

## Opinion No. 17-2000

June 4, 1917

**BY:** HARRY L. PATTON, Attorney General

**TO:** Hon. H. R. Parsons, Fort Sumner, New Mexico.

Contract With a Teacher Who Is the Wife of a Board Member Is Void.

### OPINION

I am in receipt of your recent letter, inquiring as to the validity of a contract entered into by members of the board of education, wherein they employ the wife of one of the members of the board as teacher. I note the authorities which you cite and the comment made by you in this connection.

Section 4917, Code 1915, as amended by Section 32, Chapter 105, Laws 1917, reads, in part, as follows:

"All persons identified in an official capacity with the public schools or with the higher educational institutions supported in whole or in part by the public funds of this state are prohibited from being a party directly or indirectly to any contract, or interested in any contract, in connection with the operation or maintenance of such public schools or higher educational institutions; and any contract in which they are so interested shall be void, and the members of any educational board voting for the same shall be guilty of a misdemeanor and liable to punishment accordingly."

The statute quoted not only prohibits a member of the Board of Education from being a "party, directly or indirectly to any contract," but also prohibits him from being interested in any contract. I note your reference to Section 2759, Code 1915, which reads as follows:

"The earnings of the wife are not liable for the debts of the husband."

In my opinion, this section should also be read in connection with Section 2764, which, in part, reads as follows:

"All other property acquired after marriage by either husband or wife, or both, is community property."

In *Abbott v. Wetherby*, 33 Pac. 1070, the Supreme Court of Washington, in construing a statute which provides that the wife may receive the wages of her personal labor, holds that the personal earnings of the wife, while living with her husband, are community property. It further holds that such statute must be construed to be a statute of exemption, and in no sense defines her separate property. The Washington statute, in

my opinion, more strongly indicates that the earnings of the wife are her separate property than our statute, which simply provides that the same shall not be liable for the debts of the husband. I think that Section 2759 should be construed as an exemption belonging to the wife. I am further of the opinion that the earnings of the wife, while living with her husband, are community property. If such conclusion is correct, the husband being a member of the Board of Education, and a person identified in an official capacity with the public schools, is either a direct or indirect party to the contract of employment, and is interested in the contract entered into between the Board of Education and his wife. In my opinion, such contract would be void, or at least voidable.

You further ask whether or not a contract for the sale of building site between the Board of Education and the Fort Sumner Townsite Company would be valid in a case in which one of the members of the Townsite Company is a member of the Board of Education. In my opinion, the sale of a lot to the Board of Education for school purposes would be "in connection with the operation and maintenance" of the school and is prohibited under our statute.