

"In addition to any other power existing by statute or law to modify its order or determination every agency shall have authority to modify any order or determination during the time within which a judicial review could be had thereof. Any person aggrieved by any such modification may have a judicial review thereof as provided herein for reviews of agency determinations."

By the last referred to section of the Administrative Adjudication Act it is clear that authority to modify any final order or determination is limited to that time in which a judicial review may be had thereof. This period of time is limited to fifteen days under the provisions of Section 19 of said Act, same being Section 63-3019, Burns' Indiana Statutes Annotated (1951 Repl.).

From the foregoing I am of the opinion that your board is not now authorized to revoke said certificate of registration for the reasons given in your letter but that revocation can only be had for a statutory reason.

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OFFICIAL OPINION NO. 53

July 8, 1953.

Hon. Frank T. Millis,  
Auditor of State,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 9, 1953 in which you request my opinion as follows:

"I respectfully request an official opinion of the Attorney General as to the legality of paying an engineer on a contract basis as a consultant for the Indiana Toll Bridge Commission; and over the same period of time, paying to a firm of engineers, of which the aforementioned engineer is a partner, a fee for the design of the proposed Lawrenceburg bridge."

The determination of your question calls for a statement of the pertinent facts. The Indiana State Toll Bridge Commission has furnished us with various records and documents which show the following to be the case:

(1) Mr. T. D. Hunt, an engineer, and Sverdrup & Parcel, a partnership engaging in the business of professional engineering, have associated themselves together as "joint-adventurers" or "associates" for the purpose of performing certain services for the Indiana State Toll Bridge Commission.

(2) At the present time T. D. Hunt, as an individual, and Sverdrup & Parcel, as a partnership, hold joint contracts with the Toll Bridge Commission for engineering services in connection with the construction of four (4) bridges which are proposed to be built by said commission at or near Cannelton, Indiana; Mt. Vernon, Indiana; Mauckport, Indiana; and Lawrenceburg, Indiana.

(3) T. D. Hunt and Sverdrup & Parcel, as joint-adventurers or associates, are to be paid fees for their services under the foregoing contracts in sums equivalent to the percentages of construction cost set opposite said locations as follows:

<i>Location</i>	<i>Fees</i>
Lawrenceburg, Indiana .....	5 $\frac{7}{8}$ %
Mt. Vernon, Indiana .....	7 $\frac{3}{8}$ %
Cannelton, Indiana .....	7 $\frac{3}{8}$ %
Mauckport, Indiana .....	7 $\frac{3}{8}$ %

An agreement entered into on the 9th day of December, 1952 as furnished this office between Sverdrup & Parcel, a partnership, as party of the first part and T. D. Hunt, an *employee* or appointee of the Indiana State Toll Bridge Commission, as party of the second part providing for division of fees is as follows:

"AGREEMENT

"Sverdrup and Parcel, a partnership, whose partners presently are L. J. Sverdrup, John I. Parcel, E. R. Grant, B. R. Smith and D. C. Wolfe, hereinafter called First Party, and T. D. Hunt, hereinafter called Second Party, agree as follows:

“WHEREAS, on or about the 13th day of October, 1939, First Party, whose partners then were L. J. Sverdrup, John I. Parcel and E. R. Grant, and Second Party entered into an agreement regarding division of services and remuneration arising from work to be performed for Indiana State Toll Bridge Commission, a copy of which agreement is attached hereto and marked Exhibit A, and

“WHEREAS, it is the desire of the parties to terminate said agreement and to enter into a new agreement on the same subject,

“NOW, THEREFORE, it is agreed between them as follows:

“1. The agreement executed October 13, 1939 (which canceled an agreement between the parties dated April 19, 1939) a copy of which is attached and marked Exhibit A, hereby is terminated, neither party has any further rights or obligations thereunder and this agreement is made in substitution thereof.

