1957 O. A. G.

State ex rel. Workman v. Goldthait (1909), 172 Ind. 210, 216, 217, 87 N. E. 133;

State ex rel. Bingham v. Home Brewing Co. (1914), 182 Ind. 75, 91, 105 N. E. 909;

Department of Insurance v. Church Members Relief Assn. (1940), 217 Ind. 58, 60, 26 N. E. (2d) 51.

As pointed out in the 1954 O. A. G., supra:

"An exception applies to the above general rule only where certain incidental powers are implied for the purpose of carrying out the express powers given a public officer."

No such inferred powers for revocation of a certificate of authority for non-use are granted by any express provision of this Act.

In view of the foregoing, my answer to your question is that there is no express or implied statutory authority for revocation of a certificate of authority of such companies solely because of non-use.

OFFICIAL OPINION NO. 54

December 5, 1957

State Board of Medical Registration and Examination
Room 538, K. of P. Building
Indianapolis 4, Indiana

Dear Gentlemen:

Your letter of November 15, 1957, has been received and reads as follows:

"Pursuant to general discussion in Executive Session on November 6, the Board of Medical Registration in Executive Session on that date directed the writer to request an opinion from you, official or unofficial, regarding the following specific question relating to the Physical Therapy Law:"
“What is the Board's authority for payment of travel and subsistence, and per diem for services rendered by the Examining Committee for Physical Therapy as prescribed in Section 4 of Chapter 198, Acts of 1957, or authority for denying such payment?

“The Board has been advised by the Budget Department and the State Board of Accounts to refer this question to you for direction, and has been instructed by the Board of Accounts to not pay travel subsistence or service per diem until you have made the determination.”

The Physical Therapy Law is Acts of 1957, Ch. 198, Sec. 1, as found in Burns’ (1957 Supp.), Section 63-1338 et seq.

Section 3 of said act, as found in Burns’ (1957 Supp.), Section 63-1340, requires the State Board of Medical Registration and Examination to administer the provisions of said act.

Section 4 of said act, as found in Burns’ (1957 Supp.), Section 63-1341, creates the State Examining Committee for Physical Therapists, and reads as follows:

“There is hereby created a state examining committee for physical therapists to assist the board in carrying out the provisions of this act regarding the qualifications and examination of physical therapists. The examining committee shall consist of three [3] members, each of whom shall have met the requirements in section 6 of this act and have had not less than three [3] years' experience in the practice of physical therapy, and each of whom shall be a citizen and resident of the state of Indiana at the time of his appointment.

thereto shall be a registered physical therapist meeting the requirements in section 6 of this act, shall have had not less than three [3] years' experience in the actual practice of physical therapy immediately preceding his appointment and shall be actively engaged, in this state, in the practice of physical therapy during his incumbency."

Section 5 of said act, as found in Burns' (1957 Supp.), Section 63-1342, requires the board, "with the advice and assistance of the state examining committee," to pass upon the qualifications of applicants, provide and conduct examinations, determine who successfully passes examinations, and register such applicants; Sec. 7 of said act, as found in Burns' (1957 Supp.), Section 63-1344, requires examinations to be held in the City of Indianapolis in June of each year and such other times and places as the board shall direct, and provides the subjects in which they shall be examined; other sections of the act prescribe fees for examination or licensure ranging from two dollars [$2.00] to twenty-five dollars [$25.00], depending upon the type of application, and provides a renewal fee each year of five dollars [$5.00].

Section 11 of said act, as found in Burns' (1957 Supp.), Section 63-1348, provides as follows:

"The fees or any part thereof collected by the board pursuant to the provisions of this act shall under no circumstances be returned to the applicant, but rather shall be deposited in a separate account hereby created within the general fund and designated as the 'Physical Therapist Account.' Notwithstanding any other law enacted by the nineteenth session of the general assembly, all money in such account is hereby specifically appropriated to the board to be used for the purpose of administering the provisions of this act and shall be used for no other purpose. All sums of money remaining in such account in excess of five thousand dollars [$5,000] at the end of each biennium shall revert and be transferred to the General Fund."

From an examination of said statute, it is apparent the Legislature has granted no specific authority for salary or compensation by way of per diem, for the services of such
state examining committee, nor in said statute made any provision for travel and subsistence. However, said statute is not complete within itself as it is administered and operated by the State Board of Medical Registration and Examination of Indiana for which provision as to operation of said board in general is made under the Acts of 1897, Ch. 169, Sec. 5, as finally amended by Acts of 1947, Ch. 253, Sec. 1, as found in Burns’ (1951 Repl.), Section 63-1306. This last referred to statute provides that the board of seven members created under said act shall organize and operate as therein prescribed and that they shall receive ten dollars [$10.00] per day for their services and traveling expenses necessarily incurred in attendance upon business of the board; said section of said act charges the board with a duty of enforcing the act and further provides that “it shall have the right and authority to employ such personnel, and assign to them such duties, as may be necessary in the discharge of this duty at salaries to be fixed by the board payable out of the funds of the board, subject to the approval of the budget committee.”

While the last referred to authority refers to the enforcement of the Medical Practice Act, both acts must be considered in pari materia, in that the administration of the Physical Therapy Law constitutes additional functions and duties devolving upon the State Board of Medical Registration and Examination of Indiana. Under Sec. 11 of the Physical Therapy Law, supra, the fee received “is hereby specifically appropriated to the board to be used for the purpose of administering the provisions of this act.” While the Medical Board, in fact, under said law makes the ultimate decisions and administers the law, the statute requires the necessity of the assistance of the state examining committee in such matters such as the screening of applicants, adoption of standards, prescribing of forms of applications, construction of examination questions, and the examining of applicants and grading of examination papers. These acts require the physical presence at many board meetings of the state examining committee, in order to give credence and lend validity to the actions of the Medical Board in their administration of the act. They are required to come from various parts of the State and attend meetings in Indianapolis and various parts of the State.

Based on the above, it appears that the members of this committee, while they might be classified as state officers,
actually act only in an advisory capacity, and more nearly come within the term "personnel" (as used in Burns' (1951 Repl.), Section 63-1306, supra) necessary to the discharge of the duties of the Medical Board in matters relating to their particular field of practice of Physical Therapy. Since they act in such a capacity, it would seem that the members of the committee are entitled to a salary or per diem (salary for a day's work), subject to the approval of the Budget Committee. In addition, they are entitled to a per diem for traveling expenses and transportation as fixed by the Budget Committee under the Acts of 1957, Ch. 285, Sec. 3, as these expenses are necessarily a part of the administration of the provisions of said statute and said administrative costs are clearly authorized under Sec. 11 of the Physical Therapy Law, supra.

I am therefore of the opinion that the Board of Medical Registration and Examination of Indiana could by resolution provide for the payment of a salary or per diem to members of the examining committee for Physical Therapists, said salary or per diem to be subject to the approval of the State Budget Committee, and that they would be entitled to the traveling and transportation expenses in connection with their duties approved by the Budget Committee, all of the above to be paid from funds received as fees under said Physical Therapy Act.

OFFICIAL OPINION NO. 55

December 5, 1957

Hon. Frank A. Lenning
Secretary of State
201 State House
Indianapolis, Indiana

Dear Mr. Lenning:

Your letter, requesting an Official Opinion, has been received and reads as follows:

"We are requesting your opinion as to the fees to be charged by this office. What shall we charge a foreign corporation for additional shares doing business in this state, as reflected by its annual report as hereinafter stated?"