OFFICIAL OPINION NO. 19

February 19, 1952.

Honorable Thomas R. Hutson,
Commissioner of Labor,
Room 225 State House,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion concerning Chapter 232 of the Acts of 1951 which creates the Elevator Safety Subdivision of the Division of Labor and about Rule 1 adopted pursuant to the authority granted in that Act.

Your first question reads as follows:

> "1. Must the State Office of the Elevator Safety Subdivision issue all Certificates of Operation or could this be delegated to a municipality if such municipality can or does qualify under the law?"

Before attempting to interpret the language of Chapter 232, it is necessary to note a technical defect that occurs. Section references to Sections 2 through 20 of the Act are improper, that is, a new Section 2 was inserted during the course of legislative enactment and the remaining sections were renumbered without a corresponding change of references to sections by number. This problem was the subject of Official Opinion No. 25 to you, issued March 20, 1951. That opinion concludes that the references should be considered to have been corrected so that references to Sections 5 and 6 should be treated as references to Sections 6 and 7.

Section 5, subsection (b), reads as follows:

> "(b) In cities, towns or other governmental subdivisions having a building department which employs licensed inspectors to enforce the provisions of this act, the Commissioner shall delegate such building department as the authorized representative of the division to enforce and carry out the provisions of Sections 5, 6, 7, 8 and 9 (Sections 6, 7, 8, 9 and 10) or any portion thereof as may be designated by him."

Operating permits are provided for by Section 10. Since Section 10 is specifically within the scope of Section 5(b), it is proper for the authority to issue such permits to be delegated to a municipality.

Your second question reads as follows:

> "2. Are all fees to be paid direct to the Elevator Safety Subdivision? This includes installation and alteration permits, all inspection fees within the State and all other fees connected with House Enrolled Act 240."

Subsections (a), (b) and (c) of Section 11 provide the various fees to be charged for installation and alteration permits and inspections. Subsection (d) of Section 11 reads as follows:

> "(d) Where the enforcement of this act is delegated to the building department of a city, town or other governmental subdivisions as provided in Section 4 [5] (b) of this act, the fees to be paid to the building department of any city, town, or any other governmental subdivision should be issued to defray expenses of said department and should be in an amount to be determined by such city *but not to exceed the fees as above provided.*" (Our emphasis.)

Section 5(b) concerning delegation, which has been previously set out, authorizes the delegation of a part or all of the duties and authorities contained in Sections 6 through 10. Inasmuch as the issuance of installation and alteration permits is of a different nature than routine on-the-spot inspections, there would seem to be less reason for a delegation of the authority to issue such permits than there would be for the delegation of other duties under the act. However, such a delegation is authorized at the discretion of the Commissioner.

Thus, in answer to your second question, to the extent of any delegation, fees may be paid to the city department rather than to the division.

Your third question reads as follows:

> "3. What remedy is available to the State of Indiana against municipalities, if they inspect elevators and

collect fees without conforming with the necessary provisions of House Enrolled Act 240 concerning them?"

Section 5(a) of Chapter 232 reads as follows:

"(a) Save where otherwise provided, the division shall have the power, and it shall be its duty to enforce the provisions of this act and the rules and regulations promulgated by the subdivision. The Commissioner of Labor shall appoint a sufficient number of qualified persons as general inspectors to insure adequate enforcement of this act."

This section clearly gives the Department the authority to enforce through its own agents all the duties conferred upon it by statute. Section 14 defines the jurisdiction of the State as it relates to and supersedes the jurisdiction of cities and other governmental subdivisions. Section 14, when construed with Section 5(b), comprises a comprehensive statement of the powers and authorities of cities in regard to elevator inspection.

Thus, if cities do not conform to these limitations, any act done by them is a nullity. They cannot require owners or lessees of elevators to pay any fees or to submit their equipment to such improper inspection. The Department is given no direct method of proceeding against municipalities who fail to comply with the provisions of this act. However, it would certainly be proper for the Commissioner or other representatives of the Division to use appropriate means to call to the attention of the city and of the elevator owners and lessees affected the legal status of any such action.

Your fourth question reads as follows:

"4. Under House Enrolled Act 240 and Rule No. 1 (adopted under Chapter 20, Acts of 1945), does the Elevator Safety Subdivision have the right to refuse to license individuals who work only for those whose elevators they are to inspect?"

Section 8a of Rule 1 of the Elevator Safety Subdivision reads as follows:

"8a. Licensing. No person shall be licensed to inspect elevators for the State of Indiana unless he is regularly

> employed in an engineering or inspection capacity by the State of Indiana; or, any of its political divisions; or, by any insurance company licensed to inspect elevators in the State of Indiana; or, by a recognized inspection bureau, provided that the person to be licensed can meet the qualifications required under Section 13, Chapter 232, Acts of 1951 and has filed the necessary application form provided by the Elevator Safety Subdivision."

This rule has received the approval of the Attorney General and the Governor and pursuant to the Uniform Rule Making Act was filed with the Legislative Reference Bureau and the Secretary of State on the 9th day of October, 1951.

