rebates to which members may be entitled are not in the nature of dividends based upon ownership of a proportionate part of the assets of the corporation as in a for-profit corporation; instead such rebates are upon a “pro rata basis according to the amount of energy consumed.” The speculative savings or financial advantage which may inure to the members of the proposed corporation about which you inquire appear to be comparable to the financial advantage of members of Rural Electric Membership Corporations, which are specifically classified by the Legislature as nonprofit corporations.

In view of the above and foregoing, it is my opinion that the declared purpose of the desired corporation is not contrary to the provisions of the Not for Profit Act and that such proposed articles should be accepted for filing and approved. It should be noted that the jurisdiction of your office is continuous over such corporations. Acts of 1935, Ch. 157, Sec. 33, as found in Burns’ (1948 Repl.), Section 25-539 provides the procedure by which corporations violating the Act shall be made to comply therewith or be dissolved. Therefore, should this corporation or any other one posing as a not for profit organization under said Act use its said corporate being as a subterfuge by which to conceal a profit-making purpose for its members, the Act provides an adequate remedy.

OFFICIAL OPINION NO. 12

May 2, 1957

Mr. Albert Kelly
Administrator, Department of Public Welfare
141 South Meridian Street
Indianapolis 4, Indiana

Dear Mr. Kelly:

This is in response to your recent letter requesting an Official Opinion on the following question:

“May a person who has been appointed and is now serving as a member of a county board of public welfare continue to perform the duties of a Notary Public pursuant to a commission in effect at the time of his appointment as a member of the county welfare board?”
Your inquiry is but one of a long line concerning eligibility for dual offices of many categories. It is well established that the Indiana Constitution, Art. 2, Sec. 9, is a foremost controlling factor, wherein it says:

"* * * nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted * * * ."

County Boards of Public Welfare were established by the Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 19, as amended, as found in Burns' (1955 Supp.), Section 52-1118, which says, in part:

"* * * The members of the county board shall serve without salary, but shall be entitled to receive the sum of seven cents [7¢] per mile for each mile actually and necessarily traveled, in performance of their official duties. They shall also be entitled to expenses for hotel and meals if their official duties require their travel outside of their counties. The per diem cost for hotel and meals shall not, however, be paid beyond the sum set by law for state employees.

"Any member not holding other elective or appointive office may receive a per diem allowance of not more than ten dollars [$10.00] for attendance at any regularly called meeting of the board. Per diem allowances for attendance at meetings shall not exceed twenty dollars [$20.00] to any one member in any calendar month. Per diem allowances for attendance at meetings, expenses for travel, hotel, and meals, shall be paid only if the amount has been made available by appropriation. * * * ."

The 1954 O. A. G., page 258, No. 70, at page 260, considered other per diem statutory provisions as follows:

"* * * A per diem is not a fee, salary or wages. It is a compensation for a service given the government for a day or a part of a day. 1945 O. A. G., pp. 188, 190, No. 40."
"In Dailey v. State (1848), 8 Blackf. 329, in speaking of the offices of Recorder and County Commissioner, the Court said:

"'We think, also, they are lucrative offices. Pay, supposed to be an adequate compensation, is affixed to the performance of their duties. We know of no other test for determining "lucrative office" within the meaning of the Constitution. The lucrativeness of an office—its net profits—does not depend upon the amount of compensation affixed to it. The expenses incident to an office with a high salary may render it less lucrative, in this latter sense, than other offices having a much lower rate of compensation.'

"In view of the foregoing, I think the per diem allowance to a member of a County Plan Commission is to be considered as compensation for a service given the county. Therefore, if the Board of Commissioners, pursuant to their statutory authority, approved a per diem allowance, then a member of the County Plan Commission would be the holder of a lucrative office under Art. 2, Sec. 9 of the Indiana Constitution.”

It is said in Harrell et al. v. Sullivan, Judge, et al. (1942), 220 Ind. 108, 122, 40 N. E. (2d) 115:

"'* * * the duties of a public office are in their nature public; that is, they involve in their performance the exercise of some portion of the sovereign power, whether great or small, in the performance of which all citizens, irrespective of party, are interested, either as members of the entire body politic or of some duly established division of it. * * *'"

The 1936 O. A. G., page 155, determined the County Director of Public Welfare to hold a lucrative office under the Indiana Constitution, Art. 2, Sec. 9.

From the foregoing authorities, it is concluded that a member of a County Board of Public Welfare, exercising the same sovereign power as the Director, would be the holder of a lucrative office within the prohibition of the Indiana Consti-
tution, Art. 2, Sec. 9, supra, and so ineligible to hold any other office meeting the same qualifications.

In 1 R. S. 1852, Ch. 76, Sec. 7, as amended, as found in Burns' (1951 Repl.), Section 49-3501, it is stated:

"* * * No person holding any lucrative office or appointment under the United States or under this state, and prohibited by the constitution of this state from holding more than one [1] such lucrative office, shall serve as a notary public, and his acceptance of any such office shall vacate his appointment as such notary * * * ."

It having been determined that a member of a County Board of Public Welfare is an officer prohibited by the Constitution from holding more than one lucrative office, it is my opinion that Burns' 49-3501, supra, expressly prohibits him from serving as a notary public and that that office was vacated by his acceptance of the office of member of the County Board of Public Welfare.

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OFFICIAL OPINION NO. 13
May 6, 1957

Honorable Joseph E. Klen
Lake County State Representative
6607 Marshall Avenue
Hammond, Indiana

Dear Representative Klen:

I have received your letter in which you requested an answer to the following:

"* * * whether or not a county commissioner, while holding office, may run for any other public office."

Our Indiana Constitution, Art. 7, Sec. 16, states:

"No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office."