

Opinion No. 527.**Legislators—Sales to State—State
Purchasing Agent—Contracts
—Agency.**

HELD: Section 12, Chapter 66, Laws of 1923, prohibits a legislator from being a party to a contract for sale of goods or supplies to the state in his own name or from entering into such contract by or through a trustee or "dummy".

But the statute is not broad enough to cover a contract of sale executed by a legislator who is merely employed by the corporation as an agent or who is only an ordinary shareholder; though it would cover a case where he is, in effect, the corporation.

May 5, 1934.

You have submitted the following: "Will you kindly let me have a written opinion as to whether a member of the Senate or a member of the Legislature either personally, or as a large holder in a corporation, is allowed to sell goods to the State of Montana where there is a personal profit for himself?" As practically all goods required by the state of Montana, its departments and institutions are bought by the State Purchasing Agent, we assume you refer to sales of goods made to the state of Montana through him.

Chapter 66, Laws of 1923, among other things, sets forth the duties of the State Purchasing Agent and prescribes the manner in which supplies for the state shall be by him purchased. Section 12 thereof provides: "No member of the legislature, nor any elective or appointive state officer, nor any deputy or employee thereof, nor superintendent of any state institution or any employee thereof, nor any person in the employ of the State of Montana in any capacity whatsoever, shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State of Montana under the provision of this Act, * * *."

The statute, therefore, prohibits the legislator from being a party to the contract of sale in his own name or from entering into it by or through a trustee or "dummy".

He is not disqualified, however, from representing a corporation in executing the contract of sale, or in the steps leading to its execution, unless he is in effect the corporation itself by reason of ownership of so great a part of the stock that a court would consider him as the corporation itself. From the administrative standpoint I think the Act should be liberally construed so as to avoid dealings with legislators under the guise of a fictitious corporate entity. The language of the statute is, we think, not broad enough to cover the case of a legislator who is merely employed by the corporation or who is only an ordinary shareholder.

Section 444, Revised Codes 1921, can have no application for the contract is made by the legislator not in his official but his private capacity. The State Purchasing Agent represents the State of Montana and is expected to look out for its interests.