ROGERS v. SANGSTER.

ROGERS v. FAIRLEY.

Opinion delivered January 27, 1930.

MUNICIPAL CORPORATIONS—LEASE OF PUBLIC WORKS TO MAYOR AND ALDERMEN.—Under Crawford & Moses' Dig., § 7520, providing that no alderman shall "be interested, directly or indirectly in the profits of any contract or job or services to be performed for the corporation," an ordinance leasing municipal waterworks and

an electric light plant to the mayor and aldermen of the city is void.

Appeals from Mississippi Chancery Court, Osceola District; *J. M. Futrell,* Chancellor; affirmed.

STATEMENT BY THE COURT.

The above-styled cases were consolidated in this court for the purpose of appeal, because the issues of law are the same.

Appellees, as citizens and owners of real property in two improvement districts, brought separate suits in equity against appellants to enjoin them from carrying out the provisions of an ordinance leasing said improvements to the mayor and aldermen of said city. A waterworks improvement district, coextensive with the city limits, was duly established in the city of Osceola. An electric light improvement district, coextensive with the city limits, was also established in said city. C. L. Moore, Jr., J. L. Ward, and A. F. Barham were constituted as a board of commissioners of each district. After the construction of the waterworks plant and the electric light plant, the city of Osceola took over the operation and maintenance of the same, under section 5739 of Crawford & Moses' Digest. On October 22, 1929, the city council passed an ordinance authorizing the leasing of the waterworks and electric light plants to appellants. According to the allegations of the complaint, the mayor and a majority of the board of aldermen of said city voted for the ordinance, and became parties to the contract, which was duly signed by the mayor of the city and attested by the city clerk, and by themselves. The lease was for a period of twenty years, and its object and purpose was to convey the property of the improvement districts to the mayor of the city and three of the aldermen for the purpose of operating and maintaining the plans of the improvement districts under the provisions of the ordinance.

The court overruled a demurrer to the complaint; and, upon the defendants declining to plead further, they were permanently enjoined from delivering to the mayor

and aldermen named in the lease either the waterworks plant or the electric light plant. The cases are here on appeal.

A. F. Barham, for appellants.

L. P. Biggs, and *Coleman & Riddick,* for appellees.

HART, J., (after stating the facts). The chancellor held that the ordinance whereby the mayor and a majority of the board of aldermen were authorized to take over the waterworks plants and the electric light plant and operate and maintain the same was void, because they were interested parties. The decision of the chancellor was correct, and the contract was void as against public policy. The rule is of general application, and is based upon principles of reason and of public policy.

In 2 Dillon on Municipal Corporations, (5th ed.), § 773, a clear and comprehensive statement of the rule is made, which reads as follows:

"At common law, and generally under statutory enactment, it is now established beyond question that a contract made by an officer of a municipality with himself, or in which he is interested, is contrary to public policy, and tainted with illegality; and this rule applies whether such officer acts alone on behalf of the municipality, or as a member of a board or council. Neither the fact that a majority of the votes of a council, or board, in favor of the contract are cast by disinterested officers, nor the fact that the officer interested did not participate in the proceedings, necessarily relieves the contract from its vice. The facts that the interest of the offending officer in the invalid contract is indirect, and is very small, is immaterial. The statutory prohibition is frequently so wide in its terms as to prohibit any officer from contracting with the municipality, whether he takes part in the making of the contract or not."

To the same effect see McQuillin on Municipal Corporations (2d ed.), vol. 2, §§ 531, 629, and vol. 3, § 1354.

Municipal officers are held by the courts to a strict accountability in their dealings with or on behalf of the

municipal corporation; and in recognition of their incapacity to serve two masters, as an incident to the frailty of human nature, public policy has placed a disability to make a contract for the city where they are interested in it in any degree. The rule is so inflexible that no inquiry into their good or bad intention or to the fairness or unfairness of the contract is permitted. Our own court has sustained the principle in the following cases: *People's Savings Bank* v. *Big Rock Stone & Construction Co.,* 81 Ark. 599, 99 S. W. 836; *Tallman* v. *Lewis,* 124 Ark. 6, 186 S. W. 296; *Gould* v. *Toland,* 149 Ark. 476, 232 S. W. 434; and *Sloss* v. *Turner,* 175 Ark. 994, 1 S. W. (2d) 993.

Section 7520 of Crawford & Moses' Digest reads as follows:

"Nor shall any alderman or member be interested, directly or indirectly, in the profits of any contract, or job, or services, to be performed for the corporation."

The statute is merely declaratory of the common law, and the reason for it is well stated in 13 Cyc. p. 425, as follows:

"It is perhaps correct to say that public policy is that principle of law which holds that no person can lawfully do that which has a tendency to be injurious to the public, or against the public good, which may be designated, as it sometimes has been, the policy of the law, or public policy, in relation to the administration of the law. Where a contract belongs to this class, it will be declared void, although in the particular instance no injury to the public may have resulted."

Some reliance is placed by counsel for appellants on act 322 of the Acts of 1923, which authorizes the lease or sale of waterworks, gas or electric works belonging to, or operated by, municipal corporations or improvement districts. General Acts of 1923, p. 252.

In the first place, under the provisions of that act, the sale could be made by the officers of the municipal corporation in cases only where that corporation owned the

plant. Even in such cases, it would be contrary to public policy for the officers of the municipal corporation to lease or sell the plant to themselves.

In this case, however, the improvement districts own the plants themselves, and, under the statute just referred to, the sale of them would have to be made by the board of commissioners of the district.

Therefore it follows that the decree of the chancery court in each case was correct, and it will be affirmed.