

998, has held that a private bank operating under the Act of 1907 is in legal signification a business owned either by an individual or a partnership. If such business is owned and operated by a partnership, such partners may sell their interests in such business, the only limitation upon such transaction being that it requires notice of such change of ownership to be filed with the Auditor of State, and a posting of the name of the new owner in the banking room.

The legislature, in enacting the Act of 1905 as amended by the Act of 1907, only intended to regulate and supervise the business of banking by individuals, partnerships, or unincorporated persons, as it had a right to do under the police power of the state; that it did not intend to abrogate all previous principles of law controlling partnerships, as they existed previous to the passage of said Act, is no longer a debatable question in this state.

Lindley v. Seward, 5 N. E. (2d) 998.

Since there are no limitations in the Act upon the sale of a part or all of a private banking business, I know of no law or rule of construction for bidding such sale.

GOVERNOR'S OFFICE: Whether ownership of stock not exceeding \$10.00 in a county farm bureau co-operative association by members of board of commissioners precludes the acceptance by them of bid of such association for purchase of road machinery when same is lowest and best bid.

October 22, 1937.

Honorable M. Clifford Townsend,
Governor of the State of Indiana,
Indianapolis, Indiana.

My dear Governor:

I have before me your letter requesting an official opinion construing Section 10-3713 of Burns Indiana Statutes Annotated (1933) as applied to the following statement of facts, viz:

The Board of County Commissioners of _____ County, Indiana, having duly advertised for bids for an item of road machinery, upon the opening of such bids, found that the low bidder was the _____ County Farm Bureau Co-operative

Association. It is claimed that each of two of the members of the Board of County Commissioners own stock in the Co-operative Association which was the low bidder in approximately the amount of ten dollars (\$10.00). It is represented that the low bidder is a non-profit corporation organized under the Indiana Agricultural Co-operative Act and that the dividends on its stock is limited by law.

Your request is based upon the consideration set out in your letter that:

“It is alleged that persons acting in the interest of the unsuccessful bidders have warned the County Attorney and others of their intention to prosecute the members of the Board of County Commissioners who hold this stock under the terms of the above mentioned section if the bid of said Co-operative Association is accepted by the Board.”

This Statute referred to is as follows:

“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." (Our italics and capitals.)

Burns Indiana Statutes Annotated, 1933, Section 10-3713.

It will be noted from the foregoing that the prohibitions of the statute may be put into two general classes. The first of the classes is the prohibition against the officers named being interested directly or indirectly during their terms of office in any contract for the *construction* of certain types of work. These types are specifically set out in the statute and include only contracts for the construction of a *state house, court houses, schoolhouses, bridges, and public buildings or works of any kind* which are "*erected or built*" for the use of the state, or any county, township, town or city in the state wherein the officer exercises any official jurisdiction.

It is obvious upon the most liberal construction of the statute that the purchase of an item of *road machinery* is not within the above class, in addition to which it should be pointed out that this act, being penal in its nature, must be strictly construed.

Marion Township etc. vs. Howard, 196 Indiana 167 at pp. 171-172.

The second of the classes of prohibitions of the statute is the prohibition against the officers named *bargaining for or receiving* "ANY PERCENTAGE, DRAWBACK, PREMIUM, OR PROFIT OR MONEY WHATEVER, *on any contract or for the letting of any contract*" wherein the state or any county, township, town or city is concerned. (Our italics and capitals.)

I do not think the above language can be made to apply to the situation presented in your letter and referred to herein. The thing prohibited is the *bargaining for* or the *receiving* of any percentage, drawback, premium, or profit or money *on any contract or for the letting of any contract*. The simple incident of the owing of a ten dollar interest in the co-operative association by a member of the Board is surely not the *bargaining for* any percentage, drawback, premium, or profit or money *on the contract or for the letting of the contract*. Is

it the receiving of any of the above? It seems to me that it requires an unreasonably wide stretch of the imagination to so conclude. The board member receives nothing directly *on the contract* or *for the letting of it*. His only possible receipt is through the route of a dividend on his ten dollar holding, which the association may pay in part out of the profits derived from this contract if a profit is realized; and the amount of this dividend is limited by law so that it is problematical whether any part of the profit, if any, on this contract would ever be returned to stockholders in the form of dividends. It may possibly be returned to patrons in the form of savings. The receipt is so problematical, so uncertain and so small that, in my opinion, it can not be considered as a receipt at all *within* the meaning of the above statutes. Stock ownership in the contracting corporation by a member of the board may be such as to invalidate the contract upon grounds of public policy or may present a case of such interest as to result in a violation of the above statute, but under the facts of the case as stated herein I am of the opinion that the letting of the contract to the low bidder would not, on account of the very small stock ownership of two members of the board, be a violation of said statute.

Burns Indiana Statutes Annotated, 1933, Section
15-1613.

**ACCOUNTS, STATE BOARD OF: Teachers' Retirement Fund
Act of 1937, effect of same as to teachers who were mem-
bers of the fund prior to the 1937 amendment.**

October 26, 1937.

Hon. William P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Mr. Cosgrove:

I have before me your letter referring to the 1937 amendments to the State Teachers' Retirement Fund Act and submitting the following questions:

“(1) Will it be possible for a teacher who is paying the assessment as set out in section 9 of the Teach-