“2. The parties presently hold contracts with Indiana State Toll Bridge Commission for engineering services in connection with the proposed construction of bridges at or near the following towns or cities for which they are to be paid fees in sums equivalent to the percentages of construction cost set opposite said locations, as follows:

<i>Location</i>	<i>Fees</i>
Lawrenceburg, Indiana .....	57/8%
Mt. Vernon, Indiana .....	73/8%
Cannelton, Indiana .....	73/8%
Mauckport, Indiana .....	73/8%

“3. Said fees shall be divided between the parties as follows:

	<i>To First Party</i>	<i>To Second Party</i>
Lawrenceburg, Indiana .....	43/8%	11/2%
Mt. Vernon, Indiana .....	57/8%	11/2%
Cannelton, Indiana .....	57/8%	11/2%
Mauckport, Indiana .....	57/8%	11/2%

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"4. First Party, at its own expense, shall perform all engineering services called for under said contracts, and Second Party shall cooperate with First Party in the accomplishment thereof, but Second Party, as an employee or appointee of said Indiana State Toll Bridge Commission, shall not in any manner supervise or administer the performance of said contracts.

"5. On the assumption that the construction cost of the bridge at Lawrenceburg, Indiana, will amount to \$4,500,000, the fee to which the parties will be entitled will amount to \$264,375.00, of which First Party shall be entitled to receive \$196,875.00 and Second Party shall be entitled to receive \$67,500.00. There has been paid to the parties for preliminary work connected with the Lawrenceburg project the sum of \$12,500, which sum now is on deposit in their joint names in First National Bank in St. Louis. It is anticipated that the parties soon will receive the additional sum of \$126,660.00 in payment of services rendered in the preparation of plans and specifications. It is agreed that from the total of said sums (\$139,160.00) First Party shall be entitled to receive the sum of \$84,160.00 and Second Party shall be entitled to receive the sum of \$55,000.00. The balance of the fee (\$125,215.00) shall be divided as follows: To First Party \$112,715.00 and to Second Party \$12,500.00, so that upon final payment of the total fee of  $5\frac{7}{8}\%$  of construction cost, First Party will have received  $4\frac{3}{8}\%$  and Second Party will have received  $1\frac{1}{2}\%$ . In the event the construction contracts which are to be awarded on or about November 12, 1952 develop a construction cost which is more or less than \$4,500,000.00 the sums stated in this paragraph shall be adjusted accordingly and proportionately and a supplemental agreement shall be executed which will reflect such revised construction cost and revised computation of division of the fee, and in such adjustment Second Party shall receive, from said sum of \$12,500.00 now on hand and the fees soon to be paid for preparation of said plans and specifications, a sum equivalent to not less than 80% of the entire fee to which Second Party shall be entitled from the Lawrenceburg project.

If upon completion of construction it is found that actual construction cost varies from the amount of construction contracts to be awarded on or about November 12, 1952, suitable adjustment will be made between the parties so that, as already stated, First Party will have received  $4\frac{3}{8}\%$  and Second Party  $1\frac{1}{2}\%$  of the total fee of  $5\frac{7}{8}\%$  of construction cost.

"6. Second Party shall pay to First Party forthwith the sum of \$2,050.00 in payment of money loaned.

"7. It is acknowledged that neither party has any claim against the other for expenses incurred or for any other reason under the agreements dated April 19, 1939 and October 13, 1939 referred to in paragraph 1, and the terms of this agreement constitute final settlement of all controversies and claims arising out of said two prior agreements.

"8. Each party shall bear his own expenses and neither shall have the right to charge the other with any cost or expense incurred heretofore or hereafter in connection with the performance of this contract or the performance of the contracts mention in paragraphs 2 and 3.

"9. Fees received by the parties from contracts mentioned in paragraphs 2 and 3 shall be deposited in the account in First National Bank in St. Louis above mentioned and shall be divided as provided herein.

"10. Each of the parties hereto agrees that he will not enter into a contract with Indiana State Toll Bridge Commission for engineering services for the construction of bridges additional to those mentioned in paragraphs 2 and 3 hereof unless the other also is a party to such contract, and that if any such future contract is entered into the total fee to be paid thereunder and all other provisions thereof must be acceptable to both parties, and that such total fee shall be divided between them in the same proportions as is provided in paragraph 3 hereof for division of fees to be derived from the Mt. Vernon, Cannelton and Mauckport projects.

"IN WITNESS WHEREOF, this instrument is executed by the parties in two counterparts this 9th day of December, 1952.

"SVERDRUP AND PARCEL, a Partnership.

By E. R. Grant

S/ T. D. Hunt

T. D. Hunt"

Under the above contract between Hunt, Sverdrup and Parcel to which the commission was not a party, Sverdrup and Parcel were to perform the services called for in the contract by which Hunt, Sverdrup and Parcel agreed to render service to the commission but yet Hunt would receive an amount equal to 1½% of the gross cost of all of said bridges for cooperating with Sverdrup and Parcel as an *employee* or *appointee* of the commission.

(4) The minutes of a Special Meeting of the Indiana State Toll Bridge Commission, held on October 28, 1947, contain the following proposal which was made by the Commission to Mr. T. D. Hunt.

"PROPOSAL

"To Mr. T. D. Hunt:

"We, the members of the Indiana State Toll Bridge Commission hereby offer you the position of Director of Administration for a period of one year from this date and agree to pay you a fee of Five Thousand Dollars (\$5,000.00) per year to be paid in monthly payments. Out of said fee you are to pay all of your own traveling and living expenses incurred by you in the carrying out the work to be performed by you for the Indiana State Toll Bridge Commission.

"It is to be agreed that you shall give priority to the administrative work of this Commission and devote such time as is necessary as will keep the administrative work of this Commission up to date.

"As Director of Administration, serving this Commission, *your duties shall be to plan the policies of this Commission in the furtherance of the bridge program adopted by the Commission for the construction of*

*interstate bridges, that it shall be your duty to advise the Commission concerning the keeping of its records, reports, books and accounts. To assist the Commission in negotiations for the financing of interstate bridge structures, outline and submit to the Commission a plan of financing on each proposed bridge project undertaken as will be most advantageous to the Bridge Commission.*

“That the acceptance of this proposal by Mr. T. D. Hunt shall constitute an agreement and shall be in full force and effect from the date of this meeting.” (Our emphasis.)

Mr. Hunt was apparently present at this meeting as he informed the commission that he would accept said proposal, whereupon the following resolution was offered and adopted by unanimous vote of the commission :

“RESOLUTION

“BE IT RESOLVED by the Indiana State Toll Bridge Commission that the foregoing proposal made to Mr. T. D. Hunt by this Commission to serve as Director of Administration for and on behalf of the Bridge Commission under the terms and provisions described therein, be adopted, approved and spread of record in the minutes of the meeting.”

This arrangement with Mr. Hunt was for a period of one (1) year. The commission requested the payment of Mr. Hunt's fee from time to time which was paid according to the foregoing agreement. This agreement was not renewed after it had expired on October 28, 1948.

(5) On November 5, 1948 the commission approved the payment of \$10,000.00 to T. D. Hunt and Sverdrup & Parcel for services rendered under the contract concerning the bridge at Mt. Vernon, Indiana, which payment was subsequently made to said parties.

(6) On February 17, 1950 the commission approved the payment of \$12,500.00 to T. D. Hunt and Sverdrup & Parcel for services under the contract concerning the Lawrenceburg bridge and said payment was subsequently made to said parties.

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(7) The following resolution appears in the minutes of a meeting of the Indiana State Toll Bridge Commission held on April 19, 1950:

“BE IT RESOLVED that the statement of T. D. Hunt, engineer consultant to the Commission, be approved and the Chairman authorized to issue a requisition upon the Division of Auditing, State of Indiana, in the amount of Ten Thousand Dollars (\$10,000.00) to pay said engineer consultant for a bi-ennial period dating from November 1, 1948 to October 31, 1950; and

“Be it further resolved that the Chairman be hereby authorized to execute receiving tickets against said bi-ennial requisition made for engineering consultant services on a prorated monthly basis; and

“Be it further resolved that payment to said T. D. Hunt, engineer consultant, shall be made subject to the Financial Reorganization Act of 1947 enacted by the General Assembly of Indiana of the State of Indiana, and such payment shall be approved by the Director of Budget as to the legality of payment for services rendered as engineer consultant to the Commission; and

“Be it further resolved that whereas T. D. Hunt, engineering consultant, has continued to render important consulting engineer services to said Bridge Commission from the date of October 31, 1948 up to this date; and

“WHEREAS said engineering services have been performed at the request of the Commission and the Commission desires such services to continue; and

“WHEREAS no fee has been paid to said T. D. Hunt, engineer consultant, for services rendered from November 1, 1948, up to date and that by adoption of this resolution said T. D. Hunt is hereby engaged to serve said Commission in the capacity as engineer consultant up to October 31, 1950, at a fee of Five Thousand Dollars (\$5,000.00) annually, prorated on a monthly basis.

“Upon motion duly made and seconded, which by vote carried, the statements of Mr. Carl C. Knapp and Mr. Walter G. Koch were approved and the Chairman

authorized to execute claim vouchers and submit to the Auditor of State for payment.”

(8) The following resolution appears in the minutes of a meeting of the commission held on May 22, 1952:

“RESOLUTION

“BE IT RESOLVED, by the Indiana State Toll Bridge Commission, That

“WHEREAS, upon October 28, 1947 the Indiana State Toll Bridge Commission engaged Mr. T. D. Hunt, Consulting Engineer, to serve the Commission and whose duties were defined as follows:

1. To make recommendations to the Commission for the construction of interstate bridges;
2. To advise the Commission concerning the keeping of its records, reports, books and accounts;
3. To assist the Commission in negotiations for the financing of interstate bridge structures; and
4. To outline and submit to the Commission a plan of financing on each proposed bridge project undertaken as will be most advantageous to the Bridge Commission,

and

“WHEREAS, the developments in connection with the construction of the proposed Ohio River Bridge at Lawrenceburg, Dearborn County, Indiana, are such that the Indiana State Toll Bridge Commission desires to sell its Bridge Revenue Bonds in an amount sufficient to pay the cost thereof; and

“WHEREAS, the Indiana State Toll Bridge Commission has designated October 1, 1952 as the date of awarding the construction contract for the erection of said Ohio River Bridge and approaches thereto at Lawrenceburg, Dearborn County, Indiana; and

“WHEREAS, it is imperative that the financing of the proposed structure be completed in advance of the date designated for the award of construction contracts.

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"NOW, THEREFORE, BE IT RESOLVED, That T. D. Hunt, Engineer Consultant for the Commission, and Joseph B. Minor, Attorney for the Commission, be and they are, hereby, authorized and directed to proceed with the investigation in connection with the financing of the proposed Ohio River Bridge at Lawrenceburg, Dearborn County, Indiana and to assemble, prepare and compile all necessary data relating to laws, engineering and financing as may be required to complete a plan of financing advantageous to the Bridge Commission and submit their recommendations to the Commission for its consideration.

"BE IT FURTHER RESOLVED, That said T. D. Hunt be, and he hereby is authorized (in carrying out the duties assigned to him) to confer with Bond Counsel, Investment Bankers, Insurance Companies and Banks; and

"BE IT FURTHER RESOLVED, That T. D. Hunt, Engineer Consultant, shall assist the successful bidder and purchaser of any bridge revenue bonds in the setting up of a financial prospectus, schedule of rates and maturities; he shall advise the Commission on terms and provisions of the Trust Indenture; recommend to the Commission provisions and terms to be incorporated in the Trust Indenture of such bonds sold as will be advantageous to the Indiana State Toll Bridge Commission; and he shall continue such services for the Bridge Commission for the duration of the Bridge Program; and

"BE IT FURTHER RESOLVED: That Mr. Joseph B. Minor, Attorney for the Indiana State Toll Bridge Commission, be, and he hereby is, authorized to give legal assistance to the Engineer Consultant, T. D. Hunt, and that said attorney shall be authorized to cooperate, assist, advise and consult with Bond Attorneys, Investment Bankers, Insurance Companies, Banks and Engineers as will produce for the Commission the best possible market for the sale of Bridge Revenue Bonds to be offered by the Commission."

