be required to register with the Commission so long as they confine their activities to the sales enumerated in Section 25-833 subsection f.

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OFFICIAL OPINION NO. 3

January 7, 1948.

Hon. L. E. Burney, M. D.,
State Health Commissioner,
Indiana State Board of Health,
Indianapolis, Indiana.

Dear Sir:

I have your letter of January 6th asking for an interpretation of that part of Chapter 217, Acts of 1935, relating to the appointment of city boards of health and their authority over the selection of the secretary of said boards. Your questions involve the power of appointment to such boards and the right of removal of members of the board.

Section 2 of the Act in question (Burns’ 35-119, 1945 Supp.) applies to cities of the second class and is as follows:

"It shall be the duty of the mayor of each city of the second class to appoint a city board of health, consisting of four (4) members, not more than two (2) of whom shall be adherents of the same political party, and not less than three (3) of whom shall be regularly licensed physicians, well informed in hygiene and sanitary science. The members of the present city boards of health, unless sooner removed, shall serve until the first day of January, 1939, at which time, unless a city board of health be sooner appointed, as herein provided, four (4) members of the city board of health shall be chosen, one (1) for a term ending December 31, 1940; one (1) for a term ending December 31, 1941; one (1) for a term ending December 31, 1942; and one (1) for a term ending December 31, 1943. At the expiration of the respective terms, appointment shall be made to fill the vacancy for the following four (4) years. The salary of the members of the city board of health shall be determined and
Section 3 of said Chapter (Burns' 35-120, 1945 Supp.) applies to cities of the third, fourth and fifth class and is as follows:

"It shall be the duty of the mayor of each city of the third, fourth, and fifth classes to appoint a city board of health, consisting of three (3) members, not more than two (2) of whom shall be of the same political party, and not less than two (2) of whom shall be physicians well informed in hygiene and sanitary science. The members of the city boards of health in office at the time this act takes effect shall, unless sooner removed, serve until January 1, 1939, at which time, unless a board be sooner appointed, three (3) members shall be chosen, one (1) for a term ending December 31, 1941; one (1) for a term ending December 31, 1942; and one (1) for a term ending December 31, 1943. At the expiration of the respective terms of each member, an appointment to fill the vacancy for the following four (4) years shall be made. The salary of the members of the city board of health shall be determined and fixed by the common council." (Acts 1935, ch. 217, § 3, p. 1027.) (Our emphasis.)

Section 4 of said Act, as amended by Chapter 173 of the Acts of 1945 (Burns' 35-121, 1945 Supp.), is as follows:

"It shall be the duty of the city board of health of each city, except cities of the first class, with the approval of the state board of health, to appoint a regularly licensed physician who shall be known as the City Health Officer. Such city health officer shall be legally qualified to practice medicine, suitably trained in sanitary science, and his qualifications shall be satisfactory to the state board of health. The city health officers who are in the office on the date when this act becomes effective, shall, unless sooner removed, continue to serve until their respective terms expire, and until their successors have been appointed and have
qualified. Beginning on the first day of January, 1939, and on the first day of January of each fourth year thereafter, a city health officer shall be appointed, as aforesaid, to serve for a term of four (4) years, unless sooner removed by the appointing authority, or by the state board of health. Should the state board of health fail to approve the nomination of the person recommended for city health officer, or should the state board of health, or the appointing authority, remove any such officer, another nomination, other than the person removed or rejected, shall be made to the state board of health at once by the appointing authority. The city health officer shall receive an annual salary of four cents (4c) per capita, based on the population of the city, according to the last U. S. census, except that in no case shall he receive less than two hundred dollars ($200). The salary and actual necessary operating expenses of the city health officer shall be paid out of the treasury of the city. The city health officer may be a member of the city board of health, or may be in the employ of the city board of health, in which case he shall not be considered a member. He shall serve as the secretary of the board when the board is in session, and as the executive officer of the board when the board is not in session. The city board of health shall exercise all the powers provided by law and enforce all the rules and regulations of the state board of health. Any failure to comply with any of the provisions of this section shall constitute a misdemeanor, and upon conviction thereof, the offender shall be fined not more than one hundred dollars ($100).” (Acts 1935, ch. 217, Sec. 4, p. 1027; 1945, ch. 173, Sec. 2, p. 406.) (Our emphasis.)

