

RECEIVED

JUN 3 1997

WYO. DEPT. OF
AGRICULTURE



Rm ✓
JS —

Office of the Attorney General

Governor
Jim Geringer

Attorney General
William U. Hill

Civil Division
123 Capitol Building
Cheyenne, Wyoming 82002
307-777-7886/777-7876/777-6397 Telephone
307-777-3687 Fax

Deputy Attorney General
Michael L. Hubbard

MEMORANDUM

June 2, 1997

TO: Ron Micheli
Department of Agriculture

FROM: William U. Hill *WUH*
Attorney General

Michael L. Hubbard *mlh*
Deputy Attorney General

Carrol S. Verosky *CSV*
Assistant Attorney General

RE: Conservation District/Contract Labor

QUESTION: Can a Conservation District contract labor with one of their supervisors?

ANSWER: No.

The Wyoming Conservation Districts Law is contained in WYO. STAT. § 11-16-101, et seq. "Conservation district means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this act", WYO. STAT. § 11-16-102(v). Establishment of a district is set forth in WYO. STAT. § 11-16-113 which provides for the appointment of "two (2) supervisors who

Ron Micheli
June 2, 1997
Page No. 2

are owners of land in the district to act with three (3) supervisors elected as provided hereinafter as the governing body of the district." The powers and duties of these districts and their supervisors are listed in WYO. STAT. § 11-16-122, specifically 11-16-122(b)(i) which empowers the supervisors to "[e]mploy personnel and determine their duties and conditions of employment." Further powers in (b)(xxv) allow the supervisors to "[m]ake and execute contracts and other instruments necessary to the exercise of its powers."

Because of the above statutory sections, it is quite evident that a supervisor's duties include the hiring, review and approval of employees. This would not exclude contract employees. Although the statutes do not specifically state that supervisors cannot be contract employees, it would make little sense to believe this action would be intended or allowed. In practical application, the supervisor wishing to perform the contract work would be hiring him or herself creating not only situations where conflict of interest would be a problem, but also serious problems of basic logic. The legislators would not have intended the possibility of such dilemmas.

Further statutory clarification is found in Title 6 of Article 16 which sets forth provisions for public works and contracts. It is important to this issue that WYO. STAT. § 16-6-118 is understood in its entirety:

(a) It is unlawful for any person, now or hereafter holding any office, either by election or appointment, under the constitution or laws of this state, to become in any manner interested, either directly or indirectly, in his own name or in the name of any other person or corporation, in any contract, or the performance of any work in the making or letting of which the officer may be called upon to act or vote. It is unlawful for any officer to represent, either as agent or otherwise, any person, company or corporation, in respect of any application or bid for any contract or work in regard to which the officer may be called upon to vote or to take or receive, or offer to take or receive, either directly or

indirectly, any money or other thing of value, as a gift or bribe, or means of influencing his vote or action in his official character. Any contracts made and procured in violation of this subsection are null and void and the person violating this subsection may be removed from office.

(b) Notwithstanding subsection (a) of this section, if any person is interested in any public contract or shall represent any person, company or corporation, but shall disclose the nature and extent thereof to all the contracting parties concerned therewith and shall absent himself during the considerations and vote thereon and not attempt to influence any of the contracting parties and not act directly or indirectly for the governing body in inspection, operation, administration or performance of any contract, then the acts are not unlawful under this section. This section does not apply as to the operation, administration, inspection or performance of banking and deposit contracts and relationships after the selection of a depository.

The exception then to involvement in a district contract by a supervisor would be to fully disclose the interest in a certain contract and completely remove him or herself from the voting and subsequent administration. This may be a difficult burden to meet. It would be improper to advise any public official that such involvement in a public contract would be a simple task.

This conflict of interest has been addressed by the Wyoming Supreme Court in the context of individuals being employees and board members. *Haskins v. State ex Rel. Harrington*, 516 P.2d 1171 (Wyo. 1973) involved the question of a schoolteacher's right to hold office as a member of a board of trustees of the school district in which he was also employed as a schoolteacher. The court determined that the positions were incompatible and the teacher's office as trustee on the board would have to be vacated. The court applied the common law rule

providing that a person cannot hold incompatible and inconsistent offices or positions, one of which is subordinate of the other. Further, the court stated that their ruling that holding incompatible offices as being a conflict of interest did not result in an unconstitutional infringement of personal and political rights. Subsequent to and consistent with the ruling in *Haskins, Coyne v. State ex Rel. Thomas*, 595 P.2d 970 (Wyo. 1979) narrowed the issue of the conflict of interest by providing guidelines as to how the court views relational interests on contract matters coming before a board of trustees when an employee/board member is related to an employee of the district. The court stated school board members by their very nature are interested in what is happening in the district. This interest in many aspects of the business of the school district does not necessarily entail a conflict of interest, especially with regard to a relational interest.

... [T]here is no constitutionally protected right to hold incompatible offices or employments; that any constitutional personal right or interest in holding such offices or employments must be subordinated to compelling state policy or interest; that incompatibility in office or position exists whenever one of the offices or positions held by an individual is subordinate to another held by him in some of its important and principal duties and is subject to some degree to the revisory power of such other office; that incompatibility in office or position exists when the duties of the two offices or positions held by an individual conflict to the extent of depriving the citizens being served of independent judgment by the holder of such office or position on an issue which might arise affecting the respective offices or positions; and that holding the office of trustee of a school district by a person is incompatible with holding of the position of teacher by that person.

More recently, the court in *Thomas v. Dremmel*, 868 P.2d 263 (Wyo. 1994) ruled that a maintenance man for the school district was disqualified from holding office as a member of the board of trustees for the school district. Following the

reasoning in the *Haskins* decision, the court reiterated that "it is inimical to the public interest for one in public employment to be both the employer and the employee or the supervisor and the supervised."

The rule that no public official should be interested in a contract entered into by him is founded on public policy forbidding persons of fiduciary character from acting for themselves in a business in which their character binds them to act for others. "It is a maxim recognized in early common law that no man can be judge in his own cause." *Board of Commissioners v. Casper National Bank*, 56 Wyo. 132, 105 P.2d 578 (1940). Public policy concerns are strongly ingrained in the requirements for actions by governmental representatives.

These public policy concerns are also apparent in WYO. STAT. § 6-5-101, *et seq.*, **Offenses by Public Officials**. A supervisor cannot solicit or accept compensation for an act he or she is already required to do as part of their job with the government, § 6-5-104; nor can a supervisor require or direct bidders or contractors to deal with particular persons, § 6-5-105. WYO. STAT. § 6-5-106 states:

- (a) Except as provided by subsection (b) of this section, a public servant commits an offense if he requests or receives any pecuniary benefit, other than lawful compensation, on any contract, or for the letting of any contract, or making any appointment where the government employing or subject to the discretion or decisions of the public servant is concerned.

Although the statutes allow for a situation such as a supervisor contracting with his or her conservation district under very limited circumstances, the Wyoming Supreme Court has consistently held that such arrangements are a conflict of interest and create serious issues of incompatibility. The case law is obviously a stronger influence to the determination in this memorandum.