SPECIAL MEETING

Tuesday, April 29, 1924.

The Common Council of the City of Indianapolis met in the Council Chamber April 29, 1924, at 1:00 p. m., in special session, President Walter W. Wise in the chair, pursuant to the following call:

Gentlemen—

You are hereby notified that there will be a special meeting of the Common Council held in the Council Chamber on Tuesday, April 29th, at 1 o'clock p. m., 1924, the purpose of such meeting being to receive the report from the Investigating Committee of the Common Council.

Respectfully,
WALTER W. WISE,
President.

I, John W. Rhodehamel, Clerk of the Common Council of the City of Indianapolis, Indiana, do hereby certify that I have served the above and foregoing notice to each and every member of the Common Council prior to the time of meeting, pursuant to the rules.

JOHN W. RHODEHAMEL,
City Clerk.

Which was read.

The clerk called the roll.

Present: The Hon. Walter W. Wise, president of the Common Council, and eight members, viz.: Messrs. Bernd, Bramblett, Buchanan, Clauer, Claycombe, King, Ray and Thompson.

REPORTS OF SPECIAL COMMITTEES

From the Special Investigating Committee:

To the President and Members of the Common Council of the City of Indianapolis, Indiana:

We, the undersigned members of your Special Investigating Committee, hereby respectfully report that pursuant to authority vested in us by the Common Council through resolution duly adopted, we have been engaged in investigating charges of misconduct touching the administration of Mayor Samuel Lewis Shank.

We have employed legal counsel, stenographers and such other assistance as would enable us to conduct this investigation. We have examined many witnesses under oath, touching these several matters, and at our request, the counsel have prepared a summary of the principal phases of the evidence produced before us, and their version of the law by which this evidence is controlled.

We herewith transmit this statement to the Common Council for its consideration as a partial report merely of this committee. The committee recommend that this be accepted as a partial report, and that the committee continue the investigation and make further reports to the Council.

We herewith submit expenditures which have been made up to this point in this investigation:

Frank Symmes, attorney fees	$500.00
Joseph Roach, attorney fees	500.00
Bertha Markowitz, shorthand and stenography	405.00
C. F. Ferguson, bailiff	200.00
John Hart, investigator	140.00
Indiana Title Guaranty & Loan Co.	37.50
Indianapolis Engraving Company	24.00
Total Expenditures	$1,806.50

The allowance of these items we respectfully recommend.

Respectfully submitted,
LLOYD D. CLAYCOMBE
H. W. BUCHANAN
THEO. J. BERND
OTTO RAY
WALTER W. WISE
Special Investigating Committee of the
Common Council of the City of Indianapolis.

To the Special Investigating Committee of the Common Council into the Affairs of the Present City Administration:

Gentlemen:

We have completed analyzing the evidence which this committee has been taking for some weeks past and herwith submit our conclusions.

The topics referred to in the petition introduced by Councilman Ray have been duly considered in the light of the facts which have been submitted under oath in support of the same, and our analysis of the evidence together with our view of the law controlling these facts are set forth in this summary. In order that these facts, which exist in the mass of evidence submitted, may be given point; meaning and logical coherence, we will set forth an analysis of the same observing the following order:

1. The transaction whereby Samuel L. Shank and Sarah E. Shank transferred certain property owned by them to the Park Board of the City of Indianapolis.

2. The purchase of the property called the Robert E. Long Hospital deal by the Park Board.

3. The transactions of the Sunnymeade Realty Company with the Park Board of the City of Indianapolis.

4. The matter in relation to street improvements effecting the Board of Public Works, the City Engineer and one William Armitage.

5. Gambling transactions effecting the Police Department, William Armitage and the Board of Public Safety, and

6. Contributions to the Shank Campaign Fund from persons engaged in violating the liquor and gambling laws at the instance of police officers connected with the city administration.

1—THE TRANSACTION WHEREBY SAMUEL L. SHANK AND SARAH E. SHANK TRANSFERRED CERTAIN PROPERTY OWNED BY THEM TO THE PARK BOARD OF THE CITY OF INDIANAPOLIS

Charles Bookwalter, president of the Park Board, testified that he devoted the time from ten o'clock Saturday morning until twelve to twelve-thirty each week to the perforamnc of his duties as a member of the Park Board. That this Park Board kept as records of its transactions, minutes of its meetings, records of all resolutions, damage, rolls, abstracts and all papers incidental to and connected with the transactions of its business; and that Sarah Shank, wife of the Mayor of the City of Indianapolis, was a member of the Park Board from January 1, 1922, until the time of her death which was quite recent. That the Park Board in 1923, purchased property owned by Samuel Lewis Shank and Sarah Shank. That a resolution to that effect was introduced on the 16th day of June, 1923. That the resolution called for the purchase of a strip of property owned by the Mayor and his wife for the purpose of dedicating the same to the establishment of a boulevard. Mrs. Shank was present when the resolution was introduced, also Fred Cline and Mr. Bookwalter. This resolution was confirmed on the 21st day of July. Mrs. Shank did not sign the resolution. The signature of Mrs. Shank did not appear to the confimatory resolution because she was interested in the sale of the property to the city. The deed to the city is from Samuel Lewis Shank and Sarah E. Shank. A check was produced showing the payment by the City of Indianapolis of the sum $9,527 to Sarah E. Shank. This was the consideration for the sale of this property.

It is then shown, through Mr. Newton J. McGuire, attorney to the Park Board, who accompanied Mr. Bookwalter, that award was given in the sum of $1,627 to the Standard Oil Company concerning whose relation with the Shank's and the Park Board more will be submitted hereafter. Witness McGuire stated that the Standard Oil Company had an oil station partly completed when the condemnation proceedings were started. This circumstance is worthy of note. The oil company, so the witness states, had an oil filling station in process of construction at a point where there is no Park Boulevard intersection and could be none, unless this property was acquired by city from the Mayor and his wife. Another connection to this will be given at a subsequent stage of this report.

Bookwalter testified that it was necessary for the Park Board to give its approval for the erection of oil filling stations along streets or property dedicated to boulevard or park purposes. That if an oil filling station were in course of construction at the time a street or a track was dedicated to boulevard or park purposes, the rule as to permits would not apply to that building. This testimony becomes important later when it is shown that upon the very day of the introduction of the resolution calling for the condemnation of this property Samuel Lewis Shank and Sarah E. Shank conveyed to the Standard Oil Company for a consideration

of $15,000 the property immediately adjoining this street, which clearly would not have been purchased by the Standard Oil Company were it not for creation of this situation.

McGuire testified that when he examined the abstract to the property embraced by the strip condemned, he ascertained that title was in Mrs. Shank and that there had been a conveyance on the very date of the introduction of this resolution of the porperty immediately adjacent thereto to the Standard Oil Company. Mr. McGuire then produced a record showing a deed dated June 16, 1823, recorded June 29, 1923, by the terms of which Sarah Shank conveyed to the Standard Oil Company, a corporation, a piece of land located on southwest corner of East Washington street and the Brookville road. Thus it will be seen that those dates correspond exactly with the important dates of the condemnation proceedings.

Mr. Bookwalter was asked to explain, if he could, the co-incidence of the condemnation proceedings taking place upon the very same day as the transfer of the property of the Shanks to the Standard Oil Company. This, he stated, he was unable to do.

Mr. McGuire testified that the money used to pay for the purchase of property by the Park Board was accured by a bond issue. That a bond issue in the sum of $11,154 was issued, calling for interest in the sum of 4½%. That there was a bond issue calling for a similar interest sanctioned on October 24, 1922, which related to certain property near the Robert Long Hosiptal which transaction will be more fully considered in another part of this report. That in relation to this property the Board offered a resolution calling for the purchase of the same for $80,000. The assessed valuation of this property at this time as taken from the figures of the County Treasurer and other officials having to do with taxation, was $22,240.

Mr. McGuire then testified to the rather startling fact that the total indebtedness of the Park Board expressed in bonds is at present $2,535,500. The foregoing Shank transaction is suggestive as to how some of it has been spent. Other transactions of a kindred nature to be later considered in this report will emphasize the fact as to how other portions of it have been spent. Mr. McGuire testified that the property that belonged to the Standard Oil Company as a result of its purchase simultaneously with the introduction of these condemnatory resolutions was 120 by 60 feet.

As effecting the Park Board and the Shanks' transactions John Marshall, manager of the Indianapolis Division of the Standard Oil Company of Indiana, produced a deed from Samuel Lewis and Sarah E. Shank to the Standard Oil Company, which recited that $15,000 had been paid to the Shanks for the real estate heretofore referred to in this transaction. Also a check payable to the order of Sarah E. Shank and Samuel Shank in the sum of $15,000 signed by the Standard Oil Company by T. Tomlinson and F. L. Peine. On the back of this check appeared the following notations by the Standard Oil Company: "Real Estate, $15,000." It was endorsed by Sarah E. and Samuel Lewis Shank, and an option in relation to this same property signed by Sarah E. Shank and Samuel Lewis Shank and witnessed by the witness Marshall, executed on the first day of May, 1923, obligated the Shanks to convey the said property in consideration of the sum of $15,000 to the Standard Oil Company

in the event certain things take place. These certain things are very suggestively set forth in the scond paragraph of this option. This paragraph is as follows:

"Provided, however, that if said Standard Oil Company is unable to obtain an ordinance or permit from the proper authorities to conduct its business upon said premises, or if such ordinance or permit, if obtained, shall be revoked prior to the consummation of the purchase of said premises, or if said Standard Oil Company at any time prior to the consummation of the purchase of said premises shall be prevented or stopped from proceeding with its plans for constructing, maintaining and operating its business upon said premises, either by petition of citizens, injunction or other legal proceedings or for any reason this option may at the election of said Standard Oil Company, become null and void and said Standard Oil Company shall be relieved of all liability thereunder."

It will be seen by this provision that the property in question would not be purchased from the Shanks, which may be reasonably seen from attentively considering this paragraph that this option would not be exercised and the Shanks would not be able to dispose of their property at the advantageous figure unless the Park Board purchased this property, and acquiesed in the operation of an oil filling station at this point. This is more than significant when it is considered that in order to enable an oil company to operate a filling station, at a place bordering upon a boulevard or a park, it is absolutely necessary to secure the permission of the Park Board. This paragraph has controlling effect in interpreting this entire transaction. Its significance is further enhanced when it is taken into consideration that simultaneously with the introduction of this acquisition resolution by the terms of which a boulevard was created through the Shank property, the Standard Oil Company exercised this option and paid to the Shanks the sum of $15,000. In this connection it is to be borne in mind that the Shanks received for this strip of property thus dedicated to boulevard purposes the sum of $9,527. This situation posseses other features well worthy of serious consideration. Who are the parties to this contract; what positons do they hold; what is their relationship with each other; and what official acts do they exercise? One of the parties transferring this property to both the city and the Standard Oil Company is the Mayor of the City of Indianapolis, another was the wife of the Mayor, who was a member of the Park Board at the time of this transaction; the other members of this board are appointees of the Mayor of the City of Indianapolis and intimately associated with his wife in Park Board transactions. This, of itself, is sufficient legally in the opinion of counsel to bring these transactions within the purview of the statute which will presently be considered. But, when to these circumstances is added the fact that Mrs. Shank passed upon the bond issue for the purpose of paying herself and her husband for the opening of this street and when it is considered that she voted in other matters of a kindred character in which another member of the Park Board secured unlawful profits, there is but one conclusion logically resulting, and that is Mrs. Shank in her participancy in this transaction was a person interested within the meaning of this statute, her husband was also interested within its meaning. It is clear that the other members of the board had full knowledge of this interest because Mr. Bookwalter testified that Mrs.

Shank did not vote on the condemnatory resolution because of this interest. The conclusion that the other members of the board with full knowledge of the actual facts of this transaction, aided and abetted Samuel Lewis Shank and Sarah E. Shank in violating this statute, is difficult to reject.

What are the legal consequences and what the legal effect of these transactions? It is the opinion of counsel that they are absolutely void, both at common law and by the terms of the statute above referred to, and that all parties have violated this statute as is attested by consideration of the law immediately applicable thereto. Section 2423, Burns R. S. 1914, is as follows:

"Officers interested in public contracts.—517. 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, school house, 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 profits or money whatever on any contract or for the letting of any contract or making any appointment wherein the state or any county, township or city is concerned, on conviction, shall be fined not less than three hundred dollars nor more than five thousand dollars, and be imprisoned in the state prison not less than two years nor more than fourteen years and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period."

This statute has come before the Supreme Court more than once for consideration and that court in order to effect its manifest purpose and accomplish the results which the legislature contemplated it should accomplish, has given it a broad application. As is manifest by the following language, taken from the case of Noble v. Davison, 177 Indiana 19, 96 N. E. 325.

"Appellee claims the contract is void, because it violates Section 2423 Burns Stat. 1908; and also on grounds of public policy. The above section of the statute reads as follows: 'Any school trustee of any town or city who shall, during the time he may occupy such office be interested, directly or indirectly, in any contract for the construction of any work of any kind, erected or built for the use of any city in the state, shall be fined not less than three hundred dollars nor more than five thousand dollars and be imprisoned in the state prison not less than two years,' etc. Burns 1881, Section 2049; 2 R. S. 1876, p. 454; Acts 1872, p. 26."

It has been repeatedly held that a contract executed in contravention of the provisions of this statute is absolutely void. Wingate v. Harrison Township, 59 Ind. 520; Case v. Johnson, 91 Ind. 477; Benton v. Hamilton, 110 Ind. 294, 11. N. E. 238; Cheney v. Unroe (1906) 166 Ind. 550, 77 N. E. 1041, 177 Am. St. Rep. 391.

Does this contract come within the inhibition of the statute? It was executed before Noble qualified as trustee, but, when executed, Noble's title to the office was perfect, though the time when

his right of possession therefore should accrue had not yet arrived. When that time should have arrived, his right to the possession of the office could not be questioned. Burns Stat. 1908, Sec. 6477.

(4) By the express provision of the contract it was contemplated that at least a portion of the stipulations thereof might be performed while Noble should be in possession of the office. In such event provision is made for the contractor to employ, at its expense, an expert, designated by it and approved by the two other members of the board, to act with the disinterested members in determining whether or not the contractor should have complied with all the stipulations of the contract. The events contemplated by the contract occurred. Noble did qualify and enter into the possession of the office. What effect Noble's resignation of his title to the office, or his failure or refusal to qualify, before the company commenced the work, might have had on the validity of the contract is a question not presented by the record and therefore will not be considered. He did qualify as contemplated by the contract and he was interested therein when this suit was filed, just as the contract contemplated he might be interested and this interest was such as the statute above quoted was designed to prohibit. The fact that the contractor agreed to furnish, at its expense, an expert approved by the majority of the board to discharge the duties of the disqualified member in reference to this contract cannot possibly aid appellant plumbing company in its contention. The school board had no right to delegate the performance of such duties, even temporarily to a contractor's employ, whether such duties were to be performed gratuituously or otherwise.

(5, 6) Even in the absence of the statute, the contract would, as appellee maintains, be void because contrary to public policy. Counsel for appellenats say in their brief: "Public policy is a juridical ignis fatuns upon which a judicial decision is sometimes sought to be founded when no support can be found for it in the law and it is resorted to frequently when the purpose is to take from one of the parties to the controversy that which is his by vested right, sometimes by constitutional guaranty.. It was an unhappy day for the law when the term was invented and given meaning as having the force of law." We cannot concur in any such suggestion. One has heedlessly considered the decisions of this court who would at this day assert such doctrine. This court has ever steadfastly adhered to the rule which invalidates all agreements injurious to the public, or against the public good, or which have a tendency to injure the public. Contracts belonging to this class are held void, even though no injury results. The test of the validity of such agreements in the tendency to public injury, regardless of the actual intent of the parties and regardless of actual results.

(7) Integrity in the discharge of official duty is seriously guarded by the law. It lends no aid to that which tends to corrupt or contaminate official action, whether such action be judicial, legislative or administrative. 9 Cyc. 485. And the tendency of contracts between municipal corporations and officers thereof, for municipal improvements or supplies, is to mislead the judgment of the officers of the municipality, if not to sully their purity.

In Cheney v. Unroe, 166 Ind. 550, 77 N. E. 1041, 117 Am. St. Rep. 391, this court quoted with approval from Dillon, Municipal Corporations, the following: "It is a well-established and voluntary

doctrine," says a distinguished author, "that he who is entrusted 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 or morality and of public policy. It has its formation 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 Aymire v. Powell, 105 Ind. 328, 4 N. E. 886, 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."

In City of Ft. Wayne v. Rosenthal, 75 Ind. 155, 39 Am. Rep. 127, it was held that an employment by a board of health of one of its members to vaccinate pupils in a public school was void. The court said: "As agent, he cannot contract with himself personally. He cannot buy what he is employed to sell, if employed to procure a service to be done, he cannot hire himself to do it. This doctrine is generally applicable to private agents and trustees, but to public officers it applies with greater force and sound policy requires that there be no relaxation of its stringncy in any case which comes within its reason."

In Wingate v. Harrison School Township, supra, it was held that a contract by a school trustee for the improvement of school property, by the terms of which he was to share in the profits of the contract was void, as against public policy.

Among the very numerous cases where this court has declared contracts void on grounds of public policy are the following: Maguire v. Smock (1873) 43 Ind. 1, 13 A. M. Rep. 353, holding illegal a contract with a property owner to pay his street improvement assessments for his signature to a petition for the improvement: Board v. Mullikin (1848) 7 Blackf. 301, holding void a promisory note, executed to a board of commissioners for the benefit of the county treasurer, in consideration of the appointment by the commissioners of a certain person as collector of county revenue. Ellis v. State (1852) 4 Ind. 1, holding that the state printer could not sell nor assign his office. Elkhart County Lodge v. Crary (1884) 98 Ind. 238, 49 Am. Rep. 746, holding void a contract for services in securing the selection of a certain place for the location of a government building. State v. Windle (1901) 156 Ind. 648, 59 N. E. 276, which hold invalid an agreement by which a county treasurer was to be allowed interest on money furnished by him for the payment of county obligations.

We see no reason for relaxing the rule adhered to so strictly by the courts of this state. In fact, not only in Indiana, but elsewhere generally the principle is applied by the courts in a large and constantly increasing number of cases. 9 Cyc. 482. As was said in State v. Wincle, supra: "The protection of the public interests requires that no exception to this rule shall be allowed, nor any evasions tolerated."

(8) It is maintained by counsel for appellants that one seeking equity must do equity; that the school city holds the benefit of the

labor and materials furnished by the plunging company, and it would be inequitable to adjudge an avoidance of the contract without restoration to the plumbing company of the reasonable value of all work done and materials furnished. In answer to this contention, it is sufficient to say that an equitable right cannot be founded on a violation of law. Waymire v. Powell, supra. Equity follows the law, and assists no one in obtaining or holding the fruits of an illegal agreement, but, on the contrary, leaves such person where it finds him, Pittsburg, etc., R. Co. v. Town of Crothersville, (1902) 159 Ind. 330; 64 N. E. 914; 16 Cyc. 145. This contract reveals a palpable attempt to evade the law. " 'He that hath committed iniquity shall not have equity.' Fetter, Equity, 3740."

This case is followed by that of Hiller v. Jackson, Township, 178 Ind. 503, 99 N. E. 102, where the foregoing doctrine is approved in the following language:

"It may be stated as a general proposition that the township can never incur a liability for goods purchased by the trustee from himself, though there be a compliance with all the provisions of the advisory board act. Public policy forbids it, and a criminal statute prohibits him from entering into contracts in which he is personally interested under a penalty of a fine, and imprisonment in the state prison. Burns' Statutes, 1908, Sec. 2423; Noble v. Davison, 96 N. E. 325, and cases cited.

An equitable defense cannot be predicated on the violation of a criminal statute. " 'He that hath committed iniquity shall not have equity.' Fetter, Equity, 37-40."

In this connection section 2095 sustains a prominent relation. It is as follows:

"Accessory before the fact—224. Every person who shall aid or abet in the commission of a felony, or who shall counsel, encourage, hire, command or otherwise procure a felony to be committed, may be charged by indictment or affidavit, tried and convicted in the same manner as if he were a principal, either before or after the principal offender is charged, indicted or convicted; and upon such conviction he shall suffer the same punishment and penalty as are prescribed by law for the punishment of the principal."

It is clear upon the foregoing facts, when tested by the law, that this conduct amounts to fraud within the definition of the common law and within the definition of this statute. It is equally clear that the Standard Oil Company and its officials who represented it in this transaction were familiar with the official capacities in which the Park Board and Mayor Shank and his wife acted in effecting this transaction. It is indisputable that this corporation and its agents aided and abetted these persons in the commission of this act; and it is difficult to reach any other conclusion then that they did this deliberately, knowingly and willingly. Such being the case, a statute of the United States, in our view, has a direct application.

The $15,000 check above referred to, by evidence of having been sent through the United States mail, it is difficult to consider that the mails were not used in other respects in giving effect to this transaction.

There is also further evidence of a more decisive character that the use of the mails was contemplated by these persons because in the option contract—the Shank option as well as those that may be designated the Cline or Sunnymeade Realty Company option (which will be hereinafter considered)—contain the following provision:

"Notice of exercise of this option by Standard Oil Company shall be served in writing and may be made by depositing the same in the United States mails addrssed to said vendor, at any time within the life of this option or of any extension or extensions thereof made by said vendor."

Such being the case, section 215 of the Penal Code of the United States denouncing the offense of placing or causing to be placed in a Postoffice matter for the purpose of executing a scheme to defraud, is applicable. The fact that the bank through which this check cleared was an innocent agent does not effect the criminal character of the act, if this check cleared through a bank has a result of a fraudulent conspiracy and the mails were used for the purpose of this clearance. This in itself constitutes a violation of this section and is shown by the case of Spear v. United States decided by the Circuit Court of Appeals of the 8th District. (certeorari denied) 38 Sup. Ct. 335; where it was held that where the defendant, delivered to a local bank for collection a draft which had been secured pursuant to a fraudulent conspiracy and the bank pursuant to its ordinary custom transmitted the same for collection, section 215 of the Penal Code denouncing the offense of placing or causing to be placed in a Postoffice matters for the purpose of executing a scheme to defraud, was violated, as the person depositing the check was chargeable with notice of the ordinary custom of banks in transmitting negotiable papers through the mails for collection.

2—THE PURCHASE OF THE PROPERTY CALLED THE ROBERT E. LONG HOSPITAL DEAL BY THE PARK BOARD.

Another situation even more flagrant than the sale of the Shank property to the city through the Park Board is what is known as the Robert E. Long Hospital transaction. Up until the time of the purchase of the property hereinafter designated, by the City of Indianapolis under the circumstances herein set forth, a corporation called the Indianapolis Building and Investment Company owned and controlled absolutely by one Oscar F. Mann, owned lots 20 to 36; 39 to 44; 48 to 58; 66 to 72; in M. B. Wilson's subdivision. Nina C. Mann had title to lot 47 in this subdivision; Albert B. Cole owned lots 45 and 46 in this subdivision; and Edward S. Wilson, lot 59.

Before the sale of this property to the city, Mr. Mann approached Fred Cline, a member of the Park Board. and offered to sell this property to him. There was an agreement later effected by the terms of which Cline had certain parties transfer some property to Mann who in turn transferred these lots in question to Reason D. Sanders. The property traded Mann was in the name of Mrs. Rothrock and a certain Phillip Kiley, and another Clyde Boyd. Both Mrs. Rothrock and Mr. Kiley testified that the property transferred by them to Mr. Mann belonged to Fred Cline, that they merely held the title for the purpose of effecting this deal. Reason B. Sanders testified that at no time did he advance any money for this property but held the same at the instance of Fred Cline under his directions and later on when this deal was consummated, transferred the same to Clarence Means, who never paid him, Sanders, the slightest consideration therefore. A diligent search was made for Clyde Boyd and he could not be found. It is highly probable that the property which he transferred to Oscar Mann as consideration for the transfer by Mann of these lots in question to Sanders was owned by Fred Cline. It is said that this Clyde Boyd is a cousin of Fred Cline.

Mr. Mann said that he got $3,000 in addition to the property transferred by Kiley, Boyd and Mrs. Rothrock out of which he paid Cline $600 for commissions. He stated that the lots were worth about $3,500. These lots (those purchased from Mann) were mortgaged to the extent of about $25,000. Thus it will be seen that Cline secured possession of this property for, stating it liberally, $32,000. Within a short time after this deal was executed, this property was sold by Means, who as has been shown, received the same without consideration and as agent for a person whom the evidence tends to show to be Cline, to the City of Indianapolis for $78,991.70.

The records of the Park Board show that at a meeting held on September 22, 1922, the following record was made, propositions submitted: "Board of Park Commissioners, Indianapolis, Indiana, Gentlemen: As owner by deed and contract of all the lots described except lots 45, 46 and 88, and a triangular piece on Michigan street, east of lots 90 and 91, I hereby consent to the appraisements and agree to accept the amount of the appraisement $73,088 on said property."

The property owned by Cole, that is to say, lots 45 and 46 have been appraised at $5,560 which appraisement the record shows was accepted by Mr. Cole A resolution had previously been introduced before the Park Board calling for purchase of this property and the sum was fixed at $80,000. Appraisers were appointed who by a singular coincidence appraised this property at $78,998, and this notwithstanding the fact that the assessed value of this property as shown by the public records was $22,240. The record shows that on motion of Commissioner Cline, the Board accepts the proposition of C. W. Means for the sale of the real estate described in acquisition resolution No. 201922, for the sum of $73,088. The vote on the acceptance of the proposition was as follows: Ayes, Bookwalter, McGuire, Cline and Shank.

The above facts which were taken from records and the testimony of witnesses to the transactions who were by no means favorable to the investigation, and who for the most part, are very friendly to Fred Cline, show that here was a sale of property in which Cline as a member of the Park Board had a large interest and in our view constitutes a clear violation of the section of the statute heretofore set out in this summary.

3—THE TRANSACTION OF THE SUNNYMEADE REALTY COMPANY WITH THE PARK BOARD OF THE CITY OF INDIANAPOLIS.

As we view the evidence in this case, the foregoing transactions, namely, the purchase of the Shank property and the purchase of the Robert E. Long Hospital property, are immediately connected with the transactions which follow, and that they are part of this general situation and bear a necessary logical and unbreakable connection each with the other.

There exists a corporation known as the Sunnymeade Realty Company. From the testimony under oath of James A. Ross, the president of the company, the following situation may be summarized: Mr. Fred Cline, a member of the Board of Park Commissioners, owns all the stock of this company with the exception of three shares, commonly known as qualifying shares—that is to say, shares necessary to qualify persons to act as officers of the corporation in order that it may apparently function as such corporation—these qualify-

ing shares are held by Mr. Ross, as president; N. B. Whelan, who is Nellie B. Whelan, bookkeeper to Mr. Cline, and one Fred Walker, who is an employee of Mr. Cline's. It is thought that he is his chauffeur. All the rent of the stock is owned by Mr. Cline. Mr. Ross is the president, Miss Whelan, secretary and treasurer, and Mr. Walker is vice-president.

In April, 1922, Cline, who had previously been a director and an officer resigned and his employee, Walker, was elected director and vice-president to succeed him. Cline has handled all the financial affairs of the company; it has declared no dividends, and such profits as have accrued have been secured by Cline. The company has no bank account, and the president has never signed any checks. This Sunnymeade Realty Company took an option to purchase lots 304 and 305 in Osgood's Addition to the City of Indianapolis, situated at 38th street and Fall Creek Boulevard, for $12,000. This option was later exercised and within thirty days of this date the Sunnymeade Realty Company transferred this property to the Standard Oil Company of Indiana—the same company which purchased the property from Samuel Lewis Shank. That notwithstanding, the Sunnymeade Realty Company figures as the contracting party, in each instance, the real contracting party was Mr. Cline.

On the 15th day of November, 1922, the Sunnymeade Realty Company gave an option to the Standard Oil Company which is herein set out. It called for a purchase of this property within fifteen days for the sum of $27,500.

OPTION.

In consideration of the sum of $1.00, receipt of which is hereby acknowledged, Sunnymeade Realty Company of Indianapolis, Indiana, hereinafter called the vendor, does hereby grant to Standard Oil Company, an Indiana Corporation, the option of purchasing the following described property, to-wit:

Lots numbered three hundred four (304) and three hundred five (305) in Osgood's Forest Park, 5th Section, an addition to the City of Indianapolis, Marion County, Indiana.

Alos all our right, title and interest in and to all vacated alleys adjacent thereto.

Subject to all covenants relating to building restrictions and intoxicating liquors.

Subject to casement to Citizens Gas Company, found in Record 113, page 522.

At any time within 15 days from the date hereof, for the sum of Twenty-seven Thousand Five Hundred Dollars ($27,500.00) and .....wife of said vendor, joins in this option and agrees in the event of the exercise of this option by said Standard Oil Company, to join said vendor in the execution of a proper deed of conveyance, and the said vendor agrees that in the event this option is exercised, he will convey a merchantable title to said real estate by good and sufficent warranty deed, with release of dower, homestead, or other rights of his wife, and free from all incumbrances whatsoever and will furnish a merchantable abstract, showing a merchantable title to said land in said vendor, free from all liens and incumbrances, brought down to date of conveyance.

Provided, however, that if said Standard Oil Company is unable to obtain an ordinance or permit from the proper authorities to conduct its business upon said premises, for if such ordinance or permit,

if obtained, shall be revoked prior to the consummation of the purchase of said premises, or if said Standard Oil Company at any time prior to the consummation of the purchase of said premises shall be prevented or stopped from proceeding with its plans for constructing, maintaning and operating its business upon said premises, either by petition of citizens, injunction or other legal proceedings or for any reason, this option may at the election of said Standard Oil Company, become null and void and said Standard Oil Company shall be relieved of all liability thereunder.

Notice of exercise of this option by said Standard Oil Company shall be served in writing, and may be made by depositing same in the United States mail addressed to said vendor, at any time within the life of this option, or of any extension or intentions thereof made by said vendor.

Witness our hands and seal this 15th day of November, 1922.

SUNNYMEADE REALTY CO.,
By Jas. A. Ross,Pret. (Sig.)
Attest: N. B. Whelan, Secy. (Sig.)

Witness.....

This option contains the same paragraph which appeared in the Shank options, namely a substantial agreement that the vendor will within that period of time secure a permit from the proper authorities to operate an oil station at this point. This, be it remembered, was a desirable place upon a public boulevard, and there was at that time a regulation of the Park Board against the maintenance of oil filling stations at this place. This option was exercised and the Standard Oil Company paid to the Sunnymeade Realty Company the sum of $27,500 which Mr. Cline secured.

Witness Marshall produced this option and also a check exhibiting the consideration for this transaction which was made to the Sunnymeade Realty Company for $27,500 dated December 20, 1922, executed by the Standard Oil Company and signed by T. Tomlinson and George W. Ashman. This check is endorsed by the Sunnymeade Realty Company, by N. B. Whelan, secretary, and also by Fred Cline. It bore evidence of having cleared through another bank and it is fair to presume that it passed through the United States mails.

This corporation had another contract with the Standard Oil Company in relation to property situated on Thirty-eighth and Illinois streets. Witness Marshall produced a deed of property situated at Thirty-eighth and Illinois streets, reciting a consideration of $22,500, the vendor being the Sunnymeade Realty Company and the vendee the same Standard Oil Company. A cancelled check showing the consideration for the purchase of this property in the sum of $22,500, executed by the Standard Oil Company and signed by Tomlinson and Paine. This check was endorsed by the Sunnymeade Realty Company acting through N. B. Whelan and by Fred Cline.

The witness produced also an option executed by the Sunnymeade Realty Company to this Standard Oil Company by the terms of which this lot was to be sold for $22,500, and this option contained the same second paragraph which those other Standard Oil options contained.

Witness Ross stated that he had title to property situated at Fall Creek and Central avenue; that this was mortgaged and Cline gave him $500.00 if he would execute a deed in blank and send the same through the mails to Mr. Cline. Witness at this time was at the lakes in Kosciusko County. This witness did, and received $500.00

for so doing. This property was transferred to the Standard Oil Company, Mr. Cline securing the money from this transaction.

Witness Marshall, touching this transaction, produced a deed in relation to this property executed in Kosciusko County before a Notary Public located in that county by James Ross and Maude E. Ross, his wife, and a cancelled check executed by the Standard Oil Company of Indiana dated August 19, 1922, in the sum of $27,000, payable to James Ross and signed by T. Tomlinson and G. W. Ashman, and apparently endorsed by James Ross. Ross testified however, that he got no part of this money except the $500, the rest being retained by Mr. Cline. In every instance it was necessary for the Park Board of which Mr. Cline was a member to give their sanction for the erection of those filling stations. It will be observed that in all these options the Standard Oil Company substantially stipulated for the securing of those permits before it would exercise these options. These permits were given by the Board of which Mr. Cline was a member. Clearly, this is a case within the statute because the statute was enacted for the purpose of preventing city officials from dealing with anybody in relation to matters in which their personal interest and their integrity should come into conflict. The City of Indianapolis had the right that these officials should determine whether their own rules previously established for the purpose of keeping boulvards free from business structures should be continuously enforced without that judgment being impaired by a bribe. These facts in our view, amount to a violation both civilly and criminally of the state statute heretofore set forth and to a violation of section 215 of the Federal criminal Code heretofore referred to.

The fact that Cline in effecting those transactions with the Standard Oil Company used the thinly veiled disguise of the Sunnymeade Realty Company, an alleged corporation, does not alter the legal aspect of the case in the slightest degree, nor screen him from the condemnation of the statutes heretofore referred to. It is well established that in order to prevent fraud a court will disregard the corporate existence and apply the law as though the actor were an individual. In other words, it will disregard the corporate existence and attach liability to the individual who issuing the corporation as a disguise for his actual transactions.

D. I. Felsenthal Co. v. Northern Assurance Co., 284 Ill. 343; 120 N. E. 268; 1 A. L. R. 602;

Donavan v. Purtell, 216 Ill. 629; 75 N. E. 3334; 1 L. R. A. N. S. 176;

Kellogg v. Douglas City Bank, 58 Kan. 43; 62 Am. St. Rep. 596; 48 Pac. 587;

Re Berkowitz, 173 Federal 1012;

Baltimore & Ohio Telegraph Co. v. Interstate Telegraph Company, C. C. A. 54 Federal 50;

Brundred v. Rice, 49 Ohio State 640; 34 Am. St. Rep. 589; 52 N. E. 169;

McGrew v. City Produce Exch., 85 Tenn. 572; 4 Am. St. Rep. 771; 4 S. W. 38;

Hilbrath v. State, 137 Wis. 354; 131 Am. St. Rep. 1012; 120 N. W. 252;

Re Muncie Pulp Co., C. C. A., 139 Federal 546.

In one of the foregoing cases, namely, Hilbrath v. State, supra, in affirming a conviction for embezzlement, the court said:

"One can convert the money to his own use by putting it into the treasury and mingling it with the funds of an insolvent corporation which is under his control and management and of which he is a stockholder and officer in charge. * * * It is put into that which is a mere instrumentality created by him under sanction of law, but as much under his control and as subservient to his will as the furniture of his office or the books of account in which he records his transaction. Under such circumstances, there is no room for the legal action of a separate corporate personality or for any distinction between the defendant's acts as an officer of a corporation and his act as an independent natural person."

4—THE MATTER IN RELATION TO STREET IMPROVEMENTS EFFECTING THE BOARD OF PUBLIC WORKS, THE CITY ENGINEER, AND ONE WILLIAM ARMITAGE.

John L. Elliott testified that he had been City Engineer since January, 1922.

Stated that at the outset of his service in office, he took the attitude that asphalt used in pavements should be specified by chemical or technical specifications, and not by trade nameor designation; that he was for what is commonly called open specifications, permitting the use of any type of asphalt which will meet the requirements of a chemical specification.

Stated that he had no experience or knowledge of technical tests along the lines above suggested, but he got his information in this respect from one C. H. Hunter, who had been and was now a technical engineer employed with reference to his knowledge on this subject. He was asked whether this technical engineer was employed during the administration of Mayor Bookwalter when Mr. Brunaugh was sent to the penitentiary for paving frauds. Witness did not remember this incident.

Stated that a man named Cheney told him that Mr. Shank wanted to see him in room 601, Lincoln Hotel. Went to this place and met Jesse Miller in the hall. Mr. Miller told him that Shank wanted to see him. Shank came out and invited him into the room. Was asked if he would accept the position of city engineer, and stated that he would if he had absolute charge of his office and the right to appoint its technical force. Whereupon Shank told him to run his office and he would hold him responsible for it. Was asked by the Mayor to step in and meet some other persons, among those persons were Mr. Armitage, Mr. Groninger, and perhaps Mr. Sourbier. After a discussion, Mr. Armitage wanted him to walk down the street with him, and stated while walking down the street, that "You, perhaps, have heard a lot of stuff in the papers about me and believe that I am an awful crook and gambler," and ended by saying that he wanted to get getter acquainted with me. I told him that I did not believe in newspaper reports, but I heard that he was going into the asphalt business during the administration of Mayor Shank, and I warned him that the asphalt business under my administration would be open as far as specifications were concerned. I told him that "I am told that you have a contract with the Barber Asphalt Company," and said, "If you have I advise you to get rid of it because I don't intend to use that."

Whereupon Armitage said, "You will never find me asking you for anything that is wrong." The engineer then stated that he has always found the situation to be in that shape. He then stated that

Armitage showed him a promotion contract with the Barber Asphalt Company which provided that he should get a dollar a ton for the Trinidad asphalt used in Indianapolis. Witness stated that so far there was one contract awarded calling for Trinidad asphalt.

This, upon the witness' own statement, is contradictory. He previously stated that the Barber Asphalt Company would not be permitted to contract in any contract that Trinidad Asphalt entered into. He further stated that this contract was awarded after a pretty big fight. He then went on to state that Trinidad asphalt was a specialized asphalt controlled absolutely by the Barber Asphalt Company of which Mr. Armitage was agent. Witness stated that beyond this, his acquaintance in connection with Mr. Armitage was limited to matters of a purely social nature.

Later he stated that he had some business dealings with him, and that they were to this effect: About a year and a half ago some four persons, among whom was the witness Elliott, initiated a business enterprise for making cast stone. Stated that he could not determine whether that was before or since he became city engineer. That these four persons had nothing but a process for making an element which enters into cement for the purpose of hardening the same. That these persons entered into a deal with a man of the name of Islam, who had controlling interests in a company called the Klinestone Company, which company manufactured cast stone. This company was located at 13th street and the Belt Railroad in the City of Indianapolis. After negotiations with this Mr. Islam, the plant which he controlled entered into the activity of making this element or product called semite, in addition to making the usual product. These two companies merged, and it was their purpose to sell preferred stock in the new company which was a holding company and to get permit from the securities commission to issue preferred stock. Stated by the witness first at $100,000 and later $27,000. This enterprise was started since witness became city engineer. The officers of this company were the witness as prsident, John W. Martin, a Mr. Franklin who is manager of the Bixby Company, Mr. George Spindler, and a Mr. Chapman. Mr. Spindler, at my suggestion, sold Mr. William Armitage and Mr. James Armitage $2,100 worth of stock in this company. Witness, though being president of the company, did not know the par value of the stock issued. Witness invested $1,500 in his company and does not know how much stock he received for it. Elliott as president of this company, signed the stock issued to the Armitages. States that the entire "darn business" was pretty hazy to him and he was sorry he got into it. States that the "darn company" is in the hands of a receiver and he resigned a year ago as president because the manager of the company took a contract for some cast stone on a public contract and refused to have anything to do with it. Witness states that he personally sent Mr. Spindler to talk to the Armitages.

Mr. Wise then asked witness if the company did not make artificial stone. Witness answered yes. Witness stated that he specified that the stone should be placed in the specifications, but found out that a contract for the same had been let to the American Granite Products Company and that this Mr. Spindler had asked for a contract to build bridges for them. Witness then claimed that he refused to have anything more to do with this company and resigned as president. Claims that he holds a note of the company for $2,000 which

he loaned them. Has never been paid any interest on the note and doubts that it ever will be paid.

Stated that he had no further relation with the Armitage brothers beyond selling them the $2,100 worth of stock. Stated that Mr. Armitage had regularly attended the meetings of the Board of Works.

Witness was then shown his signature to his tax return which showed that he owed two notes to Mr. William Armitage in the sum of $2 600 and $2,000 respectively. Stated this money was delivered to him in cash. Stated the money was in very big bills. Later on Mr. Armitage loaned him $250 to go to New York to testify in a Federal Grand Jury investigation.

William Armitage stated his present occupation is none. In answer to the question what was his occupation during the last three years, he said: "Well, I have been in the saloon business, gambling business."

Asked whether that was in the last two or three years, he said, "No, I haven't done anything;" and then answered, "Oh well, I was agent for the Barber Asphalt Company."

Stated further that he was agent for the Barber Asphalt Company and had severed his relationship with this company in 1922, and during that time his company had one contract with the city of Indianapolis.

Stated that he was not in the business of loaning money and that he had loaned no sums of money beyond a dollar or two, or perhaps five dollars, but no large sums of money. That, notwithstanding the fact that it was said that he loaned large sums of money, he loaned nothing of the kind. Stated that during the last few years he had not loaned large sums of money to anybody.

Mr. Michael Jefferson. assessor of Center Township produced the tax returns of John Elliott for the years 1923 and 1924. The schedule of property rated by Mr. Elliott in 1923 shows that he owed William Armitage at that time money in the sum of $2,000 secured by a note executed January 25, 1923.

William Dawson testified that he was assessor of Washington Township. This witness brought with him a schedule of personal property owned by William Armitage and that of James Armitage for the year 1924. This showed that William Armitage paid taxes on property to the value of $330. In this return there is no mention of the notes designated by Mr. Elliott in his tax return.

Witness stated that Jack Douglas, County Assessor, had tried to secure from Mr. Dawson a return of these statements, saying that there was some personal property omitted which the Armitage Brothers wanted to put on the list.

These transactions between the City Engineer of the City of Indianapolis, the man who has more control over public contracts and the man in whose power the protection of the citizens more than that in any other man rests, and a paving contractor, an admitted professional gambler, are set forth for the light which they shed upon the transactions which will now be stated.

The investigation of street paving contracts is a farreaching and stupendeous undertaking. It is attended with great difficulty, especially where the methods employed by the Board of Public Works in the way of accounting and checking up upon the contractors have been loose, as has been the case in this situation. However, the investigation disclosed some very pertinent facts and from the con-

clusion which may be drawn from these facts, it is suggested that this one contract may possibly be representative of the entire situation in relation to streets paved during the present administration.

The facts upon this point may be thus briefly stated. Lawrence F. Orr, State Examiner of the State Board of Accounts, stated that two employees of his office had made an investigation was superficial and amounted to little more than a balancing of superficial accounts. He stated that this method did not constitute a basic investigation and was of little or no value in detecting frauds or violations of contracts. He further stated that a petition had been filed requesting that his office investigate the improvement of 29th street from the west property line of Capitol avenue to the east side of Riverside Drive, by the Mansfield Engineering Company. That this was done by members of the official staff of the State Board of Accounts and a report was submitted by Mr. A. L. Donaldson, the expert engineer of the official staff of the State Board of Accounts. Mr. Donaldson testified that he had been a civil engineer and superintendent of construction work for forty years. The witness investigated 29th street and made his report to the State Board of Accounts. He made a core test on this street by taking out cores of the pavement laid. These were taken out at various places in the street. The cores thus taken out were submitted to a standard test to determine whether the materials were of such character as to conform to the plans and specifications. The general character of the pavement was faulty, there being a number of holes that one could get his foot into in this pavement, and the concrete was loose. All of these cores showed a pronounced weakness. Thirty-three cores were taken from the street, but all of them crumbled, and consequently could not be tested with the exception of ten. Of these ten but four stood the test. The cores that crumbled were broken up into such small pieces that they could not be tested. Witness attempted to examine the officials of the Mansfield Construction Company, but they refused to be examined, and sent an affidavit stating that 4,686 barrels of cement had been used in the street according to witness' figure. The specifications called for a minimum of 5,871.66 barrels. Thus it will be seen that there is a shortage of 1,185.66 barrels of cement in this one piece of work.

Mr. Orr proposed that Mr. Elliott and Mr. Donaldson should make an examination together, but Elliott declined. Witness stated that as a result of his investigation, he determined that the Board of Public Works kept no efficient check upon the materials which enter into streets pursuant to contracts with a view of determining whether the specifications have been complied with, otherwise a perfect check would have been available to the inspecting engineer.

Witness stated that notwithstanding his adverse report, the Board of Public Works, upon the recommendation of Mr. Elliott, accepted this street. Witness is of the opinion that the base of this street will give way in course of two or three years. Witness stated that in his opinion, many other streets which have been paved under this administration are in worse condition in the particulars above set forth than 29th street. Of this class, he instanced 44th street, 45th and 46the streets up to Buckingham Drive. He contrasted these streets with Capitol avenue, which witness claimed is a well laid street. Witness then made the following remarkable statement: "I can show you streets in Evansville that have been in the main part of the city for eleven years, that there is nothing wrong

—not a defect to be found there, and they are a great deal older than that. But this so-called sham to guarantee for three years is what causes them to go ahead and use anything It just seems to me from my knowledge of construction improvements when you come to figure that our schools and improvements are taking 82½ per cent out of the taxes of the State of Indiana, and if this repairing has to be kept up, it will bankrupt the taxpayer in twenty-five years or we won't have any streets."

Frank Meid, a property owner effected by this improvement, stated that in front of his house, the gravel fell out of the asphalt contained in this pavement. He sent for Mr. Elliott and asked him if this was in accordance with the plans and specifications. Elliott said it was not, but that it would do, and two or three days later recommended that the street be accepted. Witness called the defective condition of the cement foundation to Mr. Elliott's attention, but the latter said it was all right. Witness saw Elliott afterwards in the controller's office and protested against the condition of this street, and Elliott said: "If you want any further trouble, you can go to court about it."

H. A. Kimberlin, Secretary of State Board of Accounts, stated that after this petition was filed he was engaged in conversation with City Engineer Elliott, William Freeman of the Board of Public Works and Lawrence Orr of the State Board of Accounts, during which conversation Freeman objected violently to the State Board of Accounts taking jurisdiction and making an investigation, contending that the law did not permit this, and it was an undue interference with the jurisdiction of the Board of Public Works.

Witness Kimberlin said he could not accept this interpretation of the law. Then Elliott stated that this man Meid, meaning the preceding witness, was too hard to please. Later a petition was prepared to the effect that the said Board of Accounts' office inspect Boulevard Place from 34th to 40th streets. Witness asked Elliott and Freeman whether the Board of Public Works desired to take action before the State Board of Accounts made an inspection. Elliott said, "You can't do anything. You'll just make monkeys of yourself. You do every time you try to inspect streets and you'll never get any place." This petition has not yet been acted upon. Later some persons secured some forms for the purpose of petitioning an inspection of 34th street. Witness called Elliott's attention to this, who answered, "Well, I had some inspector out there the other day and the inspector said it was all right." At this moment, the inspector came in and was asked about the condition of the street and said it was rotten. Elliott stated that Donaldson (meaning the inspector who made the report on 29th street) was crazy and did not know his business; that this 29th street was all right and one of the best streets in Indianapolis. Witness then suggested that Mr. Kellum should assist Mr. Donaldson. To this Elliott answered that "Kellum is the best man in Indiana on this subject, and whatever he says I will abide by." Kellum was sent out with Mr. Donaldson and made an unfavorable report touching the pavement. Mr. Mansfield, of the Mansfield Construction Company, which company had the contract on 29th street, came to the office and in an angry manner objected to the State Board of Accounts making the inspection. Witness stated to Elliott, "Mr. Elliott, I am surprised that you are opposed to this investigation. It looks to me like you would want these contractors to carry out their contracts. That if we would

help you here you ought to be tickled to have this inspection." His answer was that there were too many people meddling in the matter now." Witness finally concluded with this statement, "There were several points in that conversation with Elliott that if I just had jotted them down would have been of interest to you because of the fact that the way he said it and the things he said were that he absolutely did not want any inspection by anyone."

