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and the object the Legislature had in view, it would appear that the Legislature's intent was to place a minimum or floor upon the appropriation for deputy prosecuting attorneys, investigators, clerical assistants, out of state travel and extradition expenses in certain Judicial Circuits in this State. Such provisions would appear to be for the benefit and protection of the prosecutor's office in the Circuits named.

I do not believe this Act should be construed to deprive prosecuting attorneys, in Circuits of not more than 19,999 population of the implied power to employ the necessary stenographic and clerical assistants to enable them to carry out the duties enjoined upon them from their office.

In view of the foregoing, I am of the opinion that a county auditor, in a Judicial Circuit having a population of not more than nineteen thousand nine hundred ninety-nine (19,999) is authorized to draw a warrant on an existing appropriation in the current operating budget in payment of a claim for compensation of a clerical assistant to the prosecuting attorney in such Judicial Circuit.

This opinion assumes, of course, that the employment of the clerical assistants was necessary in order for the prosecuting attorney to carry out the duties enjoined upon him from his office.

OFFICIAL OPINION NO. 72

September 1, 1953.

Mr. Robert M. Reel,
Executive Secretary,
Indiana Real Estate Commission,
1433 N. Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which is as follows:

"An official opinion is desired regarding the authority of this Commission to require by rule a one year tenure as a salesman before being eligible to transfer

through examination to a broker's license. Such rule would not preclude taking a broker's license first, but would only affect transfer from salesman to broker."

The Indiana Real Estate Commission Act is Chapter 44 of the Acts of 1949, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Sections 63-2401 to 63-2423.

Under Section 5 of this Act, Burns' Indiana Statutes Annotated (1951 Repl.), Section 63-2405 the Indiana Real Estate Commission is empowered to adopt and promulgate rules and regulations for its guidance and for the regulation of its business and procedure so far as consistent with or in furtherance of this Act pursuant to the laws of the State of Indiana.

In speaking of the rule making power of Administrative Boards, the Supreme Court of Indiana recently said, in *State ex rel. Standard Oil Co. v. Review Board of the Indiana Employment Security Division et al.* (1951), 230 Ind. 1, 8, 101 N. E. (2d) 60:

"While a law as enacted must be complete, where the legislature has laid down a standard which is as definitely described as is reasonably practicable, it may authorize an administrative agency to amplify or implement that legislation, within prescribed limits, by adopting rules and regulations of general application to all alike, and it may authorize an administrative agency to determine whether facts or circumstances exist upon which the law makes or intends to make its own action depend, *but it cannot confer upon any body or person the power to determine what the law shall be.* As has been said, there is a clear distinction between the delegation of power to make a law, which necessarily involves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution, to be exercised under and in the pursuance of the law." (Our emphasis.)

The provisions in regard to the examination for and issuance of a real estate broker's license are found in Sections 10 and 11 of the above named Act, being Sections 63-2410 and 63-2411 of Burns' Indiana Statutes Annotated (1951 Repl.) and are as follows:

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“Sec. 10. Any person, desiring to act as a real estate broker or real estate salesman, must file an application for a license with the commission. The application shall be in such form and detail, as the commission shall prescribe, setting forth the following: (1) The name and address and age of the applicant or the name under which he intends to conduct business and, if the applicant be a partnership, the name and residence address of each member thereof and the name under which the partnership business is to be conducted; and if the applicant be a corporation, the name and address of each of its principal officers. (2) The place or places, including the city, town or village with the street and street number, if any, where the business is to be conducted. (3) Such other information as the commission shall require.”

“Sec. 11. The Commission shall require all applicants for a license to pass a written and oral examination to be taken before the commission on questions pertaining to sale, listing and procedures involved in dealing with real estate, and to obtain thereon a grade previously established as a passing or satisfactory grade. If the applicant is a partnership all members thereof shall pass such examination, and if the applicant is a corporation, all officers or agents thereof seeking to engage on its behalf as a real estate broker or salesman shall pass such examination.”

Under these sections the commission has a discretion as to the make up of the examination for a real estate broker's license, but the statute does not contemplate an apprenticeship as a real estate salesman before transfer, by examination, to real estate broker. Such a requirement would be in the nature of an additional qualification which is not contemplated by the statute, and would in effect be an amendment to such statute and would be a determination, by the commission, as to the law contrary to the terms of the statute. Such a determination, of course, is solely for the legislature to make.

I am therefore of the opinion that the Indiana Real Estate Commission cannot, by rule, require a one year tenure as a

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real estate salesman before being eligible to transfer, through examination, to a broker's license.

OFFICIAL OPINION NO. 73

September 2, 1953.

Mr. L. A. Cortner, Supt.,
Indiana Soldiers' and Sailors' Children's Home,
Knightstown, Indiana.

Dear Sir:

I have your letter of August 11, 1953 with enclosure. Your letter reads as follows:

"Over the past several years the Board of Trustees of the Indiana Soldiers' and Sailors' Children's Home have received three legacies, the funds from which were placed in U. S. Series G Bonds. The amount totals \$6,000. These bonds were made out in the name of 'Board of Trustees of Indiana Soldiers' and Sailors' Children's Home, a body corporate under Burns' Indiana Statutes of 1933, Sec. 22-2303 and acts amendatory thereof and supplemental thereto, Amusement Fund, Knightstown, Indiana 42602-34.' The interest checks come to us so inscribed.

"During the past several years the Institution has operated a Student Bank for the benefit of the students in which they could deposit their savings and in which we could deposit their Veterans Administration pensions. \$22,000 of the resources of this bank have also been invested in U. S. Series G Bonds with the same inscription.

"Since the Board of Trustees have ceased to exist, it is imperative that we know who is empowered to act in the matter of handling these funds, which, strictly speaking, are not state funds, but are under the state's supervision and subject to audit by State Board of Accounts.

"To determine this fact, I wrote to the Treasury Department concerning a single interest check asking who