

ing company is void as against public policy where the mayor is a stockholder in the lighting company.

April 27, 1933.

You ask an opinion as to whether or not a contract for city lighting, between a municipality and the lighting company, is valid where the mayor is a stockholder in the lighting company.

Section 5069 R. C. M. 1921 provides as follows: "The mayor, or any member of the council, or any city or town officer, or any relative or employee thereof, must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office."

A statute of this character has been held to prohibit such a contract. *Ferle v. City of Lansing*, (Mich.) L. R. A. 1917C, 1096. In a note following this decision, page 1099, is found the following clear statement of the law: "This decision is in accord with the general holding, that contracts between a public corporation and a private corporation of which a public officer is a stockholder, or stockholder and officer, are within the prohibition of provisions forbidding public officers to be interested, directly or indirectly, in public contracts."

Where three stockholders of a corporation were members of a city council and a contract was entered into between the city and the private corporation by which the latter agreed to furnish the city a water supply, the court said: "The high character of the three gentlemen in question show that their presence in this contract on both sides, so to speak, was due to their great anxiety to promote the best interests of the public in the matter of a water supply and not for any profit to themselves; still it is our duty to say that their conduct is illegal." *Duncan v. Charleston*, 39 S. E. 265, (S. C.) Ann. Cases 1912D, 660, and cases cited.

Where two members of a city council were interested in a corporation which entered into a contract with the city the court declared the contract void and said: "The town of Macon will come by its proper rights when both these gentlemen resign as aldermen and resume their business as merchants which * * * we have no doubt they will

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**Contracts—Municipal Corporations
—Cities and Towns—Public Policy
—Light and Power.**

HELD: A contract for city lighting between a municipality and the light-

promptly do." *Noxubee County Hardware Co. v. Macon*, 43 S. 304, (Miss.).

Where a trustee of the city was a stockholder and director of a railroad corporation the city was authorized to donate five thousand acres of city land to the railway company. The court held the conveyance void and further said: "The trustee's relation to the city was that of an agent to his principal, the city, and he could do nothing inconsistent with such relation. This is clear upon principle and rests upon abundant authority. No man can faithfully serve two masters." *President Etc., of City of San Diego, v. Railroad Co.*, 44 Cal. 106.

The contract in question is contrary to public policy as declared by the statutes of the state and therefore void.