> *are held void, even though no injury results. The test of the validity of such agreements is the tendency to public injury, regardless of the actual intent of the parties, and regardless of actual results.*" (Our emphasis)

In the facts presented, we have a member of a Parole Board, who holds a lucrative office under the laws of the State of Indiana, see my Official Opinion No. 16, dated April 9, 1956, pages 67 and 68, and who, while acting as a private individual, desires to contract for the sale of supplies and equipment to the state.

It is my opinion that the facts fall clearly within the express words of the statute. Further, in applying the test as set out in Noble v. Davison, *supra,* I am of the opinion that such a contract would most certainly have a *tendency* to public injury and would be void as against public policy.

In answer to your question, it is my opinion, based on the discussion above, that a member of a Parole Board would be prohibited from entering into a contract with the correctional institution in question.

OFFICIAL OPINION NO. 10

February 6, 1958

Mr. Paul L. Myers, Chairman
Department of Correction
210 State House
Indianapolis, Indiana

Dear Mr. Myers:

I have your letter of November 14, 1957, in which you present the following hypothetical question:

> "'John Doe—ISR 00000—was declared delinquent on his Reformatory sentence under date of December 14, 1948, either because his whereabouts were unknown, or time was being served in another institution. When this subject is located or becomes eligible for release to our detainer, the case is summarized to the

> Board of Correction, who orders the individual returned to the institution for violation of his parole. Upon Doe's readmittance to the Reformatory he makes an appearance before the Board of Parole. At this time the Board's action "Reinstatement" on parole is taken. Let us assume that Doe was returned on December 25, 1959, and by virtue of the delinquency owed approximately 9 years and 11 months. Now, if the Board should authorize that man for release on parole we would assume that this lost time would be added to his maximum, however, on the other hand, if subject is "Reinstated on Parole," does he still owe the State of Indiana that delinquent time? We realize that if he is reinstated and not returned to the institution, automatically that delinquency is waived. In many instances a man has been returned to the institution and "reinstated on parole," and if such action waives the delinquency his sentence would have expired by reason of maximum expiration.' "

I note first of all that your question concerns only parole violators from the Indiana Reformatory. A man on parole is subject to retaking and return to the institution upon a warrant issued by the Superintendent or any member of the Board of Parole, upon reasonable cause to believe that the parolee has violated his parole, his term not having expired.

> Acts of 1897, Ch. 53, Sec. 11, as amended by the Acts of 1949, Ch. 191, Sec. 1, as found in Burns' (1956 Repl.), Section 13-410.

Upon release upon parole the prisoner has already received a written statement of the conditions of his parole, and a violation by the prisoner of such conditions makes his parole agreement subject to termination, but of course the termination is at the option of the State of Indiana.

> Acts of 1953, Ch. 266, Sec. 32, as found in Burns' (1956 Repl.), Section 13-1532.

The Division of Parole of the Department of Correction supervises all parolees released from any penal institution under the jurisdiction of your Department, and has been

vested with all the powers and duties of the former Division of Corrections of the State Department of Public Welfare in respect to such parole supervision.

> Acts of 1955, Ch. 66, Secs. 5 and 7, as found in Burns' (1956 Repl.), Sections 13-1544 and 13-1546;
>
> Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 10, as amended by the Acts of 1945, Ch. 349, Sec. 5, and as found in Burns' (1951 Repl.), Section 52-1109.

Although there is no specific provision in the statutes pertaining to the Indiana Reformatory in respect to the particular meeting at which the Board of Parole shall conduct a hearing in respect to asserted parole violation, as is the case in respect to the Board of Parole of the Indiana State Prison (Acts of 1897, Ch. 143, Sec. 8, as found in Burns' (1956 Repl.), Section 13-251), yet the applicable statute does require that the declaration of delinquency be a formal order entered in the Board's proceedings, and that it be based directly upon the "opinion" of that Board—the Board of Parole of the Indiana Reformatory.

> Acts of 1897, Ch. 53, Sec. 12, as found in Burns' (1956 Repl.), Section 13-411.

It is therefore clear that the delinquency is determined and declared by the Board in formal proceedings, and it is further provided in the same section of the statute as follows:

> "* * * and (the parolee declared delinquent) shall thereafter be treated as an escaped prisoner owing service to the state and shall be liable, when arrested, to serve out the unexpired term of his maximum possible imprisonment, and the time from the date of his declared delinquency to the date of his arrest shall not be counted as any part or portion of time served. * * *"

In respect to a delinquent parolee from the Indiana State Prison, the Supreme Court of Indiana in Overlade, Warden v. Wells (1955), 234 Ind. 436, 443, 127 N. E. (2d) 686, declared as follows:

> "In the Gilchrist case, at page 575 of 233 Ind., and page 96 of 122 N. E. (2d), we said:

" 'The Governor of Indiana may, in the exercise of his power to grant pardons and reprieves, surrender a prisoner to another state or to the Federal government to pay the penalty for a crime committed in that State or against the Federal government, in a manner which would effectively waive any right to future custody or jurisdiction of such prisoner. Such action would, in effect, be a commutation of sentence amounting to the remaining time which the prisoner could be required to serve under his commitment in Indiana.

" 'The Parole Board in Indiana has no power to pardon or to commute the sentence of any prisoner.'

"If the Parole Board has no such power it follows that, for the same reasons, the Department of Public Welfare, nor any of its employees, has the power to grant pardons or commute the sentence of any prisoner.

* * *

"Acts 1897, Ch. 143, Section 8, p. 219, being Section 13-251, Burns' 1942 Replacement, *supra,* provides:

" 'At the next meeting of the board of commissioners of paroled prisoners, held at such prison, after the issuing of a warrant for the retaking of any paroled prisoner, said board shall be notified thereof. If said prisoner shall have then been returned to said prison, he shall be given an opportunity to appear before said board, and the said board may, after such opportunity has been given, or in case said prisoner has not yet been returned, declare said prisoner to be delinquent, and he shall, whenever arrested by virtue of such warrant, be thereafter imprisoned in said prison for a period equal to the unexpired maximum term of sentence of such prisoner, at the time such delinquency is declared, unless sooner released on parole or absolutely discharged by the board of commissioners of paroled prisoners.'

* * *

"Section 13-251, *supra,* being a part of the parole acts, must be read into appellee's parole and considered

as a condition thereof in the same manner as if the provisions of the statute were recited in the certificate of parole.

* * *

"Section 13-251, *supra,* operates automatically, under certain specified conditions, to toll or suspend the running of a prisoner's sentence. The invoking of the statute rests wholly with the prisoner. He, and he alone, must furnish the conditions or perform the acts which result in the operation of the statute.

* * *

"The parole authorized by our statutes does not toll or suspend the running of the sentence, nor does it operate to shorten the term. While on parole the prisoner remains in the legal custody of the parole agent and the warden of the prison from which he is paroled until the expiration of the maximum term specified in his sentence or until discharged as provided by law.

* * *

"The sentence and service while on parole are subject to the provisions of Section 13-251, *supra,* that whenever a parolee has been lawfully declared delinquent he shall, whenever arrested pursuant to a warrant issued for his retaking, be imprisoned in the institution from which he was paroled for a period equal to the unexpired maximum term of his sentence at the time such delinquency is declared, unless he is sooner released by some lawful authority.

* * *

"In each instance, from the date on which he was declared delinquent until appellee was returned to the Indiana State Prison, the running of his sentence was tolled, (cases cited), and was, in legal effect, as much suspended as though he had escaped.

* * *

"Thus, by operation of statute (Section 13-251, *supra*), he was required to serve the balance of his term.

* * *

> "Applying the same reasoning to his second delinquency following his arrest in the State of Illinois, appellee's term of service in the Indiana State Prison was, by his own act and the operation of the statute, extended to December 4, 1957."

It appears to me that there is no way, manner or means by which the term of the lawful sentence of an inmate may be decreased, without final discharge, by the Board of Parole. The only question which you have asked me, as above noted, is whether a delinquent parolee who has been "Reinstated on Parole" still owes the State of Indiana the delinquent time. It is my opinion that he must complete his entire term, whether on parole or otherwise, unless the same be decreased by action of the Governor by commutation, or unless the same be terminated either by action of the Governor or by discharge by the Board of Parole pursuant to the provisions of the Acts of 1897, Ch. 53, Sec. 13, as found in Burns' (1956 Repl.), Section 13-412.

OFFICIAL OPINION NO. 11

February 7, 1958

Mr. Kenneth Marlin, Director
Department of Conservation
311 West Washington Street
Indianapolis, Indiana

Dear Mr. Marlin:

Your letter of 3 January 1958 in which you request an Official Opinion of this office, reads as follows:

> "I respectfully request that you issue an official opinion regarding the interpretation of Section 1 (f) which applies to the last paragraph on Page 1004 of the Acts of 1957, Chapter 343. Section 1 (f) in part reads as follows: 'The fees received from the sale of such stamps shall be used by the Indiana Department of Conservation for the purpose of propagation of trout and the planting of trout in the rivers and waters of the State, *any other provision of this Act notwithstanding.*' (Underscoring mine.)