Hon. Otto K. Jensen, State Examiner,
Department of Inspection and
Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of March 20, 1944, received requesting an official opinion regarding the validity of a rule promulgated by the State Board of Education under date of October 8, 1943, as follows:

"RESOLVED, that where a state school relief corporation has failed to meet a qualifying rate as provided by the State Board of Education, it may with the approval of the State Board of Education, be certified for reimbursement at a chargeable rate equal to the chargeable rate plus the deficiency in the qualifying rate."

Your letter further presents the questions, (1) should you proceed with the audit of a claim of a corporation which had a tax rate less than seventy-five cents under the above rule, and (2), can the Department of Education make an exception of certain school units under the above rule, or would such rule be equally applicable to every unit in Indiana having a rate under seventy-five cents?

On October 8, 1943, the sole authority to make such a rule was given to the State Board of Education under Sec. 1, Ch. 121, Acts of 1941, same being Sec. 28-906, Burns’ 1943 Supp., which in part reads as follows:

"The board of department of education shall have and is hereby given full power and authority to promulgate regulations and issue its orders from time to time defining and setting forth the terms and conditions upon which the various school taxing units of the state
may avail themselves of any portion of said relief fund provided for by section 1 (Sec. 28-901) of this act: Provided, however, That nothing in this section shall be construed as any limitation whatsoever upon the power and authority of the board of department of education to determine finally the amount of such relief fund which shall be allocated to any school taxing unit in any year under the provisions of this act: and, Provided, further, That the said regulations and orders of the board of department of education issued under and pursuant to the terms of this act, shall, when so promulgated and issued, have the full force and effect of law: and, Provided further, That in addition to establishing uniform standards and regulations, it shall be the duty of the board of department of education to require a statement of outstanding debts and accounts and also to require that in the instances where such outstanding debts and accounts exist without budget appropriation for their payment, sufficient appropriation and tax levies and rates be established for their liquidation within a reasonable period of time as determined by the board of department of education: * * *:"

In order to make a valid delegation of the power to make rules to an administrative board the legislature must enact a statute complete in its terms and provisions and establishing proper standards so that nothing in the matter of determining what the law may be is left to the judgment of the appointee or delegate of the power. At 42 Amer. Jur., page 339, Sec. 44, it is said:

"In order to avoid a delegation of essentially legislative power to administrative authorities, a statute vesting power in such officers must be complete in all its terms and provisions so that nothing in the matter of determining what the law may be is left to the judgment of the appointee or delegate of the power. * * *"

Blue v. Beach (1900), 155 Ind. 121, 132;
Hollingsworth v. State Bd. of Barber Examiners (1940), 217 Ind. 373, 378, 379;
Town of Kirklin v. Everman (1940), 217 Ind. 683, 693.
It is to be noted the authority of said Department of Education to make rules and regulations regarding distribution of such school relief refers to the relief fund established by Section 1 of Chapter 167, Acts of 1933, same being Section 28-901, Burns' 1933. Sections 2, 3, 4, and 5 of said Chapter 167, Acts of 1933, same being Sections 28-902 to 28-905, Burns' 1933, provide the conditions and facts upon which such rule making power shall operate, and provide the manner in which schools having insufficient revenue shall secure such relief.

Sections 1, 2, 3, 4, and 5 of said Chapter 167 of the Acts of 1933, supra, were specifically repealed by Section 9, Chapter 263, Acts of 1943, same being Section 28-920, Burns' 1943 Supp., which Act did not contain an emergency clause and became effective when such Acts were promulgated by the governor on November 3, 1943.

It would therefore seem to follow that the sections of the statute which sanction and provide the conditions and situations which the rules are to carry out, being repealed, there is no legislative enactment left for the rule to carry out and administer.

It is therefore my opinion that such rule made by the Department of Education on October 8, 1943, expired on the taking effect of Chapter 263 of the Acts of 1943, due to the fact such rule was made pursuant to those sections of the statute which were repealed by Chapter 263, Acts of 1943.

Sutherland Statutory Construction, 3rd Ed., Section 2042.

Any rights which had become vested under the rule prior to the effective date of the repeal would not be affected by the repeal. I cannot pass upon a question of vested rights without the facts of the particular situation in question, but there is nothing in your letter to indicate that any vested rights are involved. The answer to your first question is in the negative. In view of my conclusion that the rule was repealed, I am not passing on its validity as that question may not arise.