cash bids only are to be submitted. The notice must state that on or after a certain date contracts will be negotiated and awarded. The date must not be less than ten days from the date of posting of the notice or the first publication of notice as provided in Section 3 of Chapter 200, Acts 1943.

Your second question cannot be answered by an either yes or no. As I have heretofore stated in this opinion, a contract cannot come into existence until there is an offer and an acceptance. A bid is an offer. In the letting of the contract by the trustee and advisory board, they will have to receive and accept an offer made by one, who proposes to operate a school-bus route. It would be impossible to negotiate a contract without accepting some offer which, in the final analysis, is only a bid on the part of the offerer. The trustee and advisory board in awarding the contract could receive a series of offers from the proposed operators of the routes, and these need not necessarily be in writing. As a result of such negotiation, the trustee with the consent of the advisory board could then accept the offer which was most advantageous to the township. The Act does not make the negotiating of contracts without bids the sole procedure to be followed.

SECURITIES COMMISSIONER: Whether certain certificates to be issued by The Indiana Mutual Life Insurance Company of Elkhart, Indiana, are securities.

May 10, 1943.

Mr. Warren Day,
Securities Commissioner,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of May 5, 1943, requesting an official opinion as to whether the certificate, issued by the Indiana Mutual Life Insurance Company of Elkhart, Indiana, pursuant to Section 97 of the Indiana Insurance Law of 1935, is a security within the meaning of the Indiana Securities Law. The following is a copy of the certificate referred to:
CERTIFICATE
NO.
THE INDIANA MUTUAL LIFE INSURANCE
COMPANY
ELKHART, INDIANA

The Indiana Mutual Life Insurance Company, a corporation organized and existing under the laws of the state of Indiana, hereby acknowledges receipt of $______________ of ________________

From ________________ of ________________ which the undersigned agrees to pay, with interest at 3 1/2% per annum, out of the surplus earnings of the undersigned and not otherwise, and no liability or claims shall exist or can exist against the undersigned except as above provided. This receipt is issued and the terms of repayment are all in accordance with the terms of Section 97 of the Indiana Insurance Law.

IN WITNESSETH WHEREOF, the Indiana Mutual Life Insurance Company of Elkhart, Indiana, has caused this surplus receipt to be executed and delivered and the party to whom it is issued accepts same this ______________ day of ______________, 194__.

Attest: ______________ By ________________

President

It is explained that each certificate is to be issued in an amount not to exceed $50 and that the number of certificates to be issued is estimated to aggregate a total of $10,000. As earlier stated, these certificates are to be issued with the approval of the Department of Insurance under Section 97 of the Indiana Insurance Law of 1935.

So far as I can see, your question is simply a question of definition. Section 25-831 of December, 1942, Cumulative Pocket Supplement of Burns’ Indiana Statutes Annotated, 1938, defines the term “security” as follows:

“When used in this act, the following terms shall, unless the text otherwise indicates, have the following respective meanings:

“(a) The term ‘security’ shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, interest or certificate of interest or par-
ticipation in any profit sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, income contract, annuity contract unless issued by an insurance company qualified with the insurance department of this state, subscription or contract covering or pertaining to the sale or purchase of securities on the instalment plan, any form of contract or agreement for the sale and conveyance of land or interest therein lying outside of this state on the deferred payment or instalment plan, when such contract does not contemplate delivery of possession of such land to the purchaser within three (3) months after the date of such contract, beneficial interest in a trust or pretended trust, any transferable certificate, instrument, or receipt evidencing an interest in or right to specific property, beneficial interest in title to property, profits or earnings, certificate of interest in an oil, gas or mining lease, royalty or title, or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase, any of the foregoing."

Applying the above definition to the certificate, a copy of which is inserted in this opinion, it is apparent that such certificate clearly is a security under the terms and definitions contained in Section 25-831 of the December, 1942, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated, 1933. I need to go no further than to point out that the certificate is an "evidence of indebtedness" in order to arrive at the above conclusion. I desire to point out, however, in passing, that the certificate referred to does not contain any statement as to its maturity date and is payable only out of surplus earnings. However, it seems to me that this fact does not affect the question as to whether the instrument is, in fact, a security under the terms of the Securities Act.