Therefore, I am of the opinion that although officials charged with the duty of making employments may properly meet with representatives of the union to discuss matters of employment, yet there is no binding duty upon the officials to do so, and that until the Legislature specifically provides for the making of collective bargaining agreements where a board, bureau, commission, official agency, or unit of the government is the employer, such collective bargaining agreements would be *ultra vires* and of no legal force.

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**STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS:** Where licensed embalmer fails to renew his license on or before March first of year following expiration of license. State Board is without power to renew such license except upon re-examination.

June 12, 1944.

*Opinion No. 56*

Hon. Luther J. Shirley, Secretary,
Board of Embalmers and Funeral Directors,
946 North Illinois Street,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of June 8, 1944, received in which you request an official opinion on the following question:

"Can the State Board of Embalmers and Funeral Directors of Indiana renew an embalmer's license who did not make application for renewal and who did not pay the renewal fee on or before March 1st of the year following the last year for which renewal fees were paid?"

This question is controlled by Section 63-724, Burns' R. S. 1943 Repl., same being Sec. 8, Ch. 165, Acts of 1939, which is as follows:

"All embalmers' licenses and funeral directors' licenses hereafter issued shall automatically terminate on the 31st day of December in each calendar year. On or before the last day of each calendar year each
embalmer or funeral director hereafter licensed to act as an embalmer or funeral director or to engage in the funeral directing business shall transmit to the secretary-treasurer of the state board of embalmers and funeral directors an application for renewal of his license, together with the fee for such renewal hereinafter prescribed. If any holder of an embalmer's license or funeral director's license neglects to secure the renewal certificate herein provided for by March 1 of the calendar year succeeding the previous renewal date, such neglect shall, without any action by the board, automatically cancel and annul the license previously granted, together with any related renewal certificate, and no renewal license shall be issued until a regularly prescribed re-examination has been passed by the applicant to the satisfaction of the board: Provided, however, That any license may be renewed by the board, subsequent to its expiration date and prior to March 1 of the next succeeding calendar year upon payment by the applicant of the required renewal fee and a penalty of ten dollars ($10.00).” (Our emphasis.)

It is therefore clear that under the aforesaid section of the statute the State Board of Embalmers and Funeral Directors of Indiana has no authority to renew an embalmer's license where the applicant has not filed his application for renewal, and paid his fees therefor, on or before March 1st of the calendar year succeeding the previous renewal date. Said statute not only fails to give authority to said board to so act, but prohibits such renewal by said board until a regularly prescribed re-examination has been passed by the applicant to the satisfaction of the board.

The above statute is mandatory upon the board and it could not acquiesce in or authorize a renewal after March 1st.

In the case of Department of Insurance v. Church Members Relief Association (1939), 217 Ind. 58, in which case the appellee, as plaintiff, secured an injunction against the Department of Insurance of the State of Indiana restraining defendants from interfering with said plaintiff's writing certain insurance contracts, and where plaintiff asserted the State of Indiana had waived this right to object to such con-
tracts by past continuous approval of the same, the court, in
reversing the lower court, on page 60 of the opinion, said:

"That the court was in error in its first and second
conclusions cannot be doubted. When the right to do
a thing depends upon legislative authority, and the
Legislature has failed to authorize it, or has forbidden
it, no amount of acquiescence, or consent, or approval
of the doing of it by a ministerial officer, can create a
right to do the thing which is unauthorized or for-
bidden. The administrative officers of the state, as
well as the appellee, were bound by the statute. The
insurance department had no power to authorize or
acquiesce in the issuance of policies unauthorized or
forbidden by the statute. An estoppel against the state
cannot arise out of the unauthorized acts of state
officers. Platter v. Board of Com'rs (1885), 103 Ind.
360, 381, 2 N. E. 544, 556, 557; Sandy v. Board of
Com'rs (1909), 171 Ind. 674, 677, 87 N. E. 131, 132;
Ness v. Board of Com'rs, etc., et al. (1912), 178 Ind.
221, 232, 98 N. E. 33, 1002; 21 C. J., § 193, p. 1191; 19
American Jurisprudence, § 166, p. 818."

Therefore, the applicant referred to in your letter would
be required successfully to pass to the satisfaction of the
board the regularly prescribed re-examination before his
license could be renewed.

STATE BOARD OF ACCOUNTS: SALE OF REAL ESTATE
BY AUDITOR, OF LANDS VESTED IN STATE FOR
USE OF SCHOOL FUNDS. TERMS, CONDITIONS
AND METHOD OF PROCEDURE.

June 13, 1944.

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

Dear Sir:

I have your letter of recent date in which you state: