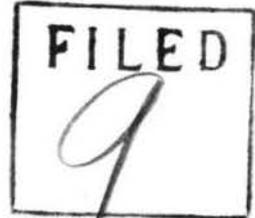


PURCHASING AGENT: Corporation, in which curator, regent or trustee of educational and eleemosynary institution is stockholder, may be let contract by state purchasing agent for supplies to be furnished the institution for which said stockholder is curator, regent or trustee.

August 9, 1939

Mr. George Blowers
State Purchasing Agent
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of August 7, 1939, requesting our opinion on the following:

"May a corporation, in which a curator, regent or trustee of one of our educational or eleemosynary institutions is a stockholder, submit bids to the State Purchasing Agent for supplies to be furnished the institution for which said stockholder is curator, regent or trustee?"

There are various acts which prohibit curators, regents and trustees of our educational and eleemosynary institutions from being interested in any contract for supplies bought for said institution. These acts, appearing in R. S. Mo. 1929 are: Missouri University Section 9654; Teachers Colleges Section 9614; Lincoln University Section 9621; Schools for Blind and Deaf Sections 9710, 9711 and Eleemosynary Institutions Section 8620.

Each of these institutions has a statute in existence authorizing the board in charge of said institutions to purchase necessary supplies. Missouri University Section 9626; Teachers Colleges Sections 9596, 9603, 9610; Lincoln University Eleemosynary Institutions Section 8594.

In Laws 1933, page 410, there appears an act creating the State Purchasing Agent. Section 2 of this act provides:

"The Purchasing Agent shall purchase all supplies * * * for all departments of the State except as in this Act otherwise provided."

We assume, because we think it is conceded by all, that the statute revokes the authority heretofore had by the above institution to purchase their own supplies.

The statutes requiring interpretation all contain one or the other of these provisions or ones similar thereto -- that the prohibited persons shall not be, "directly or indirectly interested in any contract for any supplies in any quantity or of any kind to be furnished said institution," nor shall they "keep for sale or be interested in, directly or indirectly, the sale or exchange of any school furniture or apparatus, books, maps, charts or stationary used in said school."

In *Forest City Mfg. Co. v. International Labor Union* 111 S. W. (2nd) 1.c. 940 (Mo. App.) it is said, "A corporation is a creature of the sovereign power which brings it into being, with an entity separate and distinct from the individuals who compose it, * * *". In *State v. Miller* 272 S. W. 1.c. 1067 (Mo. App.) the court says, "It is a general and well-established principle of law that a corporation has a legal entity distinct from its members, * * *".

In 14 C. J. p. 52, Section 5, this rule is stated as follows:

"On the creation of a corporation, as we have seen, the individuality of the corporators or members is merged in the corporate body and the corporation becomes in law, and for most purposes, a legal entity or artificial person entirely distinct from its members and its officers, so that its acts through its members as a corporate body, or through its officers or agents, are regarded as the acts of this legal entity or artificial person as distinguished from the members who compose it, and the property or rights acquired, or the

liabilities incurred, by it are regarded as its property, rights, and liabilities as such distinct legal entity, * * * "

In 14 C. J. p. 55, Section 9, it is stated:

"On the same principle the contracts entered into for a corporation by its authorized officers or agents are the contracts of the corporation as a distinct legal entity, and neither confer rights nor impose liabilities or restrictions on the members or stockholders individually."

Under the above authority it is to be seen that stockholders in a corporation and the corporation are, in the eyes of the law, separate and distinct persons. Thus it is not possible to say that a stockholder has any individual interest in a contract of the corporation. The corporation alone is interested in contracts between it and other persons.

There is, however, a time when this corporate fiction is cast aside. In *May Department Stores Co. v. Union Electric L. & P. Co.* 107 S. W. (2d) 1.c. 55 (Mo. Sup.) it is said:

"If any intercorporate affiliation is devised for or is being used to accomplish an improper or unlawful purpose, certainly equity does have the authority to tear down technical legal barriers and reach beyond them to impose liability or grant proper relief. If the purpose is lawful, and fair and equitable to those with whom it is intended to deal, legal forms and relationships should be observed."

Mr. George Blowers

-4-

August 9, 1939

CONCLUSION

It, therefore, is our opinion that a corporation, in which a curator, regent or trustee of one of our educational or eleemosynary institutions is a stockholder, may submit bids to and receive contracts from, the State Purchasing Agent for supplies to be furnished the institution for which said stockholder is curator, regent or trustee, if the corporate entity submitting said bid or receiving said contract is not a mere sham set up or used by the stockholder-board member for the purpose of evading statutes prohibiting said curators, regents and trustees from being interested in contracts to furnish supplies to their institutions.

Very truly yours,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

LLB:RT