of fees, particularly where those fees become the property of the state or a subdivision thereof. As stated in 42 L. R. A. at p. 44:

> "Fees cannot be taxed against the state except where authorized by statute, * * *."

It is, consequently, my opinion that the secretary of state, while acting for and on behalf of the state, is not liable for any fee for the filing of a certificate of revocation of admission to do business in Indiana. That conclusion, however, I desire to limit to the particular statute involved, since there may be instances where fees are authorized by statute or where the public official is not carrying out a mandatory duty in behalf of the state.

See: *Ex parte* Fitzpatrick, *supra.*

2. In answer to your second question, upon the authorities above cited and discussed, it is my opinion that it is the mandatory duty of the county recorder to accept and file certificates of revocation without collecting any fee therefor.

OFFICIAL OPINION NO. 52

June 18, 1945.

Mr. James M. Knapp, Director
Indiana State Personnel Division,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Knapp:

I have your letter of recent date in which you ask for an official opinion upon the following questions:

> "I should like your official opinion as to whether or not all the provisions of Section 35 and 36 of the Indiana Personnel Act apply to directors of county departments of public welfare, and, if not all of the provisions, which provisions of Sections 35 and 36 do apply? Also, if Sections 35 and 36 do not apply to

county welfare directors, are the conditions for grants-in-aid imposed by the Social Security Act being met?"

Section 20 of Chapter 3 of the Acts of 1936, (Spec. Sess.), as amended, commonly referred to as the "Welfare Act of 1936," the same being Section 52-1119 of Burns' 1933, (Supp.) provides in part as follows:

> "The county board of public welfare shall appoint a county director of public welfare who shall be appointed solely on the basis of merit from eligible lists established by the state department, and who shall have been a resident of such county for a period of at least two (2) years prior to the date of his appointment, unless a qualified person cannot be found in the county. The county director of public welfare shall be the executive and administrative officer of the county department and shall serve as the secretary of the board. *Except as hereinafter provided, the director shall serve at the pleasure of the appointing board.* * * * " (my italics.)

In a recent official opinion of this office addressed to the Governor of Indiana under date of April 6, 1945, a copy of which is herein enclosed, it was held by the Attorney General that where an officer serves at the pleasure of an appointing board, he may be removed by said board without notice, charges or reasons assigned. The pertinent conclusions reached in that opinion are as follows:

> "It is my opinion that where the term of office is not fixed by law, the Governor, as the appointing official, may remove such officer at pleasure and without notice, charges or assigning reasons.
>
> "* * *
>
> "It is my opinion that those officers falling within the second classification herein outlined and who are appointed under statutes, like the examples above given, do not receive a term of office fixed at the number of years stated absolutely, but receive a term for said number of years, subject to and conditioned upon the exercise of the discretion or will of the Gov-

> ernor and dependent upon the exercise by the Governor of his power to remove at pleasure. In such cases, it is my opinion that the Governor may remove the appointed officer at his pleasure and without notice, charges or assigning reasons."

In at least four official opinions issued by this office it has been held by the Attorney General that where there is a conflict between the provisions of the State Personnel Act and the provisions of the Welfare Act, the latter act will control.

1941 O. A. G., p. 268;
1043 O. A. G., p. 273;
1944 O. A. G., p. ___, (Released April 25, 1944), No. 44;
1945 O. A. G., p. ___, (Released March 15, 1945), No. 16.

In 1941 O. A. G., p. 268, the Attorney General held that as of the effective date of the Acts of 1941, the provisions of the Welfare Act prevailed over the provisions of the State Personnel Act where there was any conflict. On this matter he said as follows, (p. 273) :

> "1. Answering your questions specifically, I am of the opinion that as of the effective date of the promulgation of the Acts of 1941, Chapter 179 thereof will override and supersede Chapter 139 so far as the component parts of said Act are in conflict."

The Welfare Act has been recently amended by the 1945 General Assembly of the State of Indiana by Chapter 196, Acts of 1945, p. 350, and Chapter 316, Acts of 1945, p. 1044, as published in the Emergency Acts, but such amendments do not affect the decision in this case.

Based upon the foregoing statutes, as so construed, it is my opinion that Sections 35 and 36 of the State Personnel Act are not applicable to the directors of county departments of public welfare, and that the provisions of the Public Welfare Act control as to the appointment and removal of said directors. The applicable provisions of the Welfare Act, as so construed, provide that the directors of county departments of public welfare shall be appointed by the county boards and

serve at the pleasure of such boards and may be removed without notice, hearing or reasons assigned.

Concerning your second question, Section 302 of Title 42 of U. S. C. A provides in part as follows:

> "(a) A State plan for old-age assistance must * * * (5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Board shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Board to be necessary for the proper and efficient operation of the plan; * * *"

From the foregoing quoted part of the statute it is apparent that the Social Security Board is expressly prohibited from exercising any authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with personnel standards on a merit basis included within a state plan. It is further clear that the statute only requires that a state plan shall provide some merit system based upon personnel standards which is found by the board to be necessary for the proper and efficient operation of a state plan. No specific requirements for any particular merit system are set forth in the statute, and thus it cannot be stated definitely whether a particular merit plan would meet with the requirements of the statute.

I am informed that the Public Welfare Department has been operating under a merit plan contemplated by the statute for many years and said plan apparently has met with the approval of the board.