Section 7 of said act as amended by Chapter 173 of the Acts of 1945 (Burns’ 35-124, 1945 Supp.) reads in part as follows:

“* * * All boards of health and health officers shall be subordinate to the authority of the state board of health, and subject to all orders of the state board
of health, which may if deemed expedient act through the county health officer or city board of health."

We also point out that Section 9 of the Acts of 1935 (Burns’ 35-126, 1945 Supp.) provides as follows:

"When, in the opinion of the state board of health, any local health authority shall fail or refuse to enforce the laws and regulations necessary to prevent and control the spread of communicable or infectious disease declared to be dangerous to the public health, or when, in the opinion of the state board of health, a public health emergency exists, the state board of health may enforce the rules and regulations of the state board of health within the territorial jurisdiction of such local health authorities, and for that purpose shall have and may exercise all the powers given by law to local health authorities. All expenses so incurred shall be a charge against the respective counties or cities. In such cases the failure or refusal of any local health officer or local health board to carry out and enforce the lawful orders and regulations of the state board of health shall be sufficient cause for the removal of such local health officer or the members of such local health board from office, and upon such removal the proper county or city authorities shall at once nominate a successor, other than the person or persons removed, as provided by law."

It is to be observed that the above quoted sections of said Act provide for and definitely fix the terms of the members of said board at four (4) years after the initial appointment. The Act was apparently carefully drawn to provide for staggered terms of the respective members of the board in order to prevent a complete change of personnel of the board at one time. The Act also expressly provides for the members being selected from adherents of different political parties and that a majority be licensed physicians. We also point out that the 1935 Act, in Section 9, contains a provision for the removal of members of said board for failure or refusal to carry out and enforce the lawful orders and regulations of the State Board of Health.
Section 2 of Article 15 of the Indiana Constitution is as follows:

“When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the general assembly shall not create any office, the tenure of which shall be longer than four (4) years, nor shall the term of office or salary of any officer fixed by this constitution or by law be increased during the term for which such officer was elected or appointed.”

Under the above section of the Constitution, it is only where the duration of the term of office is not provided for by the Constitution or declared by law that the office is held during the pleasure of the authority making the appointment. In the case of State, *ex rel.* Manlove v. Curtis (1913), 180 Ind. 191, the court said:

“The general rule is conceded to be that ‘where the term of office is not fixed by law, the officer or officers, by whom a person was appointed to a particular office, may remove him at pleasure, and without notice, charges, or reasons assigned.’ Throop, Public Officers § 354. See, also, Mechem, Public Officers, §§ 445, 454. Furthermore, it is stated in article 15, § 2, of our State Constitution that ‘When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.’”

In the case of Weir v. The State, *ex rel.* Axtell (1884), 96 Ind. 311, at page 312, the court said:

“* * * County commissioners, having once exercised the power of selecting an officer, can not annul the election by electing another person. If it were otherwise, then the board might elect every month, week or even every secular day of the year, and the statute never contemplated any such a thing as that.
Where an inferior court is entrusted with the power of appointing an officer for a term definitely fixed by statute, the officer will hold for the term so fixed. An officer whose term is designated by statute takes the office for that term, and does not hold it at the pleasure of the appointing power. * * *

In the case of Roth v. The State (1901), 158 Ind. 242, the court referred to a California case, pointing out that the California Constitution was similar to ours and said at page 266:

"* * * The court held that the word 'duration,' as employed in the constitution, 'signified extent, limit, or time,' and that, when the tenure of an office was not fixed by law, it could be held only during the pleasure of the appointing power. We have fully recognized this rule in the case at bar, but hold that under the provisions of the charter the duration of relators' terms were fixed or declared by law, and hence the board was deprived of the right to dismiss them at its mere will or pleasure. * * *"

In the case of Shira, et al. v. State, ex rel. (1918), 187 Ind. 441, the court points out at page 444 that where a term of office is a fixed tenure, within the meaning of the law, the officer is not subject to being dismissed from service except for cause and then only after a hearing on proper notice. At common law, a municipality had the power to remove officers for reasonable and just cause in the absence of any express or implied restrictions in the statute. Muhler et al. v. Redekin et al. (1889), 119 Ind. 481, 483. This power of removal was regarded as an incident of the appointing power. However, under our Constitution the power to remove at pleasure applies only where the term is not fixed, either by the Constitution or by law. The power to remove as an incident of the power of appointment does not apply where a term is fixed. In addition to authorities already cited, see: 43 Am. Jur., p. 31; Bruce v. Matlock (1908), 86 Ark. 555, 560; Holder v. Anderson (1925), 160 Georgia 433; State, ex rel. Nagle v. Sullivan (1934), 98 Mont. 425; Town of Davis v. Filler (1900), 47 W. Va. 413, 416.
The question was before the then Attorney General concerning the right to remove a member of the State Board of Health in 1925 and the Attorney General said, upon this question, at page 33 of the Opinions for that year:

"But where the tenure of the appointee is for a fixed term, it cannot reasonably be said that the power to remove is necessary to the exercise of the power to appoint, and therefore implied. Not only does the statute fix the terms of the members of the state board of health, but it also determines the periods during which such terms run. The appointive board is given express power only to make the appointments at the times and for the terms provided by the legislature. The times for such appointments arrive without action by the appointive board and said board is powerless either to delay or to augment these times. When the times for appointment arrive, appointments must be made for the four-year terms or not at all. The board is powerless either to appoint for a shorter or a longer term than is fixed by statute. It is plain that in no instance could the proper exercise of the express power to make said appointments be dependent on the exercise of an implied power to remove such members who had been appointed. Plainly there is no necessity for finding an implied power to remove an order that there might be a proper exercise of the express power to appoint. It is plain that the appointive board has no power, either express or implied, to remove members of the state board of health for cause or without cause."

See also Official Opinion No. 26, page 120 of the Opinions of the Attorney General for 1945 at page 126 et seq.

In the case of Roth v. The State, supra, the court said, concerning the provisions of the law, relating to the appointment of policemen at page 250:

"These provisions, and others of the law, fully demonstrate that the legislature intended thereby to prevent the police and fire forces of a large city, like Indianapolis, from being used as a 'political machine' by
a party in power to further its interest in carrying elections, and that the evil or mischief which may be said to have formerly existed, of allowing a general dismissal of efficient policemen and firemen at each and every change in the administration of the affairs of the city, without regard to the merits or demerits of the persons so removed, should no longer be permitted. * * *"
Section 8 of this act as amended in 1909 by Chapter 144, Section 4 (Burns' 35-108) provides in part as follows:

"* * * In every incorporated city, there shall be a department of health composed of a board of three (3) commissioners not more than two (2) of whom shall be of the same political party and at least two (2) of whom shall be physicians, well informed in hygiene and sanitary science, and who shall be appointed by the mayor of such incorporated city for the term of four (4) years, and who shall be known as the city board of health. * * *"

Section 3 of this act provided for the powers of the State Board of Health and provides for the removal of local health authorities by the State Board of Health stating the various reasons for dismissal and sets up the method of removal, and provides for appeals to the courts on such removal. This section was amended in 1945 by Section 5, of Chapter 352 (Burns' 35-106 Pocket Supp.) at which time members of the city board of health were specifically included in the removal powers set forth in this section. This section was last amended by Section 1 of Chapter 139 of the Acts of 1947 and the portion of this section relating to the powers of removal reads as follows:

"* * * The state board shall also have power to discharge any county or city health commissioner or health officer in the state either for intemperance, failure to collect vital statistics, obey rules, keep records, make reports, answer letters of inquiry of said board concerning the health of the people or neglect of official duty.