By way of summary, it appears that:

(a) T. D. Hunt was engaged by the Commission, at the rate of \$5,000.00 a year. This compensation was raised by the Commission on December 16, 1952 pursuant to the following resolution of the Commission:

**"RESOLUTION**

**"BE IT RESOLVED, That**

**"WHEREAS, under date of October 28, 1947, at a special meeting of the Commission by proper Resolution adopted, engaged T. D. Hunt, Engineer Consultant, to render services and the Commission, fixing the fee to be paid said engineer at \$5,000.00 per year out of said fee, said engineer was required to pay all of his own expenses, and**

**"WHEREAS, by proper Resolution adopted April 19, 1950, said engineering services was extended at the same fee and under the same terms and provisions, and**

**"WHEREAS, under date of May 22, 1952, at a special meeting of the Commission by proper Resolution, said engineer was therein specified, and services extended, said annual fee was stipulated as \$5,000.00 per year, said engineer was required to pay all of his own expenses, and**

**"WHEREAS, the Commission has determined and found to be true, that the fee of \$5,000.00 now being paid to said T. D. Hunt, Engineer Consultant, is not adequate compensation for the services being rendered to the Commission, taking into consideration that said engineer consultant is required to bear all his own expenses in connection with services rendered,**

**"THEREFORE, BE IT RESOLVED, That the fee to be paid said T. D. Hunt, Engineer Consultant, for services to be rendered to this Commission, as stipulated in the foregoing Resolution mentioned, shall be Ten Thousand (\$10,000.00) Dollars annually, pro-rated on a monthly basis, and that said Engineer Consultant shall pay all of his own expenses in connection with the services to be rendered.**

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"BE IT FURTHER RESOLVED, That said increased fee shall start as of the date this Resolution was adopted by the Commission, being December 16, 1952.

"BE IT FURTHER RESOLVED, That the Chairman of this Commission be, and he hereby is, authorized and directed to execute a requisition to the Division of Public Works and Supply, in the amount of \$5,000.00 requesting a purchase order number and to execute partial delivery reports monthly in favor of said Consultant covering payment for services rendered.

"IT IS FURTHER RESOLVED, That when and at such time said Consulting Engineering contract existing between this Commission and T. D. Hunt and Donald Patterson, in connection with services in connection with the proposed Indiana-Kentucky Memorial Bridge across the Ohio River at Lawrenceburg, Indiana, shall become in full force and effect, which contract provides for an annual fee of \$3,600.00 annually, then and in that event, the \$10,000.00 annual fee to T. D. Hunt, Engineer Consultant, shall be reduced by the amount of \$3,600.00 per year.

"BE IT FURTHER RESOLVED, That when and at such time as an existing agreement between this Commission and T. D. Hunt and Donald Patterson, Partners, in connection with the operation of the proposed bridge across the Wabash River at Mount Vernon, Indiana, shall become in full force and effect, then and in that event, the annual fee of \$10,000.00 paid to said T. D. Hunt, Engineer Consultant, shall be further reduced by the sum of \$3,600.00 per year, otherwise to remain unchanged and T. D. Hunt is authorized to prepare and submit a contract for said employment.

\* \* \*

"I, Carl Knapp, Secretary of the Indiana State Toll Bridge Commission, do hereby certify that the foregoing resolution is a true and correct copy of a resolution spread of record in the minutes of the Commis-

sion, and passed at a meeting of the Bridge Commission on December 16, 1952.

(SEAL)

S/ *Carl Knapp, Secretary*  
Carl Knapp, Secretary”

His duties are outlined above and his services are to continue for the duration of the bridge program.

(b) T. D. Hunt is also a party to certain contracts, between the Commission on the one hand and T. D. Hunt as an individual, and Sverdrup & Parcel, a partnership, for the performance of engineering services in regard to bridges which the Commission proposes to construct. Hunt's fee under these contracts is based on a percentage of the total cost of the construction of the bridge.

Under the facts above stated, a question is presented as to whether T. D. Hunt can legally serve as “Director of Administration” or “Engineer Consultant” to the Toll Bridge Commission, and at the same time, be a party to a contract between the Commission and T. D. Hunt and Sverdrup & Parcel, as joint adventurers or associates, for engineering services in connection with the construction of the above named bridges.

