Mr. Jacob R. Roberts, Clerk,
State Election Board,
102 N. Senate Avenue,
Indianapolis, Indiana.

Dear Sir:

I have before me for consideration your letter of September 29, 1950, reading as follows:

"The State Election Board by action has requested that I ask for an official opinion upon the following:

"Define the powers of the State Election Board over the Clerks of the Circuit Courts of the State of Indiana, if any, acting as Registration Clerks, mandating them to appoint Deputy Registration Clerks.

"I would appreciate receiving this opinion at your earliest convenience."

The answer to your question requires the consideration of the election laws of Indiana, and of the purpose thereof.

In 1945 the legislature passed a new and comprehensive code to govern all elections in Indiana. Under this new code a hierarchy of boards and officials were erected to entirely regulate the preparation for and conduct of all future elections in the state of Indiana. At the top of this hierarchy, and functioning as a central supreme controlling body was created and placed the State Election Board. Acts 1945, Ch. 208, Sec. 8 (Burns R. S. 1949 Repl., Sec. 29-3001).

The powers and duties of the State Election Board are set out as follows:

"The board is hereby vested with the power and charged with the duty of supervising all elections and administering the election laws of the state in their statewide application and especially as they relate to federal and state elective officers.

"Said board, subject to the provisions of the laws of this state, shall have the power, and it shall be its duty,
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to formulate, adopt and promulgate rules and regulations governing the conduct of elections. Except when otherwise provided in this act, said board shall prepare a uniform set of election forms for use throughout the state. It shall advise, instruct, and exercise supervision over local elections and registration officials: Provided, however, That nothing in this section shall be deemed to divest the various county election boards of any of the powers and duties imposed upon them in article four (4) (§§ 29-3101—29-3109) of this act, except in case of deadlock in any board the question in issue shall be submitted to the state election board for final determination.

"It shall also be the duty of said board to prepare and distribute ballots and stamps for the election of all officers for whom all the electors of the state are entitled to vote in compliance with the provisions of this act.

"In the event this code omits any provisions for any act necessary in the opinion of the state election board for the fair, legal and orderly conduct of any election in the state of Indiana such board shall issue proper rulings to correct such omission not in conflict with any law or the provisions of this act." (Acts 1945, Ch. 208, Sec. 11 (Burns R. S. 1949 Repl., Sec. 29-3004)). (Our emphasis.)

It is to be noted that the power of the board extends over registration officials. Logically, registration is an integral and vital part of the conduct of any election. It is now unlawful for any person to vote at any general, primary or city person is, at the time of such election or primary, a registered voter as required by the act—(Acts 1945, Ch. 208, Sec. 45 (Burns R. S. Sec. 29-3401)). Without registration there can be no voters, and without voters there can be no election. See the definitions of "election" and "elector." Acts 1945, Ch. 208, Sec. 2 (Burns R. S. Sec. 29-2802).

The primary duty of registering voters devolves, in countries of a population of less than eighty thousand persons, on the county clerk; and in counties of eighty thousand or more persons, on a board of registration. With appropriate omis-
sions Acts 1945, Ch. 208, Sec. 50; 1947, Ch. 120, Sec. 3; 1949, Ch. 272, Sec. 1 (Burns R. S. 29-3406) is quoted from as follows:

"The clerk of the circuit court of each county, except in counties having a population of eighty thousand (80,000) or more as shown by the last preceding United States census, shall be ex officio the registration officer of such county and shall have full charge and control of the registration of voters within such county, and in counties having a population of eighty thousand (80,000) or more as shown by the last preceding United States census a board of registration as hereinafter provided in this act shall have full charge and control of the registration of voters of such county. The clerk of the circuit court, except in counties having a population of eighty thousand (80,000) or more as shown by the last preceding United States census, and the board of registration in counties having a population of eighty thousand (80,000) or more as shown by the last preceding United States census shall appoint as many deputy registration officers for the county as may be necessary, who, before entering upon the discharge of their duties, shall take an oath to be administered by the clerk of the circuit court or by a member of the registration board as the case may be that they will faithfully and honestly discharge the duties imposed upon them by law. The deputy registration officers so appointed shall be selected, as nearly as practicable in equal numbers, from the two (2) political parties which cast the highest and second highest vote for secretary of state in such county at the general election last preceding, and the person so appointed shall be appointed on recommendation in writing of the respective county chairmen of such political parties, filed in the office of the clerk of the circuit court, or board of registration as hereinafter provided not more than ten (10) days after requests have been made in writing by the clerk of the circuit court or the board of registration addressed to the respective county chairman for such recommendations. Such requests shall indicate the number of deputy registration officers to be recom-
mended by each of said county chairmen. If either of said county chairmen shall fail to make recommendation upon request of the clerk of the circuit court or board of registration, as the case may be, then said clerk of the circuit court or board of registration may appoint such deputy registration officers of the same political party affiliation as that of the chairman who failed or refused to make recommendation. * * *"

A careful examination of the above-quoted section reveals that a mandatory duty is imposed on the clerk, or the board of registration, as the case may be, to appoint as many deputy registration officers for the county as may be necessary. The clerk or board, when a determination of the necessity for deputy registration clerks has been made, then requests recommendations for such deputy registration clerks from the respective county chairmen of the two political parties casting the greatest vote for secretary of state at the last preceding general election, and the clerk further indicates the number of deputies to be recommended.

The provisions of this section indicate that, when there has been a determination that deputy registration officers are necessary, the clerk of the county has a mandatory duty to perform in requesting recommendations from the county chairmen for such deputies. The clerk performs only a ministerial function in making such request.

It is further to be noted that any public officer or any election officer who wilfully omits or neglects to perform any duty imposed by the act is guilty of a felony. Acts 1945, Ch. 208, Sec. 403 (Burns R. S. 29-5917); and that any deputy registration officer or any public official or any person upon whom duties relating to registration are imposed, who wilfully neglects to perform such duties is guilty of a misdemeanor. Acts 1945, Ch. 208, Sec. 404 (Burns R. S. 29-5918); and that severe penalties are imposed in such cases. Acts 1945, Ch. 208, Sections 450, 451 (Burns R. S. Sections 29-5964, 29-5965).

It is, therefore, my opinion from the facts and an interpretation of the relevant statutes, that the State Election Board possesses the power to advise, instruct and exercise supervision over registration officials. Further, that a county clerk acting ex officio as the registration officer or a board of regis-
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istration, as the case may be, is subject to such supervision and should obey the instructions and dictates of the State Election Board.

It is my further opinion that in a situation where a clerk of a circuit court, acting as the ex officio registration clerk, has failed to perform any duty imposed upon him by the election laws of the state of Indiana the State Election Board has the duty and statutory obligation to exercise its power of supervision in compelling such registration clerk to comply with the provisions of the election laws of the state of Indiana.

OFFICIAL OPINION NO. 63

October 5, 1950.

Bernard E. Doyle, Chairman,
Alcoholic Beverage Commission,
201 Illinois Building,
Indianapolis, Indiana.

Dear Sir:

This is in reply to your request for an interpretation of the Acts of 1939, Chapter 30, Section 8, page 79, as amended by the Acts of 1941, Chapter 237, Section 6, page 957, same being Section 12-530 Burns 1942 Replacement. Your specific question being whether or not one who has a permit to sell alcoholic spirituous beverages at wholesale may sell alcoholic vinous beverages on credit. The section of the statute insofar as pertains to the problems in question reads as follows:

"After July 1, 1939, it shall be unlawful for any permittee, his agent, servant or employee, to sell, or offer to sell, or purchase or receive, any alcoholic beverages except for cash.

"* * *"

"Provided, however, nothing in this section shall be deemed to apply to any manufacturer licensed to manufacture alcoholic spirituous beverages, nor to prohibit any licensee or permittee authorized to sell alcoholic spirituous beverages at wholesale from extending