

OFFICERS:

Police Commissioner at St. Joseph is not city officer but a state officer as far as city counsel contracts for material be concerned.

May 12, 1939

5-15



Honorable H. G. Rix
Police Commissioner
President of Hesse-Rix Company
St. Joseph, Missouri

Dear Sir:

We acknowledge your request for an opinion dated May 3, 1939, which reads as follows:

"I am President of the Board of Police Commissioners of St. Joseph, Missouri, also an officer of the Hesse-Rix Company, who deal in building materials and supplies.

"There are a number of contracts let, and to be let, for the construction of public improvements under the P. W. A., for which bonds have been voted. Under the rulings of the P. W. A., no employee of the city can, either directly or indirectly, enter into any contracts for the sale of materials to be used in the construction of the improvements under the P. W. A. program.

"O. W. Watkins of Groves & Watkins, our attorneys furnished the following opinion.

"It is our opinion that Mr. Rix is an employee of the State of Missouri and not of the City of St. Joseph. Under our city charter any office of the city is prohibited from having any interest in any contract, either directly or indirectly, with the city, or to furnish supplies for the city. I refer to Section 6154 R.S.Mo. 1929.

"Sections 6360, 6361, and 6369, provide for the appointment of Police Commissioners and their duties. It is our opinion that under these sections of the statutes each of the Police Commissioners is an officer of the State of Missouri and are not in any wise officers of the City of St. Joseph.

"Section 6372 provides that members of the police force of such city organization appointed by the Commissioners are declared officers of the city under the charter and ordinances of the city, and also officers of the State of Missouri, but it does not provide that the Commissioners themselves shall be officers of the city.

"P. W. A. has requested that I get a ruling from your office in this matter this week. I will appreciate it very much if it is at all possible for you to send me your opinion with reference to this matter, so that it will reach me this week."

Section 6154 R. S. Mo. 1929 provides:

"If any city officer shall be directly or indirectly interested in any contract under the city, or any work done by the city, or in furnishing supplies for the city or any of its institutions, he shall be deemed guilty of a misdemeanor; and any appointive officer becoming so interested shall be dismissed from office immediately by the mayor; and upon the mayor becoming satisfied that any elective officer is so interested, he shall immediately suspend such officer and report the facts to the common council, whereupon the common council, as soon as practicable, shall be convened to hear and determine the same; and if, by a four-fifths vote of the common council, he be found to be so interested, he shall be immediately dismissed from such office. No officer shall hold two appointments under the city government at the same time."

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Whether a Police Commissioner of St. Joseph is or is not a "city officer", as identified in the above statute as not being legally able to contract supplies to the city, depends upon the sense upon which the term "city officer" is used in the statute, and also upon the particular circumstances involved in the contractual relationship.

Section 6154, supra, was not passed to restrain reasonable individual business enterprise on the part of a Police Commissioner who happens to be an officer and owns stock in a mercantile company. It is true that the duty of a Police Commissioner makes his office a public trust which he cannot administer by using the office so as to conflict with his duty to serve at best interest of the public.

46 Corpus Juris, page 1037, Section 308 sets out the principles of law which should be applied in construing Section 6154, supra, and reads:

"A public office is a public trust and the holder thereof cannot use it directly or indirectly for a personal profit; and officers are not permitted to place themselves in a position in which personal interest may come into conflict with the duty which they owe to the public. * * * * *

You, as Police Commissioner have no statutory power to execute city contracts for material to be used on projects of Public Works Administration. In such contracts the city council through city ordinances are the contracting parties who must come to an agreement with third persons.

Sections 6360, 6361, & 6362, provide for the appointment of Police Commissioners in St. Joseph, Missouri, and also the Commissioner's duties.

Among other things these statutes require the Commissioners to be citizens of the State of Missouri, that they receive \$500.00 per year salary, that they take oath to support the constitution of the State of Missouri, that the treasurer give bond to the State of Missouri, that vacancies be filled by the Governor of the State of Missouri, and that the Governor of Missouri may remove them for official misconduct, and that the Governor issue commissions to them.

Section 6362 R. S. Mo. 1929 provides:

"The duties of the board of police hereby created shall be as follows: They shall at all times of the day and night, within the boundaries of any city of the first class, as well on water as on land, preserve the public peace, prevent crime and arrest offenders, protect the rights of person or property and guard the public health, preserve order at every public election and at all the public meetings and places, and on all public occasions, prevent and remove nuisances on all streets, alleys, highways, waters and other places, provide a proper police force at every fire for the protection of firemen and property, protect immigrants and travelers at steamboat landings and railway stations, see that all laws relating to elections and to observance of Sunday, and relating to pawnbrokers, intemperance, lotteries and lottery policies, vagrants, disorderly persons, are enforced; and suppress gambling and bawdy houses, and every other manner and kind of disorder and offense against law and the public health. They shall also enforce all laws and ordinances passed, or which may hereafter be passed by the common council of such city, not inconsistent with the provisions of this article or any other law of the state which may be properly enforceable by a police force, In case they shall have reason to believe that any person within said city intends to commit any breach of the peace or violation of law or order beyond the city limits, or any person charged with the commission of crime in such city, and against whom criminal process shall have been issued, such person may be arrested upon the same in any part of this state by the police force created or authorized herein:
* * * * *

In the case of Britton v. Steber, et al, 62 Mo. 374, the court says:

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"* * * * There is a recognized distinction between State officers, whose duties concern the State at large, or the general public, although exercised within defined territorial limits, and municipal officers, whose functions relate exclusively to the particular municipality. * * * * * A State officer may be connected with some of the municipal functions but he must derive his powers from a State statute and execute his powers in obedience to a State law. * * * * *"

In re Police Com'rs, 49 Atl. Rep. 36 l.c. 38, 22 R. I. 654, that court held police commissioners of New Port, R. I. to be state officers and the court said:

"While their jurisdiction and their duties are territorially limited to the city of Newport, those duties are clearly of general concern, and they discharge a state function, rather than a municipal function. * * * * *
* * * * * We are accordingly of the opinion that this board of police commissioners is a state board, within the spirit as well as within the letter of the act."

CONCLUSION

We believe the conclusion in the Rhode Island case, supra, should be the conclusion to your problem. We are of the opinion that since your office is by legislative act, the appointment to which is by the Governor with confirmation of the Senate, the office being held subject to removal by the Governor, the bond being given to the State of Missouri, the official oath being to support the constitution of Missouri, and the duties pertaining to the administration of justice and the preservation of peace, (essential matters of public state wide concern), it follows that the office is a state office and not a city office as the term "city officer" is used in Section 6154, supra.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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