The Acts of 1905, Chapter 169, Section 517, same being Burns' Indiana Statutes Annotated, Section 10-3713, provides as follows:

*“Officers interested in public contracts.—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 state-house, court-house, 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, p. 584.)*" (Emphasis supplied.)

It has been held that contracts executed in contravention of the provisions of this section are void.

Wingate v. Harrison School Tp. (1877), 59 Ind. 520;

Ft. Wayne v. Rosenthal (1881), 75 Ind. 156;

Case v. Johnson (1883), 91 Ind. 477;

Benton v. Hamilton (1886), 110 Ind. 294, 11 N. E. 238;

Noble v. Davison (1911), 177 Ind. 19, 96 N. E. 325;

Miller v. Jackson Twp. (1912), 178 Ind. 503, 99 N. E. 102;

McNay v. Lowell (1908), 41 Ind. App. 627, 84 N. E. 778;

Pipecreek School Tp. v. Hawkins (1911), 49 Ind. App. 595, 97 N. E. 936.

The Indiana State Toll Bridge Act of 1939, as amended, has not yet been construed by the courts. However, certain provisions of said Act clearly indicate that even though the Commission is given the character of a corporation, it is nevertheless a commission of the State of Indiana. The Acts of 1939, Ch. 79, Sec. 1, Burns' Indiana Statutes Annotated (1949 Repl.), Section 36-3001 provides:

"There is hereby created a body corporate under the name of Indiana state toll bridge commission which

shall have power to contract and be contracted with, to sue and to be sued in that name and to adopt a seal and alter the same at pleasure. \* \* \*”

This section also provides for the appointment of members of the Commission by the Governor for staggered terms of three years each. The Acts of 1941, Chapter 217, Section 3, Burns' Indiana Statutes Annotated (1949 Repl.), Section 36-3005 provides that the activities of the Commission in determining the need for the construction of an inter-state bridge shall be dependent upon the necessity and the advisability therefor "in the public interest." Section 36-3007 authorizes the Commission to exercise the power of eminent domain and Sections 36-3007a and 36-3007b provide that all matters relating to the construction, acquisition by purchase, or otherwise, or condemnation of any bridge or highway, and the letting of contracts for the building of bridges shall be subject to the approval of the Indiana State Highway Commission. Section 36-3007c provides that, in the case of deadlock between the Toll Bridge Commission and the Highway Commission the Governor shall act as arbiter in which case the Governor's decision shall be final.

It is therefore apparent that the Indiana State Toll Bridge Commission possesses sovereign power, is an agency of the State of Indiana and that the members of said Commission are State Officers. The exercise of the power of eminent domain is an attribute of sovereignty. Article 1, Section 21 of the Indiana Constitution provides as follows:

*"Compensation for services or property. No man's particular services shall be demanded, without just compensation. No man's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered."* (Our emphasis.)

This is true notwithstanding the fact that the power of eminent domain may be given by the sovereign to private corporations when for a public purpose. The Consumers Gas and Trust Company v. Harless *et al.* (1891), 131 Ind. 446 at page 450 and 451, 29 N. E. 1062. Further, the ultimate authority of the Governor and the Indiana State Highway Commission

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under the Acts concerning the Indiana State Toll Bridge Commission indelibly stamp the latter as a state agency subject to supervision and control by the sovereign power of Indiana.

In addition, Article 11, Section 13, of the Indiana Constitution provides as follows:

*“General Laws.—Corporations, other than banking, shall not be created by special Act, but may be formed under general laws.”*

From the foregoing constitutional provision it is clear that the only basis upon which the validity of the Indiana State Toll Bridge Act may be upheld is by the theory that it is a state agency, since corporations cannot be created by special act. This conclusion is supported by the recent case of *Ennis v. State Highway Commission* (November 17, 1952), — Ind. —, 108 N. E. (2d) 687, at pages 693 and 694. Said case concerned the constitutionality of the Toll Road Act, Acts 1951, Chapter 281, Burns', Sections 36-3201 to 36-3222, Pocket Supplement. A comparison of the Toll Bridge Act of 1939 with the Toll Road Act of 1951 discloses a marked degree of similarity with respect to the purpose, establishment, nature, powers and duties of the commissions thereby created. Each is established for a public purpose, has the power of eminent domain and each is subject to ultimate control and supervision by the Governor and the State Highway Commission. From the foregoing *Ennis* case it is conclusive that the Indiana State Toll Bridge Commission likewise is a state agency and that *the members of said commission are state officers exercising sovereign power.*

“A public officer may be defined as a position to which a portion of the sovereignty of the state attaches for the time being, and which is exercised for the benefit of the public. The most important characteristics which may be said to distinguish an office from an employment is, that the duties of the incumbent of an office must involve an exercise of some portion of the sovereign power.”

*Shelmadine v. City of Elkhart* (1921), 75 Ind. App. 493, 495, 129 N. E. 878.

See also:

State *ex rel.* Black v. Burch (1948), 227 Ind. 445, 456, 80 N. E. (2d) 560.

The facts previously stated show that T. D. Hunt has, since 1947, received compensation in his capacity as Director of Administration or Consulting Engineer to the Indiana State Toll Bridge Commission. His duties under the resolutions previously set forth consisted of:

(a) Planning the policies of the Commission in the furtherance of the bridge program adopted by the Commission for the construction of interstate bridges.

(b) Advising the Commission concerning the keeping of its records, reports, books and accounts.

(c) Assisting the Commission in negotiations for the financing of interstate bridges.

(d) Outlining and submitting to the Commission a plan of financing on each proposed bridge project undertaken as will be most advantageous to the Commission.

(e) Making recommendations to the Commission for the construction of interstate bridges.

Under the RESOLUTION of May 22, 1952, *supra*, T. D. Hunt was authorized to proceed with the investigation in connection with the financing of the proposed Lawrenceburg bridge. In carrying out his duties he was specifically authorized to confer with Bond Counsel, Investment Bankers, Insurance Companies and Banks. He was also to assist the successful purchaser of bridge revenue bonds in setting up a financial prospectus and schedule of rates and maturities.

The Supreme Court of Indiana has defined "Agency" as:

"\* \* \* the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."

Dept. of Treasury v. Ice Service, Inc. (1941), 220 Ind. 64, 67, 41 N. E. (2d) 201;

Lincoln Natl. Bank & Trust Co. v. Parker (1941), 110 Ind. App. 1, 14, 34 N. E. (2d) 190.

Upon the facts submitted it would appear that T. D. Hunt had authority to act in behalf of the Commission in effecting contractual relationships between the Commission and third parties. Therefore, substantial grounds exist for holding that Hunt was an agent of the Commission and that his contract for engineering services in connection with the four bridges was void under Chapter 169 of the Acts of 1905, *supra*.

However, regardless of whether he is technically an agent he was given broad and extensive authority and a question of public policy is involved.

Under the RESOLUTION of May 22, 1952, *supra*, Hunt was to make recommendations to the Commission for the construction of interstate bridges. This would appear to include not only recommendations as to what particular bridges should be constructed but also recommendations as to the appointment of engineers in connection therewith.

As previously stated, Hunt has a direct pecuniary interest in the construction of four proposed bridges. Further, his agreement of association with Sverdrup & Parcel provides that:

“Each of the parties hereto agrees that he will not enter into a contract with Indiana State Toll Bridge Commission for engineering services for the construction of bridges additional to those mentioned in paragraphs 2 and 3 hereof (Lawrenceburg, Mt. Vernon, Cannelton, and Mauckport) unless the other also is a party to such contract, \* \* \*.” (Our insertion.)

This provision would eliminate Sverdrup & Parcel as engineers unless Hunt was also a party, thereby assuring Hunt he would receive his percentage above pointed out. Therefore, Hunt's relationship to the Commission as Director of Administration or Consulting Engineer would appear to be incompatible with his personal interest in the various construction contracts.