Fred Kellum, engineer for the State Highway Commission (the person whose decision Elliott said be would abide by) testified that cores were drilled and tests thereof made under his supervision from the pavement of West 29th street. These tests show great variation in the quality of the material used. As witness recollected the samples were so frail that a core solid enough to conduct a test in a laboratory could not be secured. A considerable percentage of the cores were bad. The witness was asked whether basing his answer upon the result of his test, he, as an engineer, would have recommended the acceptance of the street, to which he answered he would not.

5—GAMBLING TRANSACTIONS EFFECTING THE POLICE DEPARTMENT, WILLIAM ARMITAGE AND THE BOARD OF PUBLIC SAFETY.

The influence of William Armitage upon the administration of the Police Department is strikingly shown by the facts of the Thomas Dillon case. Lieutenant William Cox of the Indianapolis Police Department, stated that he had been a police officer for thirty-two years and had been Lieutenant of Police for over six years. That he had no specific assignment, but his duties took him over the city in a general way. That in the year 1922, he was accompanied in this work by Lieutenant Stoddard, each was under order to report violations of the law which they found or heard of the Inspector Weaver, who was in charge of the Police Department at this time at night. Their duties took them by Capitol avenue and McCarty street, where the Dillon establishment existed. Night after night they observed many automobiles about the place and Cox stated that he remarked to Stoddard that "there is gambling going on at that place." In this Stoddard agreed with him. The reason that no arrests were made was that they were under orders to report to Inspector Weaver. These officers reported this situation to Weaver. James Armitage was generally about Inspector Weaver's office. In these matters, witness was corroborated by Lieutenant Stoddard.

John O'Brien, a patrolman, stated that he said to Tom Dillon, "Tom, you ought to cut that out." the officer referring to the gambling in the Dillon place. But Dillon answered, 'All right, John, I know what I am doing.' "

Officer Bandy of the Indianapolis Police Department stated that his beat immediately adjoined the Dillon property. That many times he saw a considerable number of automobiles parked about the Dillon establishment. That the place had the reputation of being a gambling house, but he was never ordered by any superior officer to investigate it.

Robert Bruce, a witness, stated that he had gambled at the Dillon establishment many times. That the place was accessible to the streets and that as many as twenty-five or thirty men were engaged in one craps game. That there were genrally large numbers of

automobiles on the outside and that bets on dice ranging from twenty-five to one hundred dollars were made by individuals.

Paul Besesi testified that he lost $2500 in this craps game. Hugh Range testified that he stopped in the Dillon establishment and saw from twenty-five to forty people standing about a table on which there was a large sum of money; that the doors leading to the room in which this table was located were not locked, but were accessible to anybody from the streets and he saw large sums of money being wagered on this table. Witness reported this matter to Ernest Kingston of the Board of Public Safety and asked Kingston to accompany him to this place, stating at the same time that Dillon was operating this game. Kingston said. "The Chief of Police has investigated it and there is nothing doing." This the witness dissented to.

Later Kingston asked witness not to discuss the matter of this gambling establishment with Prosecutor Evans.

Sargeant Stroh of the Indianapolis Police Department testified that he went to the corner of Capitol avenue and McCarty street in a Ford coupe and stopped his car close to the Dillon establishment and he did this under orders of Chief Rikhok. Witness was there about a half an hour when a touring car drove behind and parked. James Armitage and Ernest Kingston rode in the front seat of the car and William Armitage in the rear. William Armitage got out of the car and talked to a little fellow whose name witness does not know. This little person went into the place while Armitage remained on the outside. He came out followed by Thomas Dillon, who talked with William Armitage. The two remained in conversation about five minutes when Lieutenant H. Jones came up in a car, spoke to Thomas Dillon and William Armitage, but did not converse with them. Armitage then stepped over to Jones, reached in his pocket and handed him money, which witness saw Armitage count out in his hand. Jones got into his car and drove away. Then Dillon and William Armitage walked to the auto where James Armitage and Kingston were waiting for them. A conversation ensued, the substance of which was that Dillon desired to get somebody on the police department. Dillon remarked to these persons, "Go to Herman" (probably meaning the Chief of Police). Armitage remarked, "That——of a——has not sense enough." Kingston then got out of the car and took Dillon by the arm and walked to the front end of the car, just behind the car which witness occupied. Dillon gave Kingston $725 in paper money and said, "Here is the money. You see that guy." Kingston said, "All right, Dillon. I'll tend to it." Kingston then got back into the auto. The parties talked for a few moments and then the car was driven south on Capitol avenue.

Witness was sent by the Chief of Police several times to drive by this place and take license numbers of cars which were parked along and around Dillon's place.

This testimony is more than significant. Here we have a large and notorious gambling establishment conducted under circumstances of great publicity and open notoriety known to the police, reported by lieutenants generally assigned to the Inspector of Police, policemen on the beat having full knowledge of the same and no arrests. The significance of this is further enhanced when it is found—which subsequently proved to be the case—that an investigator of the proseuctor's office without the slightest difficulty established this condition, submitted his evidence to the grand jury and Thomas Dil-

lon, the proprietor of this place was convicted and given six months on the Penal Farm, which sentence has been recently sustained by the Supreme Court of Indiana in the case of State v. Dillon, 142 N. E. 643.

CONTRIBUTIONS TO THE SHANK CAMPAIGN FUND FROM PERSONS ENGAGED IN VIOLATING THE LIQUOR AND GAMBLING LAWS AT THE INSTANCE OF POLICE OFFICERS CONNECTED WITH THE CITY ADMINISTRATION

On the subject comprehended by the above subdivision, owing to the limited time at the disposal of the committee, a thorough investigation could not be made. However, there is much material for investigation on ths topic for the Federal and State Liquor Enforcement Officers. We set forth here the testimony of one witness which illustrates a general situation.

Louis Butler, a well known colored gambler and soft drink room proprietor, stated that on Friday evening, April 25, Lieutenant John Zener and Forrest Swank, the former a lieutenant of the police employed in inspecting licenses in pool rooms and dry beer parlors, and the latter a member of the squad specially charged with enforcement of the liquor laws, went to the G & R Pool Room and sent for witness who went to this place. Swank said to him, "What are you going to do?" Witness said "What about," and Swank said, "About the campaign fund." Witness said, "I am not going to do anything." Swank said, "You have made money up here for the last two years, haven't you?"

Facts leading up to many similar situations showing a uniform conspiracy to secure money from liquor law violators are available, and we believe should be thoroughly investigated by the proper authorities.

These activities point out the clear and positive existence of such a situation as existed in Evansville and Gary, Indiana, and which is necessary for the Federal Courts to deal with on account of the connection with this conspiracy of State officers immediately and vitally connected with the enforcement of the liquor laws against violators.

By Mr. Claycombe:

Mr. President:

I move that the committee's partial report be accepted, printed in the Journal and that the committee be continued.

L. D. CLAYCOMBE.

Carried.

On motion of Mr. Claycombe, the Common Council at 2:00 o'clock p. m., adjourned.

Walter K. Kiser

President.

Attest:

John N. Rhodehamel

City Clerk.