INDIANA PERSONNEL BOARD: County Director of Public Welfare; Director of Indiana Personnel Board may not approve or disapprove payment of salary of county director of public welfare.

April 25, 1944.

Opinion No. 44

Hon. A. E. Sinclair, Chairman,  
Indiana Personnel Board,  
141 South Meridian Street,  
Indianapolis, Indiana.

Dear Mr. Sinclair:

I have your letter of April 18th in which you request my official opinion upon the following question:

"Should the Indiana Personnel Board authorize the Director of State Personnel to approve the pay roll or pay account carrying the name of Mr. Arthur E. Wooden, whose purported appointment solely on the basis of merit, as Director of the Marion County Department of Public Welfare, has been attested by resolution adopted April 1, 1944, by the Marion County Board of Public Welfare?"

It is my desire in answering your inquiry to limit discussion of the problems involved strictly to the question asked and to express no opinion one way or the other concerning the regularity of the appointment of Mr. Wooden.

To restate your question, does the State Personnel Director have the authority and duty either to approve or disapprove the pay of the Marion County Director of Public Welfare?

The regulatory provisions of the State Personnel Act were passed in 1941 as Chapter 139. That act, in Section 2 (60-1302, Burns' 1943 Replacement) defines "state service" to include, "state department of public welfare, including county departments of public welfare; * * *.*"

Later, at the same session of the Legislature, by Chapter 179, the Welfare Act of 1936 was amended. Section 2 of Chapter 179 (52-1119, Burns' 1933 Supplement), provides in part:

"The county board of public welfare shall appoint a county director of public welfare who shall be ap-
pointed 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 can not be found in the county. * * *.”

That same year, the Administrator of the State Department of Public Welfare requested an opinion from this office construing Chapters 139 and 179 of the Acts of 1941. Two of the specific questions asked were:

“1. Do the provisions of Section 9 of Chapter 179 control any conflicting provisions in Chapter 139 or does Section 48 of Chapter 139 prevail when both Acts are in force? These are the two sections which have the prevailing or overriding clauses as to other Acts.

“2. If Section 9 of said Chapter 179 controls, can the State Board of Public Welfare operate its own merit system for the state and county departments of public welfare?”

Section 48 of Chapter 139 (60-1348, Burns’ 1943 Replacement) reads as follows:

“It is hereby expressly provided that in case of conflict between any of the provisions of this act and any provisions in any statute of the state of Indiana, including any act passed at the 82d regular session of the general assembly, the provisions of this act shall supersede all conflicting provisions in such other statutes or acts and in all such cases of conflict, the provisions of this act shall govern.”

Section 9 of Chapter 179 (52-1407a, Burns’ 1933 Supplement), being the later act in point of time, reads as follows:

“It is hereby expressly provided that in case of conflict between any of the provisions of this act as amended and any provision in any statute of the state of Indiana, including any act passed at the 82d regular session of the General Assembly, the provisions of this act shall supersede all conflicting provisions in such
other statutes or acts and in all such cases of conflict, the provisions of this act shall govern.”

In the opinion rendered by the Attorney General, questions 1 and 2 were answered as follows:

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.

2. Your second question is answered in the affirmative, that is, the State Board of Public Welfare can operate its own merit system for the State and County Welfare Departments.”


Under date of May 14th in an official opinion to the Administrator of the State Department of Public Welfare it was stated:

"Section 2 of Chapter 83 of the Acts of 1943, which amended Section 20 of the original Welfare Act of 1936, 52-1119, Burns' 1933 Supplement, provides in part as follows:

"Duties of the county boards. 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, * * *,'"

"Section 52-1104, Burns' 1933 Supplement, Acts 1936 (Spec. Sess.), Ch. 3, Sec. 5, p. 12; 1937, Ch. 41, Sec. 1, p. 235; 1941, Ch. 179, Sec. 3, p. 536, was not amended by the 1943 Acts, and it provides in part as follows:

"* * * The state department is hereby charged with the administration or supervision of all of the public welfare activities of the state as hereinafter provided. The state department:

"* * *

"(j) Shall hold or provide for holding examinations to determine the qualifications of applicants for positions in the state department and county departments and provide for annual merit ratings of em-
ployees in the state department and county departments to ascertain whether such employees, or any of them, are maintaining the eligibility standards prescribed by the state department.'