“\* \* \* “There is a class of contracts, entered into by officers and agents of the public, which naturally tends to induce the officer, or agent, to become remiss in his duty to the public, that the courts unhesitatingly pronounce illegal and void as being contrary to public

policy. \* \* \* "It is a well established and salutary doctrine," says a distinguished author, "that he who is entrusted with the business of others cannot be allowed to make such business an object of pecuniary profit to himself. This rule does not depend on reasoning technical in its character, and is not local in its application. It is based on principles of reason, of morality, and of public policy. *It has its foundation in the very constitution of our nature, for it has authoritatively been declared that a man cannot serve two masters, and is recognized and enforced wherever a well regulated system of jurisprudence prevails.* \* \* \*'" (Our emphasis.)

Town of New Carlisle v. Tullar (1915), 61 Ind. App. 230, 236, 110 N. E. 1001.

Moreover, in the course of preparing this OPINION, it has come to my attention that T. D. Hunt has not been issued a certificate of registration by the State Board of Registration for Professional Engineers and Land Surveyors. T. D. Hunt is not therefore legally qualified to engaged in the practice of professional engineering in this state or to make a contract to perform the duties of a professional engineer.

The contract concerning the Lawrenceburg bridge between the Indiana State Toll Bridge Commission, Party of the First Part, and Messrs. Sverdrup & Parcel, Consulting Engineers, a partnership, and T. D. Hunt, an individual, an engineer, both of St. Louis, Missouri, as Parties of the Second Part, reads in part as follows:

"The Parties of the Second Part for and in consideration of a fee, as hereinafter stipulated, agree to do all engineering work in connection with the proposed structure and its approaches, including the preliminary surveys and other investigations required to determine the engineering feasibility of the proposed structure, and to aid said commission in determining whether it is necessary and in the public interest to construct said bridge. They agree to do all the engineering work necessary, to design and prepare plans and specifications for the construction of said bridge and to supervise its construction."

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The Acts of 1935, Chapter 148, Section 1, as amended, Burns' Indiana Statutes Annotated, Section 63-1517 provide as follows:

"For the purpose of safeguarding life, health, and property no person shall engage in, or offer to engage in, the practice of professional engineering or of land surveying in this state, unless and until such person shall submit evidence that he is qualified so to practice and shall have been registered, or is exempted as hereinafter provided. *It shall be unlawful for any person to engage in, or offer to engage in, the practice of professional engineering or of land surveying in this state, or to use, in connection with his name, or otherwise assume, or advertise, any title or description tending to convey the impression that he is a professional engineer or land surveyor, unless such person shall have been duly registered or is exempted under the provisions of this act.*" (Our emphasis.)

Section 2 of said Act, as amended, Burns' Indiana Statutes Annotated, Section 63-1518 contains the following definitions:

"(a) The term 'professional engineer' as used in this act, shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to engage in the practice of professional engineering as hereinafter defined.

\* \* \*

"(c) The term 'practice of professional engineering' as used in this act, shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and designs, in connection with any public or private utili-

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ties, structures, buildings, machines, equipment, processes, works, or projects. \* \* \*”

Clearly, under the agreement above set forth, Hunt has contracted to, and has engaged in the practice of professional engineering as above defined.

It has been generally held that where a statute requires a license to practice a particular profession or render specified services that a contract by one not so licensed to perform such services is invalid.

33 Am. Jur., Licenses, Section 70;

McGill v. Carlos (1947, Ohio), 81 N. E. (2d) 726.

This principle has been upheld by the Indiana Supreme Court in connection with a contract for legal services by one not licensed to practice law in this state. In the case of Fink v. Peden (1938), 214 Ind. 584, 17 N. E. (2d) 95, at p. 98 the court said:

“Wherever the question now before this court has been presented to courts in other jurisdictions it has been held that a person purporting to act as an attorney, but who in fact is not a licensed attorney, cannot recover for services rendered.”

T. D. Hunt, as a Party of the Second Part agreed to perform services which under the law could only be performed by a person licensed as a registered professional engineer under the laws of the State of Indiana could legally perform and in my opinion his agreement is invalid.

In view of the foregoing, no payments can properly be made to T. D. Hunt for performing services as a professional engineer in his capacity as Director of Administration or Consulting Engineer to the Toll Bridge-Commission, or under his various contracts in connection with the construction of bridges by said Commission.