OFFICIAL OPINION NO. 86

September 20, 1946.

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

Dear Dr. Burney:

I have your letter of September 5, 1946 which reads as follows:

"Governor Gates has received a letter from the Surgeon General of the U. S. Public Health Service outlining the provisions of Public Health Law 725, Hospital Survey and Construction Act, and stating that $82,233.90 are available to the State of Indiana for assisting in survey and planning. There was also transmitted to the Governor a copy of Form HS&P-1, 'State Application for Federal Funds for Survey and Planning, Pursuant to the Hospital Survey and Construction Act.'"

"The Governor desires an opinion from the Attorney General's office as to whether Chapter 101, Acts 1945, qualifies the State Board of Health as the proper agency for carrying out the purposes of Section 601 of the Hospital Survey and Construction Act and the agency which can receive the $82,233.90."

Public Law 725 as evidenced by the law itself, the letter of the Surgeon General and fact sheets submitted by the United States Public Health Service has two phases. The first is survey and planning and the second is construction. As pointed out by the Surgeon General and also in the fact sheet, the first phase can be entered into only by states having the legal authority. The second phase cannot be entered into for a number of months until the proper appropriations have been made by Congress. Section 601 of the law reads as follows:

"Sec. 601. The purpose of this title is to assist the several States—"
“(a) to inventory their existing hospital (as defined in section 631 (e)), to survey the need for construction of hospitals, and to develop programs for construction of such public and other nonprofit hospitals as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic, and similar services to all their people; and

“(b) to construct public and other nonprofit hospitals in accordance with such programs.”

The survey and planning sections of the law are found in Part (b) of Public Law 725. Section 612 with regard to “state applications” reads in part as follows:

“Sec. 612. (a) to be approved, a State application for funds for carrying out the purposes of Section 601 (a) must—

“(1) designate a single State agency as the sole agency for carrying out such purposes: Provided, That after a State plan has been approved under section 623, any further survey or programing functions shall be carried out, pursuant to section 623 (a) (10), by the agency designated in accordance with section 623 (a) (1);

“(2) provide for the designation of a State advisory council, which shall include representatives of non-government organizations or groups, and the State agencies, concerned with the operation, construction, or utilization of hospitals, including representatives of the consumers of hospital services selected from among persons familiar with the need for such services in urban or rural areas, to consult with the State agency in carrying out such purposes; * * *”

So far as surveys and planning are concerned, the question remains whether there is an agency in Indiana with proper statutory authority to qualify under Sections 601 (a) and 612 of the Federal Laws.

Chapter 101, Acts 1945, page 221, is entitled "An Act to provide for the making of a survey of all hospital and health
center facilities in the State and for the acceptance of Federal grants in connection therewith." Sections 1 and 2 of this act read as follows:

"Section 1. The state board of health shall: (a) make a survey of the location, size, and character of all existing public and private (proprietary as well as non-profit) hospitals and health centers in the state; (b) evaluate the sufficiency of such hospitals and health centers to supply the necessary physical facilities for furnishing adequate hospital, clinic and similar services to all the people of the state; and (c) compile such data and conclusions, together with a statement of the additional facilities necessary, in conjunction with existing structures, to supply such services. The state board of health shall utilize, so far as practicable any appropriate reports, surveys, and plans prepared by other state agencies.

"Section 2. The state board of health is authorized to apply for and to accept on behalf of the state, to deposit with the state treasurer, and to expend for the purposes for which granted or advanced, any grant or advance made by the United States or by any agency or officer thereof to assist in meeting the cost of carrying out the purposes of section 1."

Under Chapter 89, page 194 of the Acts of 1945 there was created the Indiana Advisory Health Council. Said council is composed of membership drawn from state-wide organizations whose activities are related to or allied with the major activities of the State Board of Health and state officers or agencies whose functions are related to or allied with the major activities of the State Board of Health. Section 3 of that Act provides:

"Sec. 3. The council shall not have the power or duties to make, establish or promulgate any standards, rules, regulations or classifications pertaining to the administration of public health, but may assist and advise the state board of health in such undertakings. The council may furnish such technical and scientific data as are required, attend public hearings in the
interest of public health, act in a liaison capacity with the state and local health units and perform any duties assigned to it by said board not inconsistent with the provisions of this Act."

In view of the foregoing provisions of Indiana law it is my opinion that the necessary legislation now exists designating the State Board of Health as the sole agency for carrying out the purposes of Section 601 (a), supra, that the board has full authority to comply with the provisions of this act, and that the creation of the Indiana Advisory Council is a full compliance with the requirement of Section 612 (a) (2).

It is further my opinion that Chapter 101, Acts of 1945, and Chapter 89, Acts of 1945, supra, constitute the sole statutory authority for the making of a hospital inventory and survey and the development of a hospital program in the State of Indiana.

It is my recommendation, however, that Chapter 101 be appropriately broadened in scope by legislative action in order that there be no question concerning the authority of the State Board of Health to participate in the construction phases of Public Law No. 725.

OFFICIAL OPINION NO. 87
September 23, 1946.

Hon. Griffith Morris,
Bureau of Mines and Mining,
Division of Labor,
State House Annex, Room 9,
102 North Senate Avenue,
Indianapolis 4, Indiana.

Dear Sir:

Your letter concerning mine maps requests an official opinion on the following question:

"A certain land owner in Pike County, Indiana, has demanded that I make or cause to be made, Maps of Mines adjoining his property. I refused to comply with his wishes on the grounds that I had no jurisdiction