



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 1, 1960

Dr. J. W. Edgar
Commissioner of Education
Capitol Station
Austin, Texas

Opinion No. WW-957

Re: Whether the wife of a member of the governing board of a Fresh Water Supply District is eligible to serve as trustee of an independent school district which purchases and contracts for its water from such Fresh Water Supply District and related question.

Dear Dr. Edgar:

We have your letter of recent date containing two questions on which you have requested the opinion of this office. The questions are:

"1. Is the wife of a member of the governing board of a Fresh Water Supply District eligible to serve as trustee of an independent school district which purchases and contracts for its water from such Fresh Water Supply District?

"2. Is the wife of a stockholder in a bank which is the depository for an independent school district eligible to serve as trustee of such independent school district?"

Regarding your first question, we have found no constitutional or statutory provision which would be violated by the wife of a supervisor of a Fresh Water Supply District serving as trustee of an Independent School District which contracts for the purchase of water from such water district, nor do we feel that such a situation would be violative of the common law rule of incompatibility. Although this question

concerns the eligibility of a prospective trustee of an independent school district, it also gives rise to an additional question to wit: May the Board of Trustees of an independent school district legally contract with a Fresh Water Supply District for its water when one of said trustees is the wife of a supervisor of such water district? It is our opinion that such a contract would not be voided by the marital relationship in question. It is a well settled rule in Texas that a contract entered into by a public official, in his official capacity, in which he has a personal pecuniary interest, either directly or indirectly, is void, Meyers v. Walker, 276 S.W. 305 (Civ. App., June 1925, no writ history). However, since the supervisors of such water districts are paid on a day rate, the wife of such a supervisor has no pecuniary interest, directly or indirectly, in the water supply contract between the independent school district and the water district.

In connection with your second question, we quote from Attorney General's Opinion No. 2785 rendered in September, 1929:

"Honorable S. M. N. Marrs
State Superintendent of Public Instruction
Austin, Texas

"Dear Sir:

"This will acknowledge receipt of your letter of September 10th, addressed to the Attorney General. By this favor, you ask the opinion of the department as to whether a stockholder or director of a corporation serving as depository or treasurer of an independent school district would be eligible for appointment and qualification as trustee of said school district.

"We are of the opinion that the two positions present such a conflict of interests as to prevent the holding of the two relationships at one and the same time. The trustees of an independent school district have as part of their duty the task of seeing that the treasurer or depository properly manages the fund and moneys of the school

district. It is also incumbent upon the trustees to see that the school funds are properly protected by bonds and that the solvency of the bonds and also the solvency of the institution should be watched after to the end that the moneys may always be properly protected. Innumerable instances could be recounted where the pecuniary interests of a stockholder in a corporation would sway the trustee to an act of favoritism, at least that an unbiased and non-interested trustee would resolve against such depository or treasurer; without attempting to enumerate these various objections we conclude that upon the grounds of public policy the two positions are incompatible and that, therefore, we must answer your question by saying that a stockholder or officer of a corporation acting as a depository for an independent school district would not be eligible for appointment or election as trustee of said school district . . ."

It is our opinion that said reasons, founded on public policy, which make a stockholder or director of such depository ineligible for the office of trustee of an independent school district also render the wife of such stockholder or director ineligible to serve as such trustee. The interests of a husband and wife are so closely related that it would be naive and impractical to draw a distinction between them which would result in allowing the wife to serve as such trustee when the husband is ineligible to so serve because of the reasons indicated above. Even if our opinion was to the effect that the wife of such stockholder is eligible to serve as trustee for such independent school district, the depository contract between the bank and the independent school district would be made void by such service because of the direct pecuniary interest of the wife in such contract, Meyers v. Walker, supra. If the stock in question is community property, the wife is vested with her community share of same and even if such stock is the separate property of the husband, the wife is entitled to her community share in all dividends earned by such stock. In either event, the wife has a direct pecuniary interest in the depository contract in question.

S U M M A R Y

The wife of a supervisor of a Fresh Water Supply District which contracts for the sale of water to an independent school district is eligible to serve as trustee of such independent school district, and present and future water supply contracts between such water district and school district are not made void by said marital relationship because said trustee has no pecuniary interest in such contracts. The wife of a stockholder in a bank which is the depository for an independent school district is not eligible to serve as trustee of such independent school district, because of certain reasons indicated herein which are founded on public policy, and if such wife were eligible to serve as such trustee, the depository contract between the bank and the school district would be made void by such service due to the pecuniary interest of such wife in such contract.

Yours very truly,

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By

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APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL
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