Section 3(b) of Chapter 232 provides in part as follows:

> "* * * (The elevator subdivision) shall, pursuant to the procedure as provided by Chapter 120 of the Acts of 1945, make, amend, or repeal from time to time rules and regulations as follows:
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> "* * * 5. Rules and regulations concerning requirements for applicants to take examinations for license as inspectors and concerning the conduct of such examination."

Thus, the authority to adopt Section 8a of Rule 1 was granted by Chapter 232 and pursuant to that rule the Elevator Safety Subdivision has the right to refuse to license individuals who work only for those whose elevators they are to inspect.

Your fifth question reads as follows:

> "5. Is any Ordinance or Resolution authorizing inspection of elevators, adopted prior to the effective date of House Enrolled Act 240, in force at this time?"

Section 14 of the act reads as follows:

> "No city, town or other governmental subdivision shall hereafter have the power to make any ordinance, by-law or resolution providing for the licensing, inspection, construction, installation, alteration, maintenance, or operation of elevators, dumbwaiters or moving stair-

> ways within the limits of such city, town, or governmental subdivision unless the same comply with the rules and regulations adopted by the Elevator Safety Subdivision *and any such ordinance except as hereafter provided by law or resolution heretofore made or passed shall be void and of no effect.* Nothing in this act shall, however, limit the right of such city, town or other governmental subdivision to enforce the provisions of its own ordinances, by-laws and resolutions and to enforce the provisions of this act as permitted by Section 4 [5] (b) thereof or to determine the amount of the fees to be charged therefor as permitted by Section 10 [11] of this act. Provided, however, that any city or town or governmental subdivision may lay down additional or more strict requirements for the licensing and inspection of installation, alteration, maintenance or operation of elevators, dumbwaiters or moving stairways in addition to the requirements provided by the state pursuant to this act, and provided, further that in any case in which a city, town or governmental authority does not enforce its own ordinances, by-laws and resolutions, the Elevator Safety Subdivision may enforce the same."

The italicized portion of the above quoted section limits the effectiveness of ordinances or resolutions concerning elevator inspection to a certain limited scope and to resolutions passed subsequent to the effective date of Chapter 232. Therefore, ordinances adopted prior to the effective date of Chapter 232 are not in force at this time.

Your sixth question reads as follows:

> "6. In view of Section 17 of House Enrolled Act 240, are there any limitations on the authority of officials to delegate duties in connection with elevator inspection?"

Section 17 reads as follows:

> "The Commissioner of Labor, the Indiana Elevator Safety Subdivision and all other persons upon whom duties are enjoined by this act are hereby authorized to delegate any duty or authority imposed on them by

an instrument in writing filed in the offices of the division and available for inspection by the public."

The only limitation contained in Section 17 is that the delegation be made by instrument in writing filed in the offices of the Division and available for inspection by the public. This is the only limitation on such delegation.

You ask a second group of questions, the first of which reads as follows:

"1. Are the larger cities exempt from the operation of the law, and, if so, to what extent?"

Section 5(b), which we have previously quoted, makes mention of cities and towns generally. A study of the act as a whole makes it clear that all cities are governed by the act and that the size of a city has no effect upon the operation of the act.

Question 2 of the second group reads as follows:

"2. When the Elevator Safety Subdivision establishes rules, regulations and standards, will cities who already have ordinances covering rules, regulations and standards be required to amend their ordinances?"

The answer to question number five makes it clear that previous ordinances are no longer effective. Cities or towns wishing to make provision for elevator inspection will have to adopt new ordinances within the scope of the delegation by the Commissioner and within the framework of the act.

Your third question in the second group reads as follows:

"3. Under what condition will elevator inspectors in cities and towns be authorized to represent the Elevator Safety Subdivision in enforcement of Section Numbers Six, Seven, Eight, Nine and Ten?"

The authority of the Commissioner to delegate has been previously discussed, as has the authorities of the various cities and towns. Therefore, in answer to this question, it is my opinion that elevator inspectors in cities and towns will be authorized to represent the Elevator Safety Subdivision in enforcement of Sections 6 through 10 only to the extent of

the delegation in writing by the Commissioner on file in the offices of the division. That is, there must be a delegation before there can be any representation and any representation must be limited to the scope of the delegation.

OFFICIAL OPINION NO. 20

March 31, 1952.

Honorable Ross Teckemeyer, Executive Secretary,
Public Employes' Retirement Fund,
707 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of March 13, 1952, has been received and reads as follows:

> "Chapter No. 259 of the Acts of 1951 enact to declare certain public employees eligible for public service now denied them, etc. This Act made provisions under certain conditions for former members of the Indiana State Teachers' Retirement Fund to transfer their creditable service to the Public Employes' Retirement Fund.
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> "Dorothy Marie Taylor accepted employment with Indiana University February 7, 1950 and in July of 1951 became a member of the Public Employes' Retirement Fund. July 20, 1951 she filed with this office an application to transfer one year of creditable service as a school teacher from the Indiana State Teachers' Retirement Fund to this Fund. This was in accordance with Section No. 1 of Chapter No. 259 of the Acts of 1951.
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> "The Indiana State Teachers' Retirement Fund certified that Miss Taylor had on deposit contributions for one year of service amounting to $127.80. This item was handled as many others and a claim was filed with the Teachers' Retirement Fund for the above money. Due to the fact that considerable time elapsed before final settlement was made with the Teachers' Retire-