

OPINION
43-82

December 17, 1943 (OPINION)

PUBLIC OFFICERS

RE: Not to be Personally Interested in Contracts

I have your letter of December 15, in which you raise the question of the legality of a county officer or his deputy buying county-owned land, that has been acquired by the county under tax deed proceedings. You inquire whether such officers can buy such land, either at the annual November sale or at any other time.

Part of your question is answered by section 265 of the 1933 Session Laws. That chapter provides that county auditors, county treasurers, and each of their deputies or clerks are prohibited from purchasing property at tax sale.

Since county auditors and county treasurers are specifically excluded from purchasing property at tax sales, it might be argued that any other county officer may purchase such property. It is my opinion, however, that a county commissioner would also be excluded from the right to purchase such property under the provisions of section 9829 of the Compiled Laws of North Dakota for 1913. That section provides: "Every public officer, being authorized to sell or lease any property or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease, or contract, directly or indirectly, is guilty of a misdemeanor."

Thus, any public officer "who becomes interested individually in such sale, . . ." is violating the law. The county commissioners constitute the board which makes the appraisal of the real property to be offered for sale. The county commissioners thereby are in a position to gain knowledge of the price and other facts in connection with such real property, by reason of their official position as county commissioners. The general rule is that a public office is a public trust, and the holder thereof cannot use it directly or indirectly for personal profit, and officers are not permitted to place themselves in a position in which personal interests may come into conflict with the duty which they owe to the public. If the members of the board of county commissioners knew that each one of them wanted to buy some of the land to be sold by the county, the tendency would be to keep the price down. That is why public officers are denied the right to make contracts in their official capacity with themselves, or to become interested in the contracts thus made, or to take contracts which it is their official business to see are faithfully performed. No board shall make a legal contract with one of its own members, in respect of the trust reposed in it. See 46 Corpus Juris, page 1037-38, section 308.

See also McQuillan on Municipal Corporations 2d Edition, Volume 2, page 286-7.

To permit county commissioners to purchase county land in the county in which they act as county commissioner, in the face of section 9829, would open up an avenue for fraud and collusion on the part of county commissioners. This would be true, even though the county commissioner, who was purchasing a particular piece of land did not act as a member of the board when that particular sale was being considered. For instance, there would be nothing to prevent each member of the board of county commissioners from selecting certain parcels of land in which he was interested, and which he considered a desirable investment. While the bid of one was being considered by the others, he would pass, and each of such members of the board would pass when his particular bid was being considered. In other words, if it were permissible for one member of the board of county commissioners to acquire property in this manner, there would be nothing to prevent all of the commissioners from acquiring property in the same way, and certainly, such practice would be in violation of the statute referred to and absolutely contrary to public policy. It is therefor my opinion that sale of county lands to a county commissioner would also be void, and be in violation of section 9829 of the 1913 Compiled Laws.

Nothing in the law would prevent the register of deeds, for example, from purchasing such county lands, because he does not, in his official capacity, have any part in the appraisal or sale of such lands.

ALVIN C. STRUTZ
Attorney General