ment, it would not be seriously contended that the lowest responsible bidder must have been employed."

City of Newport News v. Potter, 122 Fed. 321;

It is, therefore, my opinion that a municipality may construct a sewage disposal plant directly, and that a contract may be entered into between an individual or a corporation, and the municipality, wherein the corporation or individual is to act as construction engineer of the direct construction of the plant, without the necessity of submitting such services to competitive bidding.

GROSS INCOME TAX: When co-operative associations and farm bureaus are exempt from tax.

September 25, 1933.

Department of Treasury,
State of Indiana,
Indianapolis, Indiana.
Att: Hon. Leroy Sanders,
Gross Income Tax Division.

Dear Sir:

I have before me your request for an official opinion presenting the following inquiry:

"Many farm bureaus and co-operative associations, dealing in farm products, are filing applications for exemption under the gross income tax law and claiming such exemption under section 7-B of such law. In most instances these associations or corporations are organized under the Co-operative Corporation Act, as provided in chapter 20 of the Acts of 1925.

"In the articles of incorporation of each of these it expressly provides that they are a non-profit organization. In a great many instances preferred stock is issued upon which dividends are paid. The members of these corporations are issued stock and are paid dividends thereon.

"The county organization deals with members and non-members alike. They are instructed, however, that they must sell 51% of the supplies or materials or
whatever it is they sell to their members. The members receive dividends. The non-members are credited with an amount that is the difference between the sales made to them and the pro rata part of the expense of operation but so far this amount has not been paid back.

"Does the fact that these associations deal with persons not members, and such non-members receive a part of the savings or profit exclude or prohibit such organization from coming under section 7-B of the Gross Income Tax Act, and would this act also prohibit them if this organization done business with persons other than their members upon which a profit was realized and that amount of profit held for the benefit of the members?"

Section 7-B of the Indiana Gross Income Tax Act of 1933 (chapter 50, Acts of 1933, pages 393-394) provides:

"Sec. 7. There are, however, excepted from the provisions of this act:

"(b) Labor, agricultural and horticultural societies and other organizations not operated for profit; cemetery associations and companies which are organized and operated exclusively for the benefit of their members; fraternal benefit societies, orders or associations, operating under the lodge system for the exclusive benefit of the members, and providing for the payment of death, sickness, accident or other benefits to the members of such societies, orders or associations and to the dependents of such members; corporations, associations or societies organized and operated exclusively for religious, charitable, scientific, fraternal or educational purposes; business leagues, chambers of commerce, boards of trade, civic leagues and other organizations operated exclusively for the benefit of the community and for the promotion of social welfare: Provided, however, That this exception shall apply only to companies, organizations, corporations and/or societies named in this subsection which are not organized for profit, and no part of the income of which inures to the benefit of any stockholder or other private individual." (Our italics.)
It is immediately apparent that the case of each co-operative association seeking exemption must stand upon its own merits. It is elementary that the exemption applies only to groups which are not organized for profit, and no part of the income of which inures to the benefit of any stockholder or private individual.

In response to the specific inquiry presented, I am of the opinion that the fact that these associations deal with persons other than their members is not controlling in itself. Rather it is the disposition of the savings that is a strong factor in the determination of the nature and status of the association with regard to its coming within the purview of the terms of a "for profit" or a "not-for-profit" organization.

Briefly, then, I am of the opinion that where such associations do business with persons other than members of their association and the savings or profit is withheld, in whole or in part, from such non-member patrons and distributed among the member-patrons, that such organizations are then operating for profit and cannot claim the exemption granted by section 7-B.

However, the rule may be laid down that where such co-operative agricultural associations are conducted so that the returns made inure to the benefit of all patrons—regardless of whether they are members or non-members—in the proper proportion of the savings affected in relation to purchases made by the patron, such associations where all other requirements for such exemptions are met, are within the purview of the exemption granted by section 7-B.

This leaves only the consideration of the effect of the issuance of stock upon the status of such associations. It has been urged that since the dividends upon such stocks are fixed and limited, the issuance of stock takes on a new and different character so as to prevent the issuing organization from being a "for-profit" group. An examination of the rulings so holding uniformly result in the discovery that each has specific statutory background directing that the exemptions shall not be denied because of the issuance of such stock.

See: Federal Revenue Act, 1932, (Sec. 103-(12)
and (13) );
Wisconsin Laws, 1931, Sec. 7105-1 (g).
The character of corporate stock in this state has been ably discussed by the Supreme Court of Indiana in the case of Markle v. Burgess, 176 Ind. 25, at 28, where we find that:

"A share of stock may be defined as a proportional part of certain rights in the management and profits of the corporation during its existence, and in the assets upon dissolution. 1 Cook Corporations (6th ed.), Sec. 12. A stock certificate is a written acknowledgment by the corporation of the interest of a shareholder in the corporate property, and occupies a position similar to other muniments of title. 10 Cyc. 588. It is evidence of his ratable share in the distribution of the assets of the corporation on the winding up of its business."

It follows then, that the payments of dividends upon the shares of common stock issued by these farm bureau co-operative associations represent the payment of proportional part of profits. There must be a profit before any such dividends can be paid. At this point, it might be well to note that I cannot subscribe to the theory that has been vigorously advanced that in the instant case the common stock merely represents a debt. The certificates of stock issued make no mention of this and bear upon their face, the general appearance of common stock. None of the characteristics of an acknowledgment of a debt are to be found on any of the certificates tendered for my inspection.

Aside from the question of dividends, it must be noted that the ownership of the shares of common stock in these enterprises entitles the holder to his ratable share in the distribution of the assets of the corporation on its dissolution. The answer, that it is not contemplated that the association will possess such assets for distribution on the winding-up of its business, is ineffective. The possibility of such profit exists and the issuance of the stock in a manner providing for such a contingency, would indicate that those in charge appreciated the existence of such possibility.

I am, therefore, of the opinion that where such associations have issued common stock, they must be considered as "for profit" organizations and are not entitled to the exemptions granted by section 7 of the act.