TOWNSHIP ORGANIZATION: BOARD MEMBER PERFORMING LABOR ON DISTRICT'S ROADS CANNOT BE CRIMINALLY PROSECUTED: WHEN:) When a township board member is employed by board to maintain a district's roads; accepts employment, maintains roads, and is paid from road district's funds; absent facts showing violation of Sections 231.150 to 231.330 RSMo 1949; board member cannot be criminally prosecuted under provisions of Sections 231.320 and 231.330 RSMo 1949.

March 1, 1956

FILED 18

Honorable J. W. Colley
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Mr. Colley:

This department is in receipt of your recent request for a legal opinion and reads as follows:

"Dade County operates under township organization. The Township Board has complied with section 231.160, except they have not appointed a road overseer.

"Instead of having the road overseer, one of the members of the Township Board maintains the roads of the district and receives pay for same out of funds of road district. No attempt has been made to comply with section 231.240 other than, it appears that the member of the Township Board does the work of maintaining the roads of the district and receives pay for said work.

"Under Section 231.200 the road overseer could not employ any member of the Township Board to do road work.

"My inquiry to your office is whether or not it is legal for a member of the Township Board to perform acts as above described, and whether or not such action constitutes criminal action that is governed under Section 231.320 and Section 231.330 of Missouri Revised Statutes..

"I will appreciate your help on the above inquiry."

The second inquiry is not clear, but seems to inquire if the member of the township board who maintains the roads of a

district of the township and receives pay for his labor from the district's funds, is guilty of any action for which he might be criminally prosecuted under the provisions of Sections 231.320 and 231.330 RSMo 1949.

You state that the township board has complied with Section 231.160 RSMo 1949 except that they have not appointed a road overseer. Said section reads as follows:

> "The township board of directors shall form the township into one or more road districts. If the boundary line of any road district is along a public road, then one of the other edge of said road, and not the center line, shall be the boundary line of such road; and in the event the township boards of adjoining townships are unable to agree upon the boundary lines of roads that are on the boundary lines of townships then the county court or county courts of the particular county, or counties, interested shall settle boundary lines along such township lines. In the month of April each year the board shall appoint a road overseer for each district, who shall serve for one year and until his successor is appointed and qualified. Any road overseer may be removed from office by the township board for incompetency, neglect or other good cause, and a successor may be appointed by them in his stead."

Sections 231.150 to 231.330 RSMo 1949, are in regard to township organization and road overseers. Section 231.320 provides that the prosecuting attorney of the county or his assistant shall prosecute all actions arising under the provisions of above mentioned sections. Section 231.330 is in regard to the violation of said sections and the penalty that may be assessed. Section 231.330 reads as follows:

> "Any official or other person who shall willfully fail to comply with any of the provisions of sections 231.150 to 231.330 and any person who shall willfully violate any of the provisions thereof, shall be deemed guilty of a misdemeanor, and where no other or different punishment is provided, shall be punished by a fine of not less than five dollars nor more than five hundred dollars."

You make the statement that a road overseer is prohibited from employing any member of the township board to perform labor on the roads, under provisions of Section 231.200. We agree with the statement, but since there is no evidence, that the township board member referred to in the inquiry was ever appointed, served as road overseer, or that he ever employed any of his fellow members of the township board to work on the roads of his district, no further consideration will be given to the section, which is inapplicable to the statement of facts.

It might be contended that because the provisions of section 231.330, supra, declare it to be a criminal offense for any official or other person failing to comply with any of the provisions of Sections 231.150 to 231.330, the employment of one of its members to maintain the roads of a district, by a township board, the acceptance of such employment by the board member, and payment to him of compensation from the district's funds, would be a criminal offense for which the parties might be prosecuted under the provisions of Section 231.330, supra.

We cannot agree with such a contention for the reason that Sections 231.150 to 231.330 do not provide that the employment of one of its members to perform labor on a road of the district of a township by the township board, or the acceptance of such employment and payment for labor thus performed by said member, from a road district's funds shall constitute a criminal offense or offenses.

In this connection we direct your attention to the case of Polk Township v. Spencer, 364 Mo. 97, which is a case involving facts similar to those referred to in your inquiry.

Said case was an action to recover a sum of money from the defendant Spencer, paid him as compensation for labor on the roads of a district of the township during the time he was a member of the township board. While the court held that the contract between the board and one of its members was not expressly prohibited by any statute, such a transaction was against public policy, and the contract was voidable and not void. At. l. c. 102 the court said:

> "In addition, while Spencer's employment was against public policy, there is no express statutory prohibition against the township board's contracting with its own members to perform work and labor upon the roads. It does not appear upon this record whether they were complied with but other statutes

contemplate the appointment of a road overseer. (V.A.M.S., Secs. 231.160-231.170, 231.210) who is expressly prohibited from employing board members to work on township roads. V. A. M. S. Sec. 231.200. Spencer was employed by the board, not a road overseer, and the board is expressly authorized to contract and to employ operators 'and necessary help and do such work by day labor.' V. A. M. S. Sec. 229.040. In Nodaway County v. Kidder, supra, in addition to the county judge's contract being against public policy, the statutes under which he held office expressly provided that 'No judge of any county court in the state, shall, directly or indirectly, become a party to any contract to which such county is a party, or to act as any road or bridge commissioner, * * *.' V. A. M. S., Sec. 49.140, Githens v. Butler County, 350 Mo. 295, 165 S.W. (2) 650. Likewise in 1899, the statutes relating to drainage districts provided that 'said commissioners shall not during their term of office, be interested, directly or indirectly, in any contract for the construction of any ditch, * * * nor in the wages or supplies, to men or teams employed in any work in said district.' Consequently, it was held that a contract by which one of the commissioners was employed as the engineer to supervise the construction of a levee and drainage ditch was void, and that he could not recover upon the warrants issued in payment of his contracted services. Seaman v. Cap-Au-Gris Levee Dist., supra, annotation 140 A.L.R. 583. The force and significance of the absence of the statutory prohibition and the presence of the authority to contract in general is that the employment contract is not void, but voidable. 'But a director is disabled from making a binding contract with the school district, not because the thing contracted for is itself illegal or tainted with moral turpitude, but because his personal relation to the district as its agent requires that he should have no self-interest antagonistic to that of the district in making a contract for it. The contract however

> in such case is not absolutely void, but it is simply not a binding agreement and may be avoided.' Smith v. Dandridge, 98 Ark. 38, 41, 135 S. W. 800, 34 L. R. A.(N.S.) 129; Ann. Cas. 1912D, p. 1130."

Bearing in mind the principles of law discussed in that portion of the opinion from Polk Township v. Spencer, quoted above, and applying said principles to the facts in the instant case, it is obvious that if an information were drawn following the language of Section 231.330, supra, charging the township board members with unlawfully violating the provisions of that section (or some other section under which the information were to be drawn) by employing one of their members to maintain the roads of a district of the township, or if the member accepting such employment were charged with unlawfully accepting the employment, and receiving the funds of the district for his labor, at the time he was a member of the board, in violation of Section 231.330 (or some other section under which the information were to be drawn), in either instance the information would be insufficient and charge no criminal offense for the reason that specific facts would not be alleged showing in what particular, the section had been violated, and for the further reason that the employment of one of its members to maintain the roads of a district of the township, by the township board, the acceptance of such employment, and payment, for the labor thus performed from the district's funds, have not been declared criminal offenses by any Missouri statutes.

In this connection we call attention to the case of State v. Reynolds, 274 S. W. 2d 514, which is in point with our above mentioned contention that no crime has been committed either by the township board or one of its members who is performing labor on the roads of a district of the township. In this case the defendant was charged by information with violating Section 304.010 RSMo 1949, a statute drawn in very general terms and reading as follows:

> "Every person operating a motor vehicle on the highways of this state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person. * * *."

Section 304.570 RSMo 1949 provides a penalty for violations of above quoted section and reads as follows:

> "Any person who violates any of the provisions of this chapter for which no specific punishment is provided, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than five hundred dollars or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment."

In commenting upon the insufficiency of the information the court said at l. c. 516:

> "In the light of this holding the information in the case at bar fails to state a charge. It merely states that defendant 'unlawfully operated his automobile in a careless, reckless and imprudent manner so as to endanger the life, limb and property of others', contrary to the form of the statute. This allegation fails to state in what manner or way defendant violated the rules of the road as provided in the chapter of the statute under which this action was brought. It, in no way, informs defendant of the charge he is to defend against. It does not contain a plain, concise and definite written statement of the essential facts constituting the offense charged as required by Supreme Court Rule No. 24.
>
> "We do not agree with the State that merely stating the driver unlawfully operated his car in a careless and imprudent manner is good because it follows the wording of the statute. We have set out the rule followed by the courts in this state that it is sufficient to frame an information in the words of the statute where the statute describes the entire offense by setting out the facts constituting it. Certainly, the words used by the State in the information before us do

> not describe the offense charged as was held in State v. Ball, supra, cited by the State. If the information had said that defendant operated his car in a careless and imprudent manner in that he was driving at a high rate of speed or was operating it on the wrong side of the road or that he was failing to keep it as near the right-hand side of the road as practicable or any of the other requirements of the statute, and by so doing, he endangered the property of another or the life or limb of any person, the information would have charged an offense under the law. As the information stands it merely pleads conclusions of law."

In view of the foregoing it is our thought that the answer to the second inquiry of the opinion request is in the negative.

CONCLUSION

It is therefore the opinion of this department that when a member of a township board in a township organization county, is employed by the board to maintain the roads of a district of the township; said board member accepts such employment, maintains the roads, and is paid compensation for his labor from the district's funds; absent facts showing a violation of some specific provision of any of the sections from 231.150 to 231.330 RSMo 1949, he cannot be prosecuted for a criminal offense under the provisions of Sections 231.320 and 231.330 RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL

PNC:ma