"Such removal, however, shall not be made until five days' notice of the charge or charges shall have been mailed to him by said board, naming a time and place for hearing by the state board of health, not less than two weeks later than time of mailing such notice to said health officer: Provided, however, That any health officer so removed by the state board of health shall have the right to appeal from the action of said board to the circuit or superior court of the county in
which such health officer resides, and during the pend-ency of such appeal, such health officer may serve in his official capacity. Any health officer discharged as herein provided shall be ineligible to hold the position of health officer for four years and the vacancy shall be filled by the proper authority as provided in this act. * * *"

Section 10 of this act as amended in 1909 set up qualifications for health officers which included the passing of an examination given by the State Board of Health.

The Act of 1891 has never been totally repealed but has been amended and superseded as to particular sections, however, this act as amended and the Act of 1935 together purport to cover the entire field of health authorities and prescribe the method of carrying out a state wide health program. It is a familiar rule of statutory construction that all of the statutes relating to the same subject matter are in pari materia and are to be construed together as one act. Wayne Twp. v. Brown (1933), 205 Ind. 437; Starr v. Gary (1934), 206 Ind. 196; Brownsburg v. Trucksess (1934), 98 Ind. App., 322.

In applying this rule to these health statutes it would seem quite apparent that Sections 7 and 9 of the 1935 Act and Section 3 of the 1891 Act (as amended) would be construed together in order to arrive at the intent of the legislature insofar as the exercising of control over local health authorities by the State Board and the cause and method of removal of the health authorities.

Historically, there has always been in the health statute express provision for the removal of local health authorities, for cause, by the State Board of Health and these statutes are entirely silent on any such power being exercised by the mayor. This is strongly indicative of the legislative intent to place this power exclusively in the State Board of Health. These statutes show an established state policy which has been followed since the inception of a state wide health program. Any departure from any such well established policy must be expressed in clear and unmistakable terms. 50 Am. Jur. (Statutes) Sec. 299, p. 280.

Under the above authorities and for the foregoing reasons, it is my opinion that members of city boards of health cannot
be removed or their term of office terminated at the pleasure of the mayor and that the mayor's power of appointment can only be used where there is a vacancy in the board caused by termination of the term by a member's death, resignation or other legal cause producing such vacancy.

I do not believe that Clause 7 of Section 80 of Chapter 129 of the Acts of 1905 (Burns' 48-1502) or Sections 5 and 10 of Chapter 233 of the Acts of 1933, as amended (Burns' 48-1215 and 48-1222) leads to any different conclusion. Clause 7 of the 1905 Act reads as follows:

"Seventh. To appoint the heads of departments, as hereinafter created, in cities of the first, second, third and fourth classes, and to appoint, in cities of the fifth class, a city marshal, chief of the fire force and street commissioner, all of which appointees shall hold office until their successors are appointed and qualified; and he shall make such other appointments as may be provided by law or by the ordinances of any city: Provided, That the mayor may, at any time, suspend or remove from office any or all of such heads of departments or other persons, whether appointed by him or by any of his predecessors, by notifying them to that effect and sending a message to the council stating in writing his reasons for such removal."

There have been a number of decisions under this Section of the statute, some of which have already been cited. See also: Klink v. State, ex rel. Budd (1935), 207 Ind. 628.

However, it is pointed out in said decisions that the term of the office in question was not fixed by law in those cases where removal under this Act was permitted. We have found no case in this State where removal is held to be authorized under this statute at the pleasure of the mayor where the term of such officer was fixed by law. The 1905 Act, above quoted, does not contemplate a removal for cause on hearing. While it does require that the mayor send a message to the council as to his reasons for removal, there is no requirement in said statute as to what these reasons be or whether they be for a good and just cause. It is well established that where an officer is removed for cause, he is
entitled to notice and hearing. See authorities in Official Opinion No. 26, O. A. G. 1945 above referred to. Removal for cause is also rather fully discussed in Roth v. State (1901), 158 Ind. 242, above cited. I do not understand that your question involves a situation where any member of the board was removed for cause, after notice and hearing. It is my opinion that the above provisions of the 1905 Act apply only to the removal of municipal officers who can be removed at pleasure only without just cause. That it does not apply to the removal of municipal officers who can only be removed for cause upon notice and hearing. I do not believe it applies to the removal of a member of a city health board, appointed under the Acts of 1935. If it should be construed to authorize the removal of a member of said board by the mayor at pleasure, then it would be superseded by the provisions of the 1935 Act, expressly providing that the members so appointed should serve for a term of four years.

Chapter 233 of the Acts of 1933 (Burns' 48-1201, et seq.) apparently repealed Clause 7, Section 80 of Chapter 129, Acts 1905 (set out above) and is entitled as follows:

"An Act concerning the classification and government of civil cities, reducing certain civil cities to civil towns and providing for the government of such towns, fixing and providing for the salaries of officers and employees, repealing all laws and parts of laws in conflict herewith, providing for the date of taking effect of certain provisions and declaring an emergency."

This 1933 Act provides for the appointment of various officers in each class of cities. Section 5 pertains to cities of the second class and this section was amended in 1943. (Ch. 99, 1943 Burns' 48-1215 Supp.) This section, as amended, divides second class cities into two classes:

1. Cities of the second class having a population of more than 85,000 and less than 100,000 and,
2. Cities of the second class other than cities of more than 85,000 and less than 100,000.

In the latter classification the mayor is given the general power of appointment. This part of the section provides as follows:
"* * * In such cities of second class the mayor shall appoint a city controller, a city civil engineer, a city attorney, a chief of fire department, a chief of police, and other officers, employees, boards and commissions, in accordance with the provisions of laws now in effect and as hereinafter provided. * * *"

Section 10 of Chapter 233 as last amended by Chapter 32, Section 1 of the Acts of 1945 (Burns' 48-1222 Supp.) reads as follows:

"The provisions of any law now in effect in so far only as said provisions fix or purport to fix the salaries of any elective or appointive officer and/or employees of any civil city of this state and the provisions of any laws now in effect in so far only as they fix or purport to fix the salary of any member of any board, commission, department or institution maintained or operated by any civil city, are hereby repealed upon the taking effect of this act, except all laws affecting cities of the second class owning and operating two (2) municipal utilities, which shall remain in full force and effect. All appointive officers, deputies, employees, assistants and departmental and institutional heads not provided for under the provisions of this act, but which are provided for by laws or authority of law now in effect, shall not be considered as abolished by this act but such appointments shall be made by the mayor within his discretion as to number and positions named under laws or authority of law now in effect and such officers, deputies, employees, assistants and departmental and institutional heads shall serve at the pleasure of the mayor, who may terminate their office or employment at any time; Provided, That nothing contained in this act shall be construed to repeal, alter or amend any law now in force or enacted by the seventy-eighth general assembly concerning the employment, suspension and/or dismissal of the members of the fire and police departments of the several cities of this state; Provided, That where an emergency exists for employment of assistants in any office, board, commission, department, institution and/or utility maintained
or operated by any civil city and specific provision for such employment is not made by law or authority of law, the mayor is hereby given power and authority to provide for and appoint such assistants. The salaries of each and all of such appointive officers, employees, deputies, assistants and departmental and institutional heads, other than those fixed by the common council under the provisions of this act, shall be fixed by the mayor subject to the approval of the common council, which may reduce but in no event shall raise the salary so fixed. When the salary of such officers or employees shall have been so fixed as herein provided, it shall be the duty of the common council to appropriate moneys to pay the same. Provided, however, That in cities of the first class the employees of the board of sanitary commissioners shall be appointed as now provided by law and that the number and salaries of such employees shall be fixed by the mayor with the approval of the common council, which may reduce but in no event shall raise the salary so fixed by the mayor and when so fixed it shall be the duty of the common council to appropriate the money necessary to pay said salaries. All salaries fixed by the mayor with the approval of the common council in accordance with the provisions of this act, shall be fixed on or before the first Monday in September of each year for the next calendar year immediately ensuing and when so fixed shall not be increased during such ensuing calendar year except as provided in this act."

I do not believe that Sections 5 and 10, pertaining to the appointments of city officials and employees by the mayor, repealed by implication the provisions of the 1891 Health Act, as amended, as far as the term, salary, or removal of members of the city boards of health or health officers are concerned or would be controlling over the 1935 Act, although it has been held that the purpose of these provisions in this act was to vest in the mayor full power to hire, discharge and fix the salaries of all employees of administrative and executive branches of the civil city, with certain noted excep-

It is to be noted that the 1935 Act as well as the 1891 Act (as amended) contains express provision for the removal of the members of a city board of health for cause by the State Board of Health and also a specifically prescribed method for so doing. Also, there is express provision for the city health officer being removed by the city board of health or the State Board of Health, but no provision in either instance is included giving the mayor any power of removal. The 1935 Act in conjunction with the 1891 Act (as amended) purport to cover the entire field of city boards of health, their appointments, removal and duties. This excludes any method of removal other than as provided in said Act of 1935 (in conjunction with the provisions in the 1891 Act) and if there be any contrary construction placed on the quoted provisions of the 1933 Act or the 1905 Act, it is superseded and repealed by implication by the Act of 1935, which applies specifically to city boards of health and city health officers.

In Kingan & Co. v. Ossam (1920), 190 Ind. 554 at 557, it is said:

"Concerning the construction of statutes, the rule of law obtains in this state that general statutes give way to special statutes upon the same subject-matter. Daniels v. State (1898), 150 Ind. 348, 50 N. E. 74; Stockton v. Yeoman (1912), 179 Ind. 61, 100 N. E. 2."

In Longlois v. Longlois, et al. (1874), 48 Ind. 60, it is said:

"* * * Where an amendment is made that changes the old law in its substantial provisions, it must, by necessary implication, repeal the old law so far as they are in conflict. * * *"

A situation very similar to this problem arose in Freyermuth v. State, ex rel. Burns' (1936), 210 Ind. 235, as in that case the authority of a mayor to declare the office of the city inspector of Weights and Measures vacant was considered. At that time the method of appointment was originally prescribed in a 1925 Act and in deciding the case at bar the court held that Chapter 233 of the Acts of 1933 did not repeal by implication the 1925 Act specifically relating to weights
and measures. In reaching their decision the court pointed out the two acts were not in conflict due to the fact that the 1925 Act was a special act on a particular subject, that the city inspectors were under the direction of the State Commissioner of Weights and Measures, that they could be discharged by the Commission when not faithfully performing their duties and that their principal duties were in the enforcing and carrying out of the rules and regulations of the State Commissioner. In connection with this particular case it is interesting to note that the legislature in Chapter 37 of the Acts of 1947 abolished the office of State Commissioner of Weights and Measures and gave all of its former rights, powers and duties to a division of the State Board of Health. As already expressed above in Kingan and Co. v. Ossam, supra, general statutes must give way to special statutes on the same subject-matter. Much of what has been said above pertaining to the 1905 Act would also apply to the 1933 Act and if there be any contrary construction placed on the provisions of the 1933 Act, it is superseded and repealed by implication by the Acts of 1935.

Although, Section 5 of the 1933 Act was amended in 1943 and Section 10 of the same Act was amended in 1945, the intervening Act of 1935 specifically pertaining to city boards of health would control. It is to be noted that the 1945 amendment of Sec. 10 of the 1933 Act was only a reenactment of the provisions as to the powers of a mayor as to appointment and removal of employees and that the specific language, in this respect was not changed. The above principle of construction has been recognized in the following cases: Public Service Commission et al. v. City of Indianapolis et al (1922), 193 Ind. 37; City of New Albany v. Lemon et al. (1936), 198 Ind. 127.

In the Public Service Commission case the following rule was declared and followed, "Two statutes enacted at the same session of the legislature are to be construed together as parts of the same law, so as to give effect to each, if that is possible." (Citing cases.) "And where a later statute merely reenacts the provisions of an earlier one it does not repeal an intermediate act which has qualified or limited the earlier one, but such intermediate act will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first." It is to be noted that the
1935 Act makes specific provision as to a definite term, manner of fixing salary, and of removal for cause, all of which are contrary to the provisions of the 1933 Act.

Thus, it seems quite evident that the legislature by either the Act of 1905 or 1933, giving in general terms the mayor of cities the power of appointment and removal of their administrative officers and employees, had no intention of changing or modifying the well established state policy and system relating to health authorities, and any intention of abandonment of the policy of exclusive control, as to removal of local health authorities, by the State Board of Health should be and, I think, would have to be manifest in express and unambiguous terms. 50 Am. Jur. (Statutes), Sec. 299, p. 280.

Such expression is not found in either of these two acts.

In answer to your question relative to the secretary of such boards, Section 4 of said Act, as above quoted, provides that the city health officer shall be appointed by the city board of health to serve for a term of four years. He is not appointed by the mayor. This section provides that he may be removed by the appointing authority, which is the city board of health, or by the State Board of Health for specified cause. As pointed out previously in this opinion, the qualifications of said city health officer must be satisfactory to the State Board of Health. The appointment is accomplished by the selection or nomination of such officer by the city board which nomination must be approved by the State Board of Health. The city health officer appointed with the approval of the State Board of Health then serves as secretary of the board when it is in session and is the executive officer when the board is not in session.

In summary: It is my opinion that said Chapter 217 of the Acts of 1935, as amended, provides for staggered terms for members of city health boards. That when regularly appointed, the appointment is for a term of four years. That a member of such board cannot be removed by the mayor at pleasure. That a member of the board can only be removed for cause by the State Board of Health on notice and hearing. I am further of the opinion that the city board of health selects or nominates the city health officer with the approval of the State Board of Health and that such approval is a required condition to complete such appointment. That the
city health officer can be removed by the city board of health or may be removed by the State Board of Health for specified cause. That the mayor does not appoint and cannot remove the city health officer.

This opinion does not apply to cities of the first class nor does it apply to the period to be served by appointees who are appointed to fill a vacancy caused by death or resignation of a member or health officer before serving his term, nor does this opinion consider the question of impeachment under Section 49-821, Burns' 1933.

Neither does this opinion give consideration to Section 5 of said Act, as amended by Chapter 282 of the Acts of 1947, which applies only to a full time city health department in second class cities in Lake County or to Section 5 (a), which was added by Chapter 202 of the Acts of 1947 and applies to joint city-county full time health departments as I do not understand that your questions involve any situation arising under said sections.

OFFICIAL OPINION NO. 4
January 19, 1948.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of recent date in which you quote Section 1, Chapter 272, Acts 1947, which reads as follows:

"The auditor, assessor, clerk of the circuit court, sheriff, recorder, surveyor, judges of the circuit and superior courts, except such judges whose salaries were increased under the provisions of Chapter 242 of the Acts of the General Assembly of 1945, and who are at the effective date of this act receiving said increase, and the treasurer of each county in this state having a population of not more than seventy-five thousand, according to the last preceding United