



STATE OF IDAHO

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June 15, 1990

Daniel M. Johnson
Secretary/Treasurer
Prairie Highway District
P.O. Box 36
Nez Perce, Idaho 83543

Dear Mr. Johnson:

By letter dated April 25, 1990, you requested an informal opinion from this office whether a highway district commissioner could enter into a rock pit lease with his district. For the reasons stated below, such contract would create a conflict of interest for the commissioner and would be contrary to clear language of Idaho Code Sections 59-201 and 59-202. Furthermore, such contract is voidable. Idaho Code § 59-203.

The general statutory provisions regarding conflicts of interests for public officers is found at Idaho Code Section 59-201 which states:

Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

More direct to this question is Idaho Code Section 59-202:

State, county, district, precinct and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

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These provisions are intended to prohibit public officers from placing themselves in certain contractual positions which might bring their private interests into conflict with commitments to the general public interest. The obvious conflict in this instance is the commissioner's desire to maximize his gain as a private citizen in negotiating with the district and his duty to minimize costs and expenditures as a trustee for the highway district.

Even if the commissioner has the best intentions in making the contract and is not maximizing his private interests at the expense of the highway district, the contract is still forbidden by law. According to *McRoberts v. Hoar*, 28 Idaho 163, 175, 152 P. 1046 (1915):

It is the relation that the law condemns and not the result. It might be that in this particular case, public duty triumphed in the struggle with private interest, but such might not be the case again or with another officer; and the policy of the law is not to increase temptations or multiply opportunities for malfeasance in office.

In *Nampa Highway District No. 1 v. Graves*, 77 Idaho 381, 293 P.2d 269 (1956), taxpayers challenged the payment to the highway district commissioners for services performed pursuant to a contract between the highway district and commissioners as private individuals. The Idaho Supreme Court stated:

The contract of employment in question interferes with the unbiased discharge of the respondents' duties to the public as commissioners and places them in a dual position inconsistent with their duties as trustees for the public and all such contracts are invalid even if there be no specific statute prohibiting them. The law invalidating such a contract is based on public policy and the contention that there was no loss to the highway district is no defense.

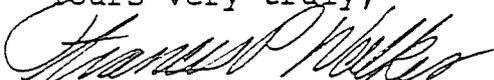
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Therefore, both case law and statutory law clearly prohibit the commissioner of a highway district from contracting with a highway district.

Please do not hesitate to contact me if you have any questions regarding this matter.

This letter is provided to assist you. This response is an informal and unofficial expression of views of this office based upon the research of the author.

Yours very truly,


Francis P. Walker
Deputy Attorney General

FPW/st