your present term of office and it is not presently "touching any question or point of law concerning the duties of" your office. By then the election laws will be recodified as a result of the work of the present commission to recodify the election laws. It is entirely moot and for these reasons it is not answered.

STATE LIBRARY: Public libraries—Library Certification Act does not apply to employee of federal instrumentality.

August 7, 1944.

Opinion No. 72

Hon. Harold F. Brigham,
Director, State Library,
140 North Senate Avenue,
Indianapolis, Indiana.

Dear Mr. Brigham:

You have asked my opinion concerning the following question:

"A woman who was a district supervisor for the W.P.A. State Library project has asked for a librarian’s certificate on the basis of her position at the time the Certification Act took effect. We wish your interpretation on whether a librarian paid by federal funds is eligible for a certificate because of the position she held at the time the Act went into effect (i.e., a professional position). It might be noted that the W.P.A. project was sponsored by the State Library. This sponsorship was largely a nominal consideration but it did entail some contributions by the State Library in the form of working space and supplies. W.P.A. salaries, as you know, were paid entirely by the Federal Government including salaries of non-relief supervisors."

In addition to the facts stated in your letter, I am informed the woman in question was employed by W.P.A., subject to its rules and regulations and paid wholly through W.P.A. funds. The particular employment was supervisor of a
W.P.A. library project which owned and distributed its own books. The question is whether one so employed on a Federal project does by reason of such employment qualify for a certificate without examination. The title of the Act (Ch. 195, page 591, Acts 1941, General Assembly), providing for certification of librarians, is as follows:

"'An act creating the Indiana library certification board, prescribing its rights, powers and duties, and providing for the certification of librarians.'"

Section 11 of the Act (41-811, Burns' Pocket Supplement) provides as follows:

"Any person, who, when this act takes effect, is serving or is on leave of absence from his position, as head librarian, head of a department or professional assistant in any public library in the state of Indiana shall upon application and payment of the prescribed fee be awarded a life certificate of the grade issued for comparable positions throughout the state, which certificate shall have equal value for all purposes with any other certificate for that grade which the Indiana library certification board shall issue based upon examination, academic education, technical training, experience or any combination of these items."

In order to determine what persons may be entitled to such a life certificate under the terms of that section, it is necessary first to consider the meaning of the words "public library" as used in the Act. In other words, was the W.P.A. library project a "public library" as the term is there used? "Public library" is not defined in the Act. Section 3 (41-803, Burns' Pocket Supplement) provides as follows:

"On and after the first day of January, 1942, and except as hereinafter otherwise provided, it shall be unlawful for the board of trustees, school board or any other governing body having the lawful charge of any public library, or any other library, supported in whole or in part by public funds, except school libraries and the libraries of educational institutions, to appoint as the head librarian, or as the head of any department or branch, or as professional assistant of
any such library, any person who does not hold a certificate of a suitable and requisite grade, granted in accordance with the provisions of this act, and the rules and regulations of the library certification board issued thereunder,"

and in Section 9 (41-809, Burns' Pocket Supplement) "private library" is defined as follows:

"* * * The term 'private library' as used in this act shall be construed to mean any library which is not supported by public funds."

Upon reading the Act in full, it becomes apparent that it was designed to include all libraries in Indiana supported in whole or in part by public funds and when the words "public library" are used in later provisions of the Act, that meaning is intended.

"Public funds" have been defined so frequently that the words are now well understood to include—"Those moneys belonging to the state and its subdivisions or to a municipal corporation of a state. * * *"


Was this woman serving in a "public library" in the State of Indiana?

Within their individual spheres, the State and the federal government are separate and distinct sovereignties as much as though they were two independent foreign States.

Commonwealth v. First Nat'l Bank (Pa.), 154 A. 379.

The State cannot interfere with federal instrumentalities and in construing State legislation a construction should be adopted which limits the legislative action to the proper sphere of State sovereignty. Obviously, it is not necessary for the legislature to enact into every law that it does not intend to encroach upon federal sovereignty any more than it is necessary to enact into the law that it shall have no extraterritorial effect. So considered, it would seem that both the phrase
“public funds” and “public libraries” should be limited to those public funds and public libraries over which the State may exercise its sovereignty. For instance, a construction could not be placed upon the Act which would bring within its terms a librarian of the library for the Federal District Courts in Indiana although those libraries are supported by federal public funds. So applied, the Act would not require a supervisor in the position of the W.P.A. supervisor to secure a certificate from Indiana in order to hold that position. And likewise, the W.P.A. library would not be a public library within the life certificate provision.

I am consequently of the opinion that without other compliance with the Library Certification Act, a life certificate should not be issued in the case you set forth.

STATE BOARD OF ACCOUNTS: Cities and towns—special attorney cannot be appointed by city council. City attorney has charge of city’s legal business.

August 10, 1944.

Opinion No. 73

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

Dear Mr. Jensen:

This will acknowledge receipt of your letter of July 31st in which you ask the following questions relative to the common council of the City of Gary appointing and employing its own special counsel to carry on or effect settlements in certain pending litigation involving Barrett Law bonds and funds:

"1. Can the common council create and set aside a fund from unexpended funds, and employ its own attorneys for the purpose of carrying on Barrett Law litigation in which the city is involved, such attorneys to take orders from and to be accountable to the common council only, the common council making all