

so withdrawn, shipped or transported. They have already passed the point of impact of the tax and to tax them would be to levy a floor tax.

II

The tax upon alcoholic spiritous beverages is payable under the former law at the time such beverages are brought from a distillery or from a government warehouse to an Indiana wholesaler's premises. (Opinions of Attorney General (1941) p. 97.) Therefore, the additional tax is payable upon any spiritous alcoholic beverages that are brought from a distillery or a government warehouse to an Indiana wholesaler's premises after midnight of April 30, 1945, and is not payable upon any such spiritous beverages that have reached such premises prior to that time.

The tax upon alcoholic vinous beverages is payable under 4 Burns' Indiana Statutes (1942 Replacement) Section 12-803, at the time of such sale or withdrawal upon all such beverages which are sold or withdrawn for sale. Therefore, if such beverages have already been sold or withdrawn for sale prior to midnight, April 30, 1945, they are not subject to the additional tax imposed by the 1945 Act. Otherwise, they must bear that tax.

Each of the above statements presupposes that the tax levied by the former law was properly and fully paid prior to May 1, 1945. If not, the additional tax must be paid when the former tax is paid.

OFFICIAL OPINION NO. 37

May 4, 1945.

Hon. James M. Knapp,
Director of State Personnel,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 18th requests an official opinion on the following question:

May the Indiana Personnel Board review on appeal the action of the Board of Commissioners of Crawford County in discharging a Public Health Nurse without a hearing or assigning cause for removal, whose expenses were paid by Crawford County, but whose entire salary was paid by the State Board of Health?

The Acts of 1935 made certain provisions with reference to public health nurses being employed by boards of county commissioners.

“The county commissioners of any county or the common council of any city which has not provided for a full-time health officer, may provide for a full-time public health nurse, or other health personnel and the expenses of such office, and for that purpose the county council or common council, as the case may be, shall annually make the necessary appropriation in the same manner as appropriations are made for other county or city offices. Such public health personnel shall be legally qualified, suitably trained in sanitary science, and their qualifications shall be satisfactory to the state board of health. They shall be nominated in the manner provided in sections one and two (SS. 35-118, 35-119 Burns’ 1933 Supp.) of this act. They shall devote their entire time to the duties of their respective offices in protecting and supervising the general health and sanitation of their jurisdiction and shall perform such duties in relation thereto as may be prescribed by the rules and regulations of the state board of health.”

35-123 Burns’ 1933 Supp., Acts 1935, Ch. 217,
Sec. 6, p. 1027.

Section 35-118 Burns’ 1933 Supplement, Acts 1935, Chapter 217, Section 1, page 1027, was amended by Section 1 of Chapter 173 of the Acts of 1945, and this section deals with the manner of appointment or nomination of County Health Officers by the Board of County Commissioners of each county. From an examination of this section, both in the original act and the amendatory act, it is apparent that the legislature intended the appointment of the County Health Officer to be

made by the Board of County Commissioners, subject to the approval of the State Board of Health, and not a mere nomination to the State Board of Health with the power of appointment in the State Board. He is a county officer, and not a state officer, even though it is his duty to enforce the health laws of the state and the rules and regulations of the State Board of Health. Both the appointing authority, which is the Board of County Commissioners, and the State Board of Health have the power to remove the County Health Officer.

However, Section 35-123 Burns' 1933 Supplement, *supra*, with reference to a public health nurse, does not provide for an appointment, nor a term of office, and clearly the legislature intended the position to be an employment and not an appointment to the public office. It is a county employment if made by the Board of County Commissioners, even though the salary may be paid by the State Board of Health.

Chapter 101 of the Acts of 1943, which abolished the State Personnel Board and the office of State Personnel Director, and created the Indiana Personnel Board and the office of Director of State Personnel, transferred the rights, powers and duties of the preceding board and office to the new board and officers without any enlargement of jurisdiction or authorities.

1943 Ind. O. A. G. 273, 274.

The State Personnel Act, which is Chapter 139 of the Acts of 1941, Sections 60-1301 *et seq.* Burns' 1943 Replacement, does include the State Board of Health in the definition of "State Service," but the only county departments within the definition are the County Departments of Public Welfare. The "appointing authority" is limited to an authority authorized to appoint or employ in the "state service." (Section 60-1302 Burns' 1943 Replacement.) There is no provision of the Act which places a public health nurse employed by a Board of County Commissioners within the definition of "state service." The only employee who may appeal is one in the "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.

I find no provision in the Indiana Personnel Act which authorizes you or the Indiana Personnel Board to review the action of the Board of Commissioners of Crawford County or to entertain an appeal by the person discharged. Therefore, it is my opinion that there is no jurisdiction to act in this purported appeal.

OFFICIAL OPINION NO. 38

May 11, 1945.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis 4, Indiana.

My dear Governor:

Your letter of May 2, 1945, received in which you request an opinion on the legal effect of Chapter 327 of the Acts of the General Assembly of Indiana for 1945. You specifically desire to know if the vocational director for the adult blind to be appointed by you under the provisions of said Act serves under the direction of the Board of Industrial Aid for Vocational Rehabilitation for the Blind, in view of the fact the plan previously adopted by the State Board of Vocational Education with the federal administrator under the Federal Vocational Rehabilitation Act, being Chapter 219 of the Act of June 2, 1920, as amended by Chapter 190 of the Acts of July