OFFICIAL OPINION NO. 18

April 30, 1947.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis, Indiana.

My dear Governor:

I have your letter of April 18th in which you refer to the passage of Chapter 37 of the Acts of the General Assembly of 1947 (Senate Enrolled Act No. 2) which abolished the office of State Commissioner of Weights and Measures and transferred all rights, powers and duties of this officer to a division of weights and measures created in the State Board of Health.

You also call my attention to certain provisions of Chapter 86 of the Acts of 1925 which relate to the matter of the appointment of county inspectors of weights and measures by county commissioners and to the appointment of city inspectors of weights and measures by common councils and boards of public safety, such appointments to be made with the approval of the state commissioner of weights and measures.

You lastly point out that employees of the State Board of Health come under the provisions of the State Personnel Act (Chapter 139, Acts of 1941) and request an opinion as to whether county and city inspectors of weights and measures now come under this later act or whether the provisions of Sections 4 and 5 of Chapter 86, *supra,* still apply to the appointment of such inspectors.

It may be well to recall the circumstances which made it advisable to recommend passage of Chapter 37, *supra.* A letter from you to the Attorney General under date of November 20, 1945, stated that a question had arisen as to the existence of the office of State Commissioner of Weights and Measures and contained a request for an official opinion as to whether the office of State Commissioner of Weights and Measures existed, and, if so, by whom the appointment of such officer was to be made.

Your above letter was answered by Official Opinion No. 131, dated December 14, 1945, which held that the office of State Commissioner of Weights and Measures did exist,

having been created by Chapter 86, Acts of 1925, and that such officer, having been authorized to adopt rules, specifications, etc., (Sec. 2 of the above Act), was a public officer of the State, and that therefore under the decision in the case of Tucker *et al.* v. State, 218 Ind. 614, such officer was required to be appointed by the Governor. In this opinion the various somewhat conflicting statutes relating to the origin of this office and its relation to the State Board of Health were reviewed, and the conclusion was reached that this officer was not an officer or agent of the State Board of Health, but was an independent public officer of the State, although for many years the impression had existed that he was an agent or officer of this board and his duties had been carried on as a subordinate of the board.

In view of the foregoing and of the further fact that the duties of this officer are intimately and almost exclusively related to, and connected with, the health laws of the state as administered by the above board, it was decided to recommend passage of Chapter 37, *supra*. It is to be noted that this act does not repeal Chapter 86, Acts of 1925 (the Weights and Measures Law of Indiana), but merely changes the agency which is to administer it, by abolishing the office of Commissioner of Weights and Measures and by transferring all his rights, power, duties, etc., to a newly created division of the State Board of Health.

It now remains to consider the question of whether county and city inspectors of weights and measures are governed by the provisions of Chapter 86, *supra*, or by those of the State Personnel Act (Chapter 139, Acts of 1939).

Turning first to the earlier act, Section 3 thereof in part reads as follows:

> "The board of commissioners of every county . . . shall . . . *appoint* a county inspector of weights and measures. No person shall be appointed as a county inspector . . . unless such person shall have been approved by the State Commissioner of Weights and Measures. . . ." (Emphasis supplied).

A provision of this same section also authorizes payment of the inspector from county funds.

Section 4 of Chapter 86, *supra,* reads in part as follows:

> "The common council of every city of the first, second and third class shall provide for the *appointment* by . . . the Board of Public Safety, of an inspector of weights and measures and provide for his *compensation.* . . . No person shall be appointed as a city inspector of weights and measures in any city unless such person shall have been approved by the state commissioner of weights and measures and no such city inspector of weights and measures shall be removed without the approval and consent of the state commissioner of weights and measures. . . .". (Emphasis supplied).

From the foregoing it is apparent that county and city inspectors are *appointed* by local units of government and are *paid* by these units, the division of weights and measures of the State Board of Health (as successor to the State Commissioner of Weights and Measures) only having authority to approve the appointments. From an examination of these sections it is equally apparent that the legislature intended the appointment of the county and city inspectors to be made respectively by the boards of county commissioners and city councils, subject to the approval of the State Board of Health, and not a mere nomination to that board with the power of appointment in the board. The inspector is a county or city officer, as the case may be, even though it is his duty to enforce certain laws of the state and rules and regulations promulgated by the State Board of Health.

Turning now to Section 2 (a), of the State Personnel Act (Chapter 139, *supra)* the State Board of Health is included in the definition of "state service", but the only county departments within the definition are the County Departments of Public Welfare. Sub-division (d) of the same section limits an "appointing authority" to an authority authorized to appoint or employ in the "state service". There is no provision of the act which places a county or city inspector of weights and measures, employed by a board of county commissioners or city council, within the definition of "state service".

The authorities granted by the State Personnel Act are limited by the provisions of that Act. A statutory officer is not permitted to enlarge his powers and authorities merely because the exercise of such are not forbidden by the statutes. In order to exercise a power or authority it must be granted by the statute, and if the statute is silent on the subject, the courts will conclude no such authority or power has been granted.

Chicago & E. I. R. Co. v. Public Service Commission (1943), 221 Ind. 592, 49 N. E. (2d) 341;
Doyle v. Lafayette Savings Bank (1923), 81 Ind. App. 177, 179;
Bell v. Meeker (1906), 39 Ind. App. 224, 233, 234;
State *ex rel.* v. Sloan (1925), 197 Ind. 556, 560.

The Attorney General's Official Opinion No. 37, May 4, 1945, dealt with a state of facts very similar to those presented in your above letter. In the earlier opinion the Attorney General held that a local public health nurse was not within the provisions of the State Personnel Act but was governed by the laws applying to local public health nurses and other local health personnel.

Accordingly it is my opinion that county and city inspectors of weights and measures do not come under the provisions of the State Personnel Act and that their appointment is governed by the provisions of the Weights and Measures Law.

OFFICIAL OPINION NO. 19

May 7, 1947.

Hon. Benjamin H. Watt,
State Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

A letter from your department has been received requesting an official opinion on the following question: