The only other factor affecting your right to issue the warrant would be concerned with the question of right of title to public office, and the jurisdiction to determine these matters rests exclusively with the judicial department of the State Government.

Your letter does not refer to any particular judge of the Supreme Court; however, all of the judges now acting and performing their duties as judges of the Supreme Court have either been elected or appointed, have received their commissions and have filed and presented said commissions to the Court together with their written oath and acceptance thereon.

Under these circumstances, I believe you can legally issue a state payroll warrant as stated in your question since you are not required to withhold the pay of a public officer pending a judicial determination of his title to the office. See City of Peru et al. v. State ex rel. McGuire (1935), 210 Ind. 668, 673, 199 N. E. 151.
tising. To quote, in part, 'It shall be unlawful and a violation of the provisions of this act: For any person or persons to publish or circulate, or print or cause to be printed, by any means whatsoever, any advertisement which quotes prices on glasses, lenses, or frames or quotes a discount to be offered to the public for the professional services and/or the prosthetic devices, eyeglasses, lenses or frames to be furnished to the public, or which quotes "moderate prices," "low prices," "lowest prices," "guaranteed glasses," "satisfaction guaranteed," or words of similar import, etc.,'. It has been alleged that several cases of this nature now exist in Indiana. In view of the recent decision of the U. S. Supreme Court upholding a similar Oklahoma Optometry Law, is it the opinion of the Attorney General’s office that our own Indiana Optometry Act could and should be enforced whether the defendants are optometrists or not?"

In answer to your first question, the Acts of 1907, Ch. 187, Sec. 9, as found in Burns’ Indiana Statutes (1951 Repl.), Section 63-1009, provides that a person receiving a certificate to practice Optometry as issued by your Board shall present the same to the clerk of the circuit court of the county in which he intends to practice and that such certificate shall be recorded by such clerk.

Section 9 of said Act, as found in Burns’ Indiana Statutes (1951 Repl.), Section 63-1010, provides as follows:

"In case of change of residence from one county to another in this state, the holder of an optometrist’s license shall obtain a new license in the county where he proposes to reside, by filing with and surrendering to the clerk of the circuit court the license obtained by him in the county in which he last resided, in the same manner as provided for on the presentation of his certificate from the state board of registration and examination in optometry, and the clerk shall issue him a new license, which shall entitle the holder of said new license to practice optometry under the provisions of this act [§§ 63-1001—63-1021] only in the county in which the new license was so issued, as long as said new license is
in full force and effect: Provided, however, That no license so issued shall be so surrendered, and a new license so issued, until a period of at least thirty [30] days has elapsed after the issuance of said license to be so surrendered. It shall be the duty of said clerk to at once notify the state board of registration and examination in optometry of the surrender of said old license, and of the issuance of said new license.”

Section 11 of said Act, as found in Burns’ Indiana Statutes (1951 Repl.), Section 63-1011, makes provision for the issuance by said clerk of a circuit court to such applicant of a license, which is to be issued in the form as set out in the statute. Said section of the statute then provides:

“Said license shall give the right to the holder thereof to practice optometry only in the county in which said license is issued so long as the same is in full force and effect.”

In the case of Bennett v. Indiana State Board of Registration and Examination in Optometry et al. (1937), 211 Ind. 678, 7 N. E. (2d) 977, which was an action against said Board for a declaratory judgment to determine the constitutionality of certain sections of the above statute, as amended in 1935, the Supreme Court of Indiana, after holding the questioned sections of said Act to be constitutional, concluded on page 690 of the opinion that “This court is unable to say that the Act, as a whole, is not a valid exercise of the police power of the state.” On page 687 of the opinion it specifically upholds the constitutionality of the statute giving the Board authority to determine “what shall constitute unprofessional conduct, as defined by the statute.”

In the case of Ritholz et al. v. Indiana State Board of Registration and Examination in Optometry et al. (1937), 45 F. Supp. 423, which was an action for injunction against said Board, the District Court of the Northern District of Indiana, Hammond Division, sitting as a three-judge court, made its Special Findings of Facts and quoted the aforesaid sections of said law on pages 429 and 430 of its opinion. Thereafter in its Conclusions of Law, the Court specifically upheld the consti-
tutionality of each section of said Act as questioned in said action and dismissed said cause of action.

Acts of 1907, Ch. 187, Sec. 17, as found in Burns' Indiana Statutes (1951 Repl.), Section 63-1018, authorizes the Board to revoke any certificate of registration or any license to practice optometry issued to any person who is found guilty by the Board of a violation of any of the provisions of said Act or of any rules, orders or regulations promulgated by the Board.

In answer to your first question, I am therefore of the opinion from the foregoing authorities that the Board is authorized to take action against any licensee who is found practicing optometry in two different counties.

In answer to your second question, Acts of 1907, Ch. 187, Sec. 18 (f), as found in Burns' Indiana Statutes (1951 Repl.), Section 63-1019, provides as follows:

"(f) Certain Types of Advertising. For any person or persons to publish or circulate, or print or cause to be printed, by any means whatsoever, any advertisement which quotes prices on glasses, lenses or frames or quotes a discount to be offered to the public for the professional services and/or the prosthetic devices, eyeglasses, lenses or frames, to be furnished to the public, or which quotes 'moderate prices,' 'low prices,' 'lowest prices,' 'guaranteed glasses,' 'satisfaction guaranteed,' or words of similar import, or, which advertises any eyeglasses, spectacles, lenses, frames, mountings, or other accessories or prosthetic devices without specifying the kind, type and quality of the same; or which includes in such advertisement the words 'eye examination free,' 'consultation free,' 'free eyesight test,' 'free sight test,' 'examination without the use of harmful drops or drugs,' or any other words equivalent thereto."

In the case of Bennett v. Indiana State Board of Registration and Examination in Optometry et al., supra, on pages 687, 688 and 689 of the opinion the Court said:

"It cannot be expected of the legislature that it should forbid specifically all improper practices likely to arise. Of necessity, details of its plan must be left to the board."
The statute fixes the standard upon which the board may act. It does not vest the board with power beyond its scope and purpose. It will not be assumed that the legislature delegated or intended to delegate to the State Board authority to declare conduct to be unprofessional, except as defined, and within the scope of the statute. The practice of optometry bears a close relationship to the health and welfare of mankind. The eye is a delicate organ closely connected with intellectual, nervous, and physical functions. This fact brings the practice of optometry within the scope of the legislative supervision through the exercise of the police power. The principal purpose of the statute is to give protection to the public from quacks, and persons or firms not licensed, but who, as nonresident manufacturers of eyeglasses, etc., employ licensed optometrists to conduct the manufacturer’s business in this state for profit. Section 11 (g) prohibits such employment. It is not for the court to say that the legislature was without authority to enact a law condemning that relationship and practice.

“Section 11 (e) and 12 (f) forbid the acts therein specified. The purport of these provisions is to prevent certain advertisements and publications likely to mislead and deceive the public. The appellant admitted upon the witness stand that the publications exhibited to him were distributed by handbills and through the medium of the press, and contained formulas, tests, and statements prohibited by the statute. These advertisements were furnished and paid for by the unlicensed, non-resident manufacturers.

“If the sections of the statute herein set out, when read in connection with the entire statute, are invalid, then this court has been wrong in numerous decisions upholding the validity of statutes affecting and regulating the practice of other learned professions, and businesses requiring mechanical skill. A license to practice optometry, to a certain degree, may vest in the holder a property right, but it is not such a contract right as will enable him to defeat the purpose of an act of the legislature, enacted under authority of the police power of the state, for the protection of health and gen-
eral welfare. It matters little whether the practice of optometry is to be regarded and classified as a learned profession or an occupation requiring mechanical skill. In either event, this court generally has recognized the power vested in the legislature to enact laws providing for licensing and regulating the learned professions as well as mechanical. The law is in harmony with our free institutions and the progress of the age. In the pursuit of his profession or occupation, each individual must have regard for the equal rights of his neighbors and the welfare of the community in which he lives."

The Court’s reference to Section 12 (f) in the above quotation refers to Acts of 1907, Ch. 187, Sec. 18, here under consideration, as said section was amended by Acts of 1935, Ch. 38, Sec. 12. Likewise, by such reference the Supreme Court of Indiana has specifically declared said section and clause of said statute to be constitutional.

Also, in the case of Ritholz v. Indiana State Board of Registration and Examination in Optometry et al., supra, on page 435 of the opinion, in its Conclusions of Law numbered 1, 6, 7 and 8, said Federal Court specifically found Sec. 18 (f) of said original statute, as amended in 1935, to be constitutional.

In an Official Opinion of this office, found in 1943 O. A. G., page 629, in construing a somewhat similar profession of the State Dental Law prohibiting certain types of exhibits and displays for the purpose of advertising, and holding said dental law to be constitutional, the opinion quotes at length from the case of Semler v. Oregon State Board of Dental Examiners (1934), 294 U. S. 608, 55 S. Ct. 570, 79 L. Ed. 1086. In view of the fact the United States Supreme Court in a very recent case, hereinafter referred to, premised the decision largely upon the decision in the Semler case, supra, it is considered appropriate to repeat part of the quotation from said case as set out on pages 638 and 639 of said 1943 Official Opinion, as follows:

"The question is whether the challenged restrictions amount to an arbitrary interference with liberty and property and thus violate the requirement of due process of law. That the State may regulate the practice of
dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board, is not open to dispute. Douglas v. Noble, 261 U. S. 165; Graves v. Minnesota, 272 U. S. 425, 427. The State may thus afford protection against ignorance, incapacity and imposition. Dent v. West Virginia, 129 U. S. 114, 122; Graves v. Minnesota, supra. We have held that the State may deny to corporations the right to practice, insisting upon the personal obligations of individuals (Miller v. State Board of Dental Examiners, 90 Colo. 193; 8 P. (2d) 699; 287 U. S. 563), and that it may prohibit advertising that tends to mislead the public in this respect. Dr. Bloom, Dentist, Inc. v. Cruise, 259 N. Y. 358, 363; 182 N. E. 16; 288 U. S. 588.

"Recognizing the state power as to such matters, appellant insists that the statute in question goes too far because it prohibits advertising of the described character, although it may be truthful. He contends that the superiority he advertises exists in fact, that by his methods he is able to offer low prices and to render a beneficial public service contributing to the comfort and happiness of a large number of persons.

"The State court defined the policy of the statute. The court said that while, in itself, there was nothing harmful in merely advertising prices for dental work or in displaying glaring signs illustrating teeth and bridge work, it could not be doubted that practitioners who were not willing to abide by the ethics of their profession often resorted to such advertising methods "to lure the credulous and ignorant members of the public to their offices for the purpose of fleecing them." The legislature was aiming at "bait advertising." "Inducing patronage," said the court, "by representations of 'painless dentistry,' 'professional superiority,' 'free examination,' and 'guaranteed' dental work" was, as a general rule, "the practice of the charlatan and the quack to entice the public."

"We do not doubt the authority of the State to estimate the baleful effects of such methods and to put a
stop to them. The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards of conduct from those which are traditional in the competition of the marketplace. The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public peculiarly susceptible to imposition through alluring promises of physical relief. And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous. What is generally called the "ethics" of the profession is but the consensus of expert opinion as to the necessity of such standards."

It is to be observed the above decision in upholding the exercise of the police power by a state in such a regulation of the professions, has also considered the effect of bait advertising and further considered the ethics of the profession.

In the very recent case of the United States Supreme Court entitled Mac Q. Williamson, Attorney General of the State of Oklahoma et al. v. Lee Optical of Oklahoma, Inc. et al. (1955), — U. S. —, 75 S. Ct. 461, 99 L. Ed. 395, Mr. Justice Douglas delivered the opinion of the Court, upholding the constitutionality of the Oklahoma optometry statute. The Oklahoma statutes, as set out in the footnotes to said decision, are much more restricting in their provisions regarding advertising than the Indiana law here being considered. The Court, in rendering its decision, in part, said:

"Third, the District Court held unconstitutional, as violative of the Due Process Clause of the Fourteenth Amendment, that portion of § 3 which makes it unlawful 'to solicit the sale of * * * frames, mountings * * * or any other optical appliances.' The court conceded that state regulation of advertising relating to eye examinations was a matter 'rationally related to the public health and welfare' (120 F. Supp., p. 140) and
therefore subject to regulation within the principles of Semler v. Dental Examiners, supra. But regulation of the advertising of eyeglass frames was said to intrude ‘into a mercantile field only casually related to the visual care of the public’ and restrict ‘an activity which in no way can detrimentally affect the people.’ 120 F. Supp., pp. 140-141.

“An eyeglass frame, considered in isolation is only a piece of merchandise. But an eyeglass frame is not used in isolation, as Judge Murrah said in dissent below; it is used with lenses; and lenses, pertaining as they do to the human eye, enter the field of health. Therefore, the legislature might conclude that to regulate one effectively it would have to regulate the other. Or it might conclude that both the sellers of frames and the sellers of lenses were in a business where advertising should be limited or even abolished in the public interest. Semler v. Dental Examiners, supra. The advertiser of frames may be using his ads to bring in customers who will buy lenses, if the advertisement of lenses is to be abolished or controlled, the advertising of frames must come under the same restraints; or so the legislature might think. We see no constitutional reason why a State may not treat all who deal with the human eye as members of a profession who should use no merchandising methods for obtaining customers.”

In the case of State ex rel. Booth v. Beck Jewelry Enterprises (1942), 220 Ind. 275, 41 N. E. (2d) 662, the Supreme Court of Indiana construed the section of the statute involved in this question (Acts of 1907, Ch. 187, Sec. 18 (f), as amended by the Acts of 1935, Ch. 38, Sec. 12 (f), as found in Burns’ Indiana Statutes (1951 Repl.), Section 63-1019), to determine if it applied to persons advertising the price of eyeglasses and selling the same to customers who selected their own eyeglasses. The customer, in that case, made his own test by reading with various eyeglasses submitted to him until he found a pair satisfactory to him. In reaching its conclusion the Court considered the title of said Act, as amended in 1935, and in page 285 of the opinion said:

“The subject of the act is the practice of optometry. Its object is ‘to define and regulate’ such practice. Mat-
ters that are regulatory of such practice are clearly covered by the title. To forbid price advertising by an optometrist is regulation of his practice. But to forbid price advertising by appellees is merely regulation of their merchandising.”

The Court thereafter, on pages 287 and 288 of the opinion, considered the case of Ritholz v. Indiana State Board of Registration and Examination in Optometry, supra, and on page 288 of the opinion stated:

“* * * We think it not unlikely that the learned judges considered the status of complainants to be unlicensed optometrists rather than mere merchandisers. Upon that theory we can agree with the conclusion.”

On page 288 of the opinion the Court concluded:

“We hold that the provisions of subsection 12 (f) do not apply to appellees in connection with their sales as merchandise. We are not required in this case to determine whether a person practicing optometry may engage in price advertising.”

In answer to your second question, I am therefore of the opinion, Acts 1907, Ch. 187, Sec. 18 (f), as amended, is valid and constitutional. That the same is enforceable by your Board as against any person, licensed or unlicensed, who is practicing optometry within the meaning of said statute as above construed by the Indiana Supreme Court; that you may not enforce said statute as to persons who merely sell eyeglasses as merchandise.