

OPINION
56-167

August 22, 1956 (OPINION)

SCHOOL DISTRICTS

RE: Clerk - Officers - Interest in Contract

We are in receipt of your letter of August 17, 1956, in which you ask whether a clerk of the board of education of a school district can enter into a contract with his district for providing vehicular transportation of the pupils.

Section 15-3414 of the code prohibits a "member of the board" from entering into such contracts. The clerk, of course, is not a member of the board so this section does not prohibit him from entering into such a contract. However, section 15-4902 provides:

No member of the board of education or school board, and no other school officer shall be interested personally, directly or indirectly, in any contract for the building or making of any improvements or repairs to school buildings, or for the erecting of any school building, or for furnishing any materials or supplies for the district, or in any contract requiring the expenditure of school funds except for the purchase of fuel and the procuring of insurance and such supplies as are in daily use. Any violation of the provisions of this section shall be a misdemeanor."

Since the contract in question would require the expenditure of school funds, the question would seem to be whether or not the clerk is a "school officer."

As our court has said in *Mootz v. Belyea* 236 N.W. 358 (N.D. 1931) at page 359: "* * *it may be difficult at times to draw a line of distinction between an official and an employee* * *;" and further (quoting a Minnesota case):

The word 'office' and 'officer' are terms of vague and variable import, the meaning of which necessarily varies with the connection in which they are used, and, to determine it correctly, regard must be had to the intention of the statute and the subject-matter in reference to which the terms are used." (Emphasis supplied)

From an examination of some of our statutes, it would seem quite certain that the Legislature did not intend to include the clerk as a "school officer."

Section 15-2401 of the 1953 Supplement, for instance, which deals with the election of officers, mentions the directors and the treasurer, but makes no mention of the clerk. And section 15-4708 which is entitled "Oath of Office of School District Officers" specifies the directors, members of the board of education, and the treasurer, but again makes no mention of the clerk. In the *Mootz* case cited above, our court quotes from a Michigan case in which it

was said that the requirement of an official oath is one of the factors which determines whether a person is an "officer" or "employee." Again, section 15-4903 differentiates between school officers and a "deputy or clerk of such officer."

In view of the foregoing, it is the opinion of this office that a clerk of a school board is not a "school officer" within the meaning of section 15-4902, and is therefore not prohibited from entering into the contract in question.

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