same is granted or refused. * * *” (Our emphasis).

Section 52-186 Burns’ 1933 (Pocket Supp.), Section 3, Chapter 260, Acts 1945.

When both of the above sections are construed together, it is evident that the statute authorizes the employment of one investigator where the number of families receiving assistance or making application for assistance is less than sixty-one (61) in any one month, and that the employment of two investigators where the number of families is less than sixty-one (61) would be unauthorized.

OFFICIAL OPINION NO. 100
December 19, 1946.

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

Dear Mr. Ruston:

I have your letter of recent date in which you request my official opinion upon the following statement of facts and questions:

“Some time ago a number of suits were filed in the Superior Court at Michigan City, Indiana, against the city of Michigan City, by Barrett Law bondholders to collect the amount of the city’s liability on such bonds caused by a diversion of Barrett Law funds. The court rendered judgment and ordered the city treasurer to pay the amount of the city’s liability with interest on delinquency to date of payment of the judgment. The money which was used to pay these deficiencies was raised by a general obligation bond issue. Such money was disbursed in accordance with the order of the court.

“The city of Michigan City is the owner of improvement bonds issued by the town of East Gary. The town of East Gary is now willing to pay the town’s liability,
created through a diversion of Barrett Law funds, but will not pay interest on delinquency. The treasurer of Michigan City feels that having paid interest on delinquency on the obligation of the city of Michigan City that he might be putting himself in an untenable position if he accepted a payment due the city of Michigan City without collecting the interest on delinquency.

"* * *

"Several questions have been presented to me by the Treasurer of Michigan City in regard to the above situation and the application of Chapter 89 thereto. I respectfully request that you answer the following questions by letter.

"1. Under Chapter 89, Acts of 1939, can interest on delinquency or interest after maturity be paid on improvement bonds and/or coupons because of the liability incurred through diversion or misapplication of improvement funds?

"2. What could the treasurer of Michigan City do but to pay interest after maturity under a court order even though the statute does not contemplate such a payment.

"3. Is it optional whether a Barrett Law bondholder accepts certificates of indebtedness or can he demand a cash payment?

"4. If general obligation bonds of the city are issued and offered at public sale, the proceeds therefrom being used to retire the city's liability because of diversion or misapplication of Barrett Law funds, does the transaction then come under Chapter 89, Acts of 1939 so that there would be no interest due on bonds and/or coupons after maturity."

Since all of your questions are closely related, reference should first be made to the statutes and authorities bearing generally upon all of such questions. In the recent case of Read v. Beczkiewicz, Treasurer (1938), 215 Ind. 365, the Indiana Supreme Court held that a municipality was liable for diversions of Barrett Law funds by its officers and em-
ployees. The court in a lengthy opinion reviewed many of the statutes and principles applicable to the administration of Barrett Law funds by municipalities. The court also specifically held that a bondholder was not only entitled to recover from the city principal and interest on bonds which it had collected and diverted, but that the bondholder was also entitled to recover from the municipality interest from the date he presented his bonds and coupons for payment until payment was actually made by the municipality. The court said at pages 380 to 381 as follows:

"The court seems to have concluded that bonds issued prior to the effective date of the act of 1929, supra, were not entitled to interest after maturity unless presented for payment and stamped 'not paid for want of funds,' as provided by the Acts of 1929 and 1931. The holders of this class of bonds are entitled to be dealt with according to the terms of the bonds and the statute in force at the time of the resolution under which they were issued. If delinquency interest was paid by the property owners, it must be paid to the bondholders whenever their bonds are presented. If the property owners paid only the principal and interest to the date of payment, whether payment was made before maturity or thereafter, and the amount of the principal and interest received is paid to the bondholder upon the first presentation of the bond, he can claim no more. But if principal and interest have been paid to the city, and the bond is presented for payment and not paid, the city is liable not only for the interest received, but also for interest from the date of the presentment of the bond for payment until paid." (Our emphasis).

Section 1, Chapter 89, page 490 of the Acts of 1939 (Burns' 1933, Section 48-4425—1945 Pocket Supp.) provides in part as follows:

"That whenever any improvement bonds or interest coupons have been issued by any city or town at any time pursuant to the several acts concerning public improvements by special assessments against adjoin-
ing and adjacent properties, commonly called 'the Barrett Law,' whether applicable to cities of the first class or to cities of all other classes and to towns, in anticipation of the payment of assessments in annual installments, and where any portion of such bonds or coupons have not been paid or can not be paid on account of any deficiency in the improvement funds arising * * * because of the diversion of any funds paid on one improvement roll and account to the payment of bonds or coupons chargeable to another roll and account; * * * or because of any other diversion or misapplication of any such funds so collected and consequent nonpayment of the bonds or coupons to which such collected funds should have been applied, and in consequence of which the municipality issuing the same has become liable, then, in any such instance, such city, by its city controller, or the clerk-treasurer of the town, as the case may be, upon presentation and demand, shall issue and deliver, in the order of such presentation and demand, to the owner of such bonds and coupons, certificates of indebtedness, of a kind and character similar to those authorized by Sections 1 and 2 of Chapter 97 of the Acts of the General Assembly for the year 1929, for the amounts that may be due thereon, as hereinafter provided, by reason of any assessments on such roll having been paid and diverted, as aforesaid, to the payment of bonds on other rolls, and also by reason of deficiencies in interest arising from the causes aforesaid, and also by reason of the loss of Barrett Law improvement funds due to the closing and insolvency of any bank or trust company in which such funds were on deposit, and which amounts so due on such bonds and coupons have not been paid, or cannot be paid, because of such deficiency, arising as aforesaid. * * * the amount of any such certificates, where based upon any such diversion of funds, aforesaid, shall be limited to the amount which would have been due, if such diversion had not occurred, and shall not include any interest on such amounts after the maturity dates of any such bonds and coupons; * * *. 
This act shall be supplemental to all existing laws and nothing herein shall be construed as repealing any other statutes upon such subject matter, or as making such municipality liable in any manner for any assessments or installments thereof not paid by the owner of the property assessed, nor for any interest thereafter on any such unpaid assessment or installment thereof, and no portion of any such delinquent assessments, or installments thereof, or any interest thereon after the due date thereof, shall be included in any such certificates of indebtedness. * * *” (Our emphasis).

Section 2 of this same act (Burns’ 1933, Section 48-4426—Pocket Supp) provides as follows:

“To meet all or any part of the deficiencies arising in the Barrett Law funds due to the diversions and losses resulting from the circumstances enumerated in Section 1 hereof, and in lieu of the refunding arrangement provided by said Section 1, through the issuance of certificates, whenever the amount of such deficiency is clearly ascertained, and the liability of the municipality therefor established, although no judgment may have been taken against the municipality on account thereof, the common council of the city or the board of trustees of the town, as the case may be, by ordinance, may provide for the raising of funds by the issuance of bonds in like manner as is provided for raising funds to pay and discharge judgments against such municipal corporations under and pursuant to Chapter 129 of the Acts of the General Assembly for the year 1905, as amended by Chapter 58 of the Acts of the General Assembly for the year 1911, and all acts amendatory thereof or supplemental thereto. All proceeds of such bonds when so issued shall be applied to the discharge of such obligations of the municipality and to no other purpose.” (Our emphasis).

The title to the above act is as follows:

“AN ACT to provide methods for the liquidation of principal and interest on bonds issued by cities and
towns under the Barrett Laws of this state, where the municipality has become liable for deficiencies and diversions of funds and for loss because of misapplication of collections effected by it on special assessments for local public improvements, and declaring an emergency.”

It will be observed that the title and the act itself are limited in their application to situations where the municipality has become liable for deficiencies and diversions of funds and for loss because of misapplication of collections on special assessments for public improvements, and this opinion, therefore, necessarily is limited to situations where such circumstances exist.

In answer to your first and third questions, it is my opinion that if the bonds were issued prior to the effective date of the 1939 Act quoted, under the decision in the case of Read v. Beczkiewicz, supra, if the principal and interest were paid for the city and diverted and the bond presented and not paid, the city is liable for the principal and interest received and, also, for interest from the date of the presentment of the bond and payment until paid. This is because the holders of the bonds are entitled to be dealt with according to the terms of their bonds and the statute in force at the time of the resolution under which they were issued. The valid terms of the bond and the statute in force at the time constitute their contract and that cannot be impaired. Under such circumstances the holder of the bond could not be compelled to accept certificates of indebtedness under Section 1 of Chapter 89 of the Acts of 1939.

It is my opinion that the rights of the holder of the bond under his contract as defined and under the Read case are not and could not be taken from him by the 1939 Act. However, such bondholder may voluntarily avail himself of the rights given by said Section 1 of the Act of 1939, if he so desires. If he should do so he would then receive certificates under the terms and provisions of that section and said certificates would not include interest after the maturity date of the bond and coupons. This is in harmony with the provision in said Section 1 that it is supplemental to all existing laws and that nothing therein should be construed as repeal-
ing any other statute on the subject matter. The Act of 1931 under which I assume that the bonds were issued, Chapter 99, Section 4, provides that the bonds shall bear interest from the date thereof until funds are available sufficient to pay the face value thereof, together with the accrued interest thereon.

In answer to your second question, the judgment of the court in question was a final adjudication between the parties, is the law of that case and binding upon the parties in the absence of an appeal.

As to your fourth question, it is my opinion that Section 2 of said Act of 1939 does not change the law as set forth in the Read case, but authorizes the issuance of bonds under Chapter 129 of the Acts of the General Assembly for the year 1905, as amended, although no judgment has been taken, whenever the amount of the deficiency is clearly ascertained.

Your question No. 5 involves a case of litigation and, in effect, asks my opinion as to what judgment that court will render. This is something that I cannot answer.

OFFICIAL OPINION NO. 101

December 20, 1946.

Hon. Ross Teckemeyer, Secretary,
Public Employees' Retirement Fund,
307 Board of Trade Bldg.,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of December 17th requesting an official opinion as follows:

"In the administration of this Act, the question has arisen relative to credit for military service of employees who received a leave of absence from their employer to serve in the Merchant Marines for the duration of the War.

"Section 7 of Chapter 340 of the Acts of 1945 reads as follows: