into stock, the bonds are immediately canceled and
the stock issued in place thereof. Under such an ar-
rangement, there can at no time be outstanding, either
in bonds or stock, an amount exceeding $5,148,000, and
such amount outstanding represents the indebtedness
of the company upon which a fee should have been
exact ed.”

To summarize, we therefore have the following situation:
(1) A petition for issuance of notes and bonds in one peti-
tion as a part of one transaction. (2) The issuance of notes
is a required incident to the transaction. (3) A remedial
and regulatory statute designed, not to raise revenue but to
safeguard public utility customers, providing a fee to reim-
burse Public Service Commission expense. Under those cir-
cumstances, I am of the opinion that the Legislature did not
intend to require a double fee but that a fee paid for the
issuance of the new preferred stock, which is the aim and
purpose of the whole transaction, is all that is required under
the statute.

It is my desire to add that, in reaching this opinion, I do
so only in the light of the particular facts involved and do
not feel justified in laying down any broad rule which would
serve to govern in any other case where all of these facts
are not present.

DIVISION OF LABOR: Child’s Work Certificate—Birth
Record; Persons in charge of Vital Statistics cannot
charge a fee for certified copies of Birth Records when to
be used in securing Child’s Work Certificate.

August 15, 1944.

Opinion No. 76

Hon. Thomas R. Hutson,
Commissioner of Labor,
Division of Labor,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter with reference to work certificates requests an
official opinion upon the following question:
"The question has arisen in regard to a fee being charged for transcript of birth records pertaining to work certificates for minors.

"Is it permissible for city and health officials to charge a fee?"

Section 28-519, Burns' 1943 Supp., being Sec. 3, Ch. 51, Acts of 1941, which is the statute controlling the issuance of work certificates to minors, provides in part as follows:

"The officer issuing the certificate for a minor shall require the evidence of age stated in paragraph (a) in preference to that specified in any subsequent paragraph and shall not accept evidence of age permitted by any later paragraph unless he shall receive and file evidence that the proof of age required in the preceding paragraph or paragraphs can not be obtained. It shall be the duty of the custodian of such vital statistics to issue the transcript of the birth certificate herein provided for."

Said statute does not provide for any compensation to such custodian of such vital statistics for the issuance of such transcript of the birth certificate therein referred to. In my opinion the foregoing statute is a special statute regarding the issuance of such birth certificates and would be controlling over any general statute authorizing a fee for such service. Such a rule of statutory construction was adopted by the Indiana Supreme Court in the case of Home Owners' Loan Corp. v. Wise (1939), 215 Ind. 445, the court in deciding a 1931 statute regarding proceedings to be followed in mortgage foreclosures controlled the provisions of the general law of 1881 on that subject, said on page 449 of the opinion:

"Since the 1931 act specifically covers the same subject-matter embraced in the old general law providing for foreclosure, and completely provides a procedure to be followed, it operates to repeal the general law to the extent of any conflict or repugnancy therein. State ex rel. v. Greenwald (1917), 186 Ind. 321, 327, 116 N. E. 296; Kingan & Co. v. Ossam (1921), 190 Ind. 554, 557, 131 N. E. 81."
If it be the duty of the officers referred to in your letter to issue such birth certificates under said statute, they would not be entitled to charge any additional fee for such service. In the case of Eley v. Miller (1893), 7 Ind. App. 529 at 536, the court, in deciding that a County Auditor could not charge a fee for any services performed in any matter in connection with his official duties, said:

"We are of the opinion that unless he can show that such services are a part of his official duties, and that the statute expressly or impliedly provides a compensation therefor, that he is not entitled to make a charge for such services. There is no pretense that the statute provides any compensation for such services. It may be true that the auditor is under no obligation to perform such services. But public policy forbids that a public officer should perform services in any matter in connection with his official duties and make a charge therefor not provided by statute. These charges, however, stand upon a different basis from the items designated as fees. The complaint does not proceed upon the theory that such charges were made as fees."

An officer is only entitled to fees allowed by statute, and before an allowance is made to him, he must point out the particular statute authorizing the allowance.

City of East Chicago v. Souberli (1940), 108 Ind. App. 581, 588;
Applegate, County Auditor v. State ex rel. Pettijohn (1933), 205 Ind. 122;
Ind. O. A. G. 1934, p. 481.

In the case of Watts v. City of Princeton (1911), 49 Ind. App. 35 at 38 and 39, the court approved the foregoing legal principle and further held that a city health officer was an officer within the meaning of such rule.

Under Section 35-111, Burns 1933, being Sec. 7, Ch. 144, Acts of 1909, city and town health officers, county health commissioners, and the State health commissioner, are required to collect, record and report the vital statistics of their respective jurisdictions and to make reports thereof to the State Board of Health.
Section 35-115, Burns 1933, being Sec. 1, Ch. 239, Acts of 1913, provides that all births occurring in cities and towns shall be reported to the health officers thereof, and when they occur in the county, outside of cities and towns, they shall be reported to the county health commissioner or his deputies, and provides further:

"* * * All