leaves under and pursuant thereto. If the Board so desired, I would think it could accept a certificate from a duly licensed chiropractor in connection with an application for sick leave; however, if this is the desire of the Board, then I would suggest that your rules be amended so as to remove any ambiguity in the construction thereof in this regard.

OFFICIAL OPINION NO. 22
June 14, 1955

Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis, Indiana

Dear Mr. Wickersham:

Your letter requesting an Official Opinion has been received and reads as follows:

"We have before us the question of the legality of a purchase by a school board from a member of the city council. We respectfully request your official opinion as to the legality of this purchase.

"I am enclosing herewith for your information a copy of a letter received from the attorney for the school board of trustees concerning this question."

From the correspondence attached to your letter, it further appears that you have requested my opinion on this question in order that you may advise the members of a certain school board as to whether or not they should proceed with purchases of this nature in the future and the following comments are submitted with that in view.

The members of the school board are elected by the Common Council of each city and the Board of Trustees of each incorporated town of this state; see Acts of 1905, Ch. 141, Sec. 1, as amended, as found in Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-1201. Under this statute the Common Council also fixes the compensation of the members of the school board who, incidentally, hold staggered terms of office.
Under this state of facts, the first question that occurs to me is whether a contract by and between the school board, and a member of the city council acting as an individual in behalf of his private business enterprise would be contrary to public policy. What the public policy of a state is must be determined from a consideration of its Constitution, its statutes, the practice of its officers in the course of administration and the decisions of its court of last resort; see Hogston v. Bell (1916), 185 Ind. 536, 545, 112 N. E. 883. The two statutes which are usually thought to be the most relevant to the matter about which you inquire, provide as follows:

"No member of the common council or board of trustees, nor any officer, clerk, or deputy of such officer, or other employee of any city or incorporated town of this state, shall, either directly or indirectly, be a party to, or in any manner interested in, any contract or agreement, either with such city or incorporated towns, or with any officer, board, clerk, deputy or employee of such city or incorporated town, for any matter, cause or thing by which any liability or indebtedness is in any way or manner created or passed upon, authorized or approved by such council or board of trustees or by any member thereof, or by any officer, board, clerk, deputy or employee of such city or incorporated town. Any contract in contravention of the foregoing provisions shall be absolutely void; and any person violating any of such provisions shall be fined not more than one thousand dollars [$1,000] and imprisoned in the state prison not less than one [1] year nor more than ten [10] years. No councilman or trustee or other officer, clerk, deputy or employee of any city or incorporated town shall, either directly or indirectly, purchase any bond, order, claim or demand whatsoever against such city or incorporated town, during his continuance in office or employment, for any sum less than the amount specified therein; and any bond, order, claim or demand so purchased by any such officer or other person in contravention of the foregoing provisions shall be forfeited to such city or incorporated town, and no action shall ever be maintained thereon. Gifts and the acquirement of equitable interests by any such officers in any such
bonds, orders, claims or demands shall be deemed to be within the meaning and scope of the foregoing provisions.” [Acts 1905, Ch. 129, § 46, as amended, as found in Burns’ Indiana Statutes (1950 Repl.), Section 48-1247.]

“Any state officer, county commissioner, township or town trustee, mayor or a common councilman of any city, school trustee of any town or city, or their appointees or agents, or any person holding any appointive power, or any person holding a lucrative office under the constitution or laws of this state, who shall, during the time he may occupy such office or hold such appointing power and discharge the duties thereof, be interested, directly or indirectly, in any contract for the construction of any statehouse, courthouse, schoolhouse, bridge, public building or work of any kind, erected or built for the use of the state, or any county, township, town or city in the state in which he exercises any official jurisdiction, or who shall bargain for or receive any percentage, drawback, premium, or profit or money whatever, on any contract, or for the letting of any contract, or making any appointment wherein the state or any county, township, town or city is concerned, on conviction, shall be fined not less than three hundred dollars [$300] nor more than five thousand dollars [$5,000], and be imprisoned in the state prison not less than two [2] years nor more than fourteen [14] years, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.” [Acts 1905, Ch. 169, § 517, as found in Burns’ Indiana Statutes (1942 Repl.), Section 10-3713.]

The numerous decisions of the Supreme Court of Indiana which appear in the annotations under these statutes in Burns, clearly indicate that contracts in violation of these statutes are void ab initio. An overall study and consideration of these decisions also shows that Indiana is one of the strictest jurisdictions in the United States insofar as the law concerning contracts of public officers is concerned; for instance, see the extremely strong statement as to the public policy involved in such situations in Noble v. Davison (1911), 177 Ind. 19, 28, 29, 96 N. E. 325.
Of course, the decided cases all involve factual situations which fall rather squarely within the terms of either one or both of the statutes hereinbefore set out and the statements therein contained, both as to the public policy involved and as to the applicability of the statutes, must be considered in view of the facts before the court in each decision.

The case at hand may not be held to be squarely within either of these statutes since the school corporation, in which the school board exercises its official jurisdiction, is a separate and distinct legal entity from the civil city in which the members of the Common Council ordinarily exercise their official jurisdiction. In this respect, see Agar v. Pagin (1906), 39 Ind. App. 567, 79 N. E. 379, in which the court held that members of the school board were not officers and employees of the government of a civil city; that the school corporation was not accountable to the Common Council of the civil city and that the Common Council of the city had no authority to investigate the actions of the school board; rather that the school board was accountable to the county commissioners and the county superintendent.

The Acts of 1905, Ch. 129, Sec. 46, supra, is also discussed and analyzed at length in 1943 O. A. G., pages 340-345, which opinion held that the statute applied to cases where a councilman, officer, clerk, deputy or employee of the city, in his official capacity, did an official act in creating, passing upon, authorizing or approving a contract or agreement with the city in which the councilman, officer, clerk, deputy or employee was directly or indirectly interested as a private individual. It sought to prevent an agent of the city from being on both sides of the same transaction, which would also make the contract or agreement illegal and against public policy in common law. Therefore, I am doubtful that the Acts of 1905, Ch. 129, Sec. 46, supra, would apply to your question in view of the fact that two distinct entities are involved so that a common councilman does not, himself, perform any official acts in passing upon, approving or authorizing a contract let by the school board.

However, the Acts of 1905, Ch. 169, Sec. 517, supra, prohibits a common councilman from being directly or indirectly interested in construction contracts for public works erected or built for the use of the state, or any county, township, town
or city in the state in which he exercises any official jurisdiction, and further prohibits such councilman from bargaining for or receiving any percentage, drawback, premium or profit or money whatever, on any contract, or for the letting of any contract, or making any appointment wherein the state or any county, township, town or city is concerned.

This statute applies to contracts between a common councilman and other governmental units in which he exercises his official jurisdiction. In the case which you have put the Common Council does exercise some official jurisdiction with regard to the school corporation, even though it be a separate entity, since the members of the school board are elected by the Common Council. In Noble v. Davison, supra, and many other decided cases in Indiana, our Supreme Court has clearly indicated its disapproval of contracts which might tend to corrupt or contaminate official action or influence the judgment of the public officers involved in the letting of the contracts.

Since the Common Council does exercise some jurisdiction over the school corporations, by appointing the members of the school board, it would, of course, be possible that the judgment of the school board could be influenced by virtue of its relationship to the Common Council.

I have found no decided cases directly involving the factual situation which you have presented to me. However, in view of the foregoing, I believe it might well be held that contracts in the nature of which you inquire about were void as opposed to the public policy of the state. Certainly, such a contract would be voidable upon a showing of collusion between the school board and the Common Council and while it is apparent that this situation does not exist in the case about which you inquire, I would advise the public officers involved not to enter into contracts of this nature, as this is the only sure way in which such officers may be fully protected, legally and otherwise, in such cases.