"* * *

"However, I am of the opinion that the language, 'or provide for holding examinations * * *' (52-1104, Burns' 1933, Supp., supra) is broad enough to empower the State Department of Public Welfare to delegate to the new Indiana Personnel Board the holding of examinations for establishing eligible lists for directors of county departments of public welfare; but I do not believe that the legislature intended that the State Department of Public Welfare should delegate all of its discretion in the establishment of eligible lists to another agency, or that the results of the examination should be conclusive on the State Department. After the results of the examination are reported to the State Department it must exercise its own discretion in the matter, taking into consideration the results of the examinations.

"If the State Department, in its discretion, deemed it proper to do so, it could 'establish' the eligible list as recommended by the Indiana Personnel Board, or it could revise or reject the list. Or the State Department could establish a list after giving its own examination as authorized by the statute. In any event, before any list of eligible applicants could be submitted to any county department, it should appear by record made by the State Department that the list was 'established' by the State Department."


Furthermore, Section 2 of Chapter 83, supra (52-1119, Burns' 1933 Supplement) contains express provision for the pay of county directors as follows:

"* * * The county directors of the several counties shall be entitled to receive as compensation for their services the amounts which shall be fixed by the county board within the salary ranges established by the state department which shall be paid monthly in the same
manner as the compensation of other county officers as provided by law.”

Under the provisions of the Public Welfare Act, and the construction given said provisions under the opinion of this office of May 14, 1943, it is clear that a County Director of Public Welfare is not appointed under the provisions of the State Personnel Act of 1941. The provisions with reference to approving the pay roll or pay account under the State Personnel Act are as follows, being Chapter 139, Acts 1941, page 387, Section 32 (a) (60-1332, Burns' 1943 Replacement):

“No public disbursing or auditing officer nor other fiscal officer of the state shall draw, sign, or issue, or authorize the drawing, signing or issuing of any warrant or check upon the state treasurer or other disbursing officer of the state, for the payment of a salary or other compensation for personal services within the state service as defined by this act, nor shall the state treasurer or other disbursing officer of the state pay any salary or other compensation for such personal services unless a pay-roll or account for such salary or other compensation, containing the name of every person to be paid and the accounts to be paid him has been certified by the director or a person designated by him to the effect that the persons named on the pay-roll or account are either in the unclassified service or have been appointed or otherwise established in their positions according to the provisions of this act, and that the payment of the amounts shown on the pay-roll or account will not violate the provisions of the pay plan or the rules pertaining thereto.”

Since county directors of public welfare are not in the unclassified service, as defined by the State Personnel Act, nor have they “been appointed or otherwise established in their positions” according to the provisions of said act, nor are they paid pursuant to a pay plan adopted by the Indiana Personnel Board, there is no duty resting upon the Director of State Personnel to make any certificate of any kind on a pay roll or account for the salary or other compensation of any county director of public welfare. Therefore, it is my
opinion that neither the Indiana Personnel Board nor its Director could properly make any certificate on any pay roll or account for any salary or other compensation payable to a county director of public welfare, and that the absence of such certificate should not prevent the payment of the monthly salary of a county director "in the same manner as the compensation of other county officers as provided by law."

DEPARTMENT OF FINANCIAL INSTITUTIONS: Industrial Loan and Investment Companies; Corporations to which Industrial Loan and Investment Certificates may be issued.

April 26, 1944.

Opinion No. 45

Hon. A. J. Stevenson, Director,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of March 29th, which reads in part as follows:

"The following questions present themselves in connection with certain applications now on file with the Department for authority to lend money under the Industrial Loan and Investment Act.

1. May the department issue a restricted certificate of authority to corporations authorizing them to operate under the provisions of the Industrial Loan and Investment Act without authority to issue certificates of indebtedness? If so, must the restriction appear in both the application and the certificate of authority?

2. May such certificate of authority issue to a foreign corporation authorized to do business in Indiana, or is it applicable to domestic corporations only?

3. Is a capital stock of $50,000.00 prerequisite to the issuance of a certificate of authority?

4. May a corporation now engaged in business as a financial institution be given a certificate of authority