

It is our opinion that the amendment to KRS 433.140 made by the last Legislature changed the penalty for the crime of armed robbery to not less than ten years or for life, or death, and the circuit court must instruct on the lower penalty of not less than ten years as well as the possibilities of life or death.

OAG 66-788

WATER DISTRICTS - Commissioners, contracting with district, validity

SYLLABUS: Water commissioner contracting with the water district they represent would be against public policy and constitute a conflict of interest.

To: Charles Luker, Luker and Luker, 108 E. Fourth St., London, Ky.
By: Walter C. Herdman, Asst. Atty. Genl., December 29, 1966

This is in answer to your letter of December 15 in which you, as special counsel for the Wood Creek Water District, request an opinion as to whether commissioners of said district are prohibited from contracting with the district. You state that you can find no statutory or constitutional prohibition against the execution of such contracts.

You are correct in that there is no statute prohibiting commissioners of a water district from contracting with the district; however, we believe that such would create a conflict of interest and be against public policy.

A water district organized pursuant to KRS Ch. 74 is a body corporate and a political subdivision of the state as held in the case of Louisville Extension Water District v. Diehl Pump and Supply Company, 746 S.W.(2d) 585 (1952). Members of the water commission appointed pursuant to the water district act have been held to be public officers in the case of Commonwealth v. Howard, Ky., 379 S.W (2d) 475 (1964). The reasons behind the common law rule prohibiting public officers from contracting with boards and commissions, of which they are members, are as hereinafter set forth and in this respect we refer initially to McQuillin, Municipal Corporations, Vol. 10, § 29.97 which states that:

"It is generally held that whenever a public officer enters into a contract the execution of which may make it possible for his personal interests to become antagonistic to his faithful discharge of a public duty, such contract will be held void as against public policy."

It also follows under the same section that:

"It is well settled that municipal officers cannot be interested in contracts of any character with the municipality. This rule has been adopted to a considerable extent in the various jurisdictions by statutory or

charter provisions which are merely declaratory of the rule at common law."

Next referring to the case of Arms & Short v. Denton, 212 Ky. 43, 278 S.W. 158 (1925), we find:

"Public policy is defined to include and embrace all acts or contracts which tend clearly to injure the public health, the public morals, the public confidence in the purity of the administration of the law, or to undermine that sense of security of individual rights, whether of personal liberty or of private property, which any citizen ought to feel. 6 R.C.L. 712. The same text says: 'It is no doubt correct to say that while public policy forbids the enforcement of an illegal or immoral contract, it is equally insistent that those which are lawful and contravene none of its rules shall be enforced, and not held invalid on a bare suspicion of illegality.'"

Also referring to the case of Commonwealth v. Withers, 266 Ky. 29, 98 S.W.(2d) 24 (1937), we find the Court of Appeals stating that:

"It is a salutary doctrine that he who is intrusted with the business of others cannot be allowed to make such business an object of profit to himself. This is based upon principles of reason, of morality, and of public policy...."

In addition to the above-cited law we also refer you to 43 Am. Jur., Public Officers, § 294 through § 300.

Under the common law doctrine expressed above we are of the opinion that commissioners of a water district organized pursuant to KRS Ch. 74 are prohibited from entering into contracts with the district as a conflict of interest would exist which would be against public policy.

OAG 66-789

COUNTY BUDGET COMMISSION - Tax requirements limited increase, duties

SYLLABUS: 1. If the budget commission does not request the 10% increase in property taxes permitted by KRS 68.245(3) for the 1967 tax year, that increase is waived and cannot be used in subsequent years.

2. Adoption of the 10% increase for the 1967 tax year does not prevent the fiscal court from reducing the county tax rate in succeeding years according to needs of the county.

3. The "preceding year" for purposes of KRS 68.245 moves forward as the current year changes; hence, if