dollars for every twenty-five miles between his place of residence and the board’s meeting place in Lake County, duly designated by said board, if traveled by him in going to and from such meeting.

HOUSING BOARD, STATE: Whether law precludes commissioner from selling insurance to an authority or a third party interested by contract in such authority.

November 29, 1939.

Hon. Walter E. Stanton,
Executive Secretary,
State Housing Board of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter referring to section 6 of chapter 207 of the Acts of the Indiana General Assembly of 1937, and inquiring whether such section:

“(a) Precludes a duly qualified commissioner from selling insurance to an authority upon the properties of the authority and from which sale such commissioner would derive a commission from the company which he represents, and

“(b) Precludes a duly authorized and qualified commissioner from selling insurance to a third party who is required to carry insurance as a result of a contract with the authority.”

The Act referred to is an Act creating housing authorities in the several cities and towns of the state providing for the organization of commissions to administer such authorities and other relevant matters. Section 6 provides as follows:

“No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an
interest direct or indirect in any property included or planned to be included in any housing project, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority, and any commissioner holding such interest shall cast no vote regarding the acquisition of such property by the authority. Failure so to disclose such interest shall constitute misconduct in office.”


In the discussion of the questions, I think it may be helpful to note that section 8 of the Act sets out in detail the powers of such an authority. Among other things it will be noted that such an authority has power to lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project; to own, hold, and improve real or personal property; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; and:

“to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards”;


Referring now to section 6, it will be noted that it is expressly provided that no commissioner or employee of an authority shall:

“have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.”


While the term “insurance” is not used in the above quoted language, it seems to me that the words “services to be furnished or used” is perhaps sufficiently broad to cover the furnishing of insurance. However, quite independent of whether the language thus used is sufficient to include insurance, upon the basis of public policy, I think that a duly qualified commissioner would not be authorized to sell insurance to an authority of which authority he is a commissioner.
This department has held in an opinion rendered August 15, 1935, to the State Examiner, that a county attorney is prevented upon the ground of public policy from selling insurance to the Board of County Commissioners who are his employers, said insurance to be upon county property. In that opinion it was said:

"The county attorney may be called upon to take the position with respect to said contract adverse to his position as an agent of the insurance company."

Likewise here, the commissioner is dealing with a body of which he is a member and might, therefore, find himself representing two conflicting interests. This cannot be permitted. As said in the opinion of the court in the case of Noble v. Davison, 177 Ind. 19, at page 29:

"In Cheney v. Unroe, supra, this court quoted with approval the following from 1 Dillon, Mun. Corp. (4th ed.) sec. 444:

'It is well-established and salutary doctrine, that he who is intrusted 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.'

"In Waymire v. Powell (1886), 106 Ind. 328, 4 N. E. 900, this court, in holding void a contract between a board of county commissioners and one of its members, said:

'The law will not permit public servants to place themselves in a situation where they may be tempted to do wrong, and this it accomplishes by holding all such employments, whether made directly or indirectly, utterly void.'"

It may be that the acts described in subdivision (a) of your question are not expressly prohibited by the provisions of section 6, but quite independent of that express language, I
think that upon very sound grounds of public policy this sub-
division of your question must be answered in the affirmative,
that is, commissioners of such authorities are precluded from
selling insurance to the authority of which they are commis-
sioners upon the properties of such authority.

The answer to subdivision (b) of your question is not quite
as clear as the answer to subdivision (a). There seems to be
no express prohibition of the acts therein described so far as
section 6 is concerned. It appears to me, however, that there
is a certain almost unavoidable duress involved in such a trans-
action on account of which I think it is desirable that such a
situation be avoided. Moreover, policies issued in such cases
would be for the benefit of the authority as its interests ap-
peared so that even in such a case the commissioner might find
himself in case of a loss under the policy in a dual position. I
think the second subdivision of your question should also be
answered in the affirmative.

INSURANCE, DEPARTMENT OF: Transfer of reserves de-
posited by Indiana company to Texas Insurance Commis-
sioner pursuant to reinsurance contract.

December 6, 1939.

Hon. Geo. H. Newbauer,
Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Sir:

Your letter of November 28th requesting an official opinion
relating to the transfer of reserves deposited by an Indiana
stock life insurance company which has entered into a re-
insurance contract with a foreign insurance company, reads
in part as follows:

"This company now proposes to enter into a rein-
surance contract with a company which has just been
incorporated under the laws of the State of Texas by
the terms of which contract the Indiana company will
transfer to the Texas company all of its assets of every
kind and description including title to such reserve
deposit, and the Texas company in consideration of