place him in a position in which his action on the contract would be contrary to the best interests of the public. Therefore, it is my opinion that in the absence of additional facts, and further, in the absence of fraud, a member of the Board of Public Works of your city who is employed by a company which supplies materials to contractors who have contracts with said Board of Public Works does not have a "direct or indirect interest" in such contract so as to render it void or illegal either in violation of the statutes of this state or as contrary to public policy.

OFFICIAL OPINION NO. 19

June 1, 1959

Honorable William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter of May 12, 1959, has been received and reads as follows:

"I am in need of an Official Opinion on the following questions:

"1. In Fountain County, the present attendance officer received five votes of the eleven members of the county board of education while another candidate received six of the eleven votes. Which person is legally the attendance officer?

"2. The county has a total school attendance of 4,037. Is the county board of education forced to name an attendance officer or can they do away with the office of county attendance officer?"

Acts of 1921, Ch. 132, Sec. 1, as amended, as found in Burns' (1948 Repl.), Section 28-501, in part, provides as follows:

"* * * The superintendent of schools of each city and/or county having fifteen hundred [1,500] or more
children in average daily attendance in school shall nominate and the board of school trustees of such city and/or county shall appoint one [1] attendance officer, and in like manner one [1] additional attendance officer may be nominated and appointed for every seven thousand five hundred [7,500] children of school age in average daily attendance in the schools in such city and/or county. * * *

Section 2 of said Act, as amended, as found in Burns' (1948 Repl.), Section 28-502, in part, reads as follows:

"Appointive attendance officers shall take office on the first of August and shall hold office for one [1] year and until their successors have been elected and qualified unless said officers are removed from office by the state board of attendance. * * *"

In answer to your second question, I wish to advise that in an Official Opinion of this office found in 1945 O. A. G., page 361, No. 91, it was held on page 366 of the Opinion as follows:

"It is therefore my opinion that the appointment of attendance officers is mandatory in every city and every county having fifteen hundred (1500) or more children of school age in average daily attendance."

In answer to your first question, under Acts of 1951, Ch. 164, Sec. 1, as found in Burns' (1957 Supp.), Section 28-804a, it is provided, in part, as follows:

"* * * A quorum shall consist of a two-thirds majority of the members of the board. Business shall be transacted and the acts of the board shall become effective by a two-thirds majority vote of members present on problems coming before the board. The powers herein granted the county board of education, however, shall not otherwise be construed as granting such board any authority whatsoever over the selection or employment of any of the personnel or employees or the purchase of supplies in any of the schools of the individual townships.

"The county board of education shall enter into a written contract with such additional administrative
and supervisory employees who shall serve the township schools of the county as shall, in the judgment of two-thirds of the members of said board, be necessary for the proper administration and supervision of the county school system. Funds for the salaries of such persons and supplies for such persons' use shall be provided in the same manner as now provided by law for the fixing and appropriation of the salaries of the county superintendent of schools. Such additional persons as are employed for the necessary administration and supervision of the county school system shall be nominated by the county superintendent of schools and approved by a vote of at least two-thirds of the members of the county board of education. * * *"

Under the last referred to statute a two-thirds majority of the members of the County Board of Education must vote for a new attendance officer before one is elected. In the meantime the present attendance officer continues to hold office until a successor is elected and qualifies. However, as pointed out by the foregoing Official Opinion, such election is mandatory and time is not the essence of the statutory requirement but there is a continuing duty to elect a county attendance officer.

Wampler v. State ex rel. Alexander et al. (1897), 148 Ind. 557, 47 N. E. 1068.

In a similar situation concerning the election of a County Superintendent of Schools by said Board it was held such requirement was mandatory and a continuing duty which could be enforced by mandate.


Therefore, in answer to your first question, I am of the opinion there has been a failure to elect a new attendance officer but that there is a continuing duty upon the Board to meet and vote until it elects one. In the meantime, the present attendance officer will continue to hold office until his successor is elected and qualified. As pointed out above in answer to your second question, appointment of an attendance officer in your county is mandatory and the County Board of Education cannot do away with the office of county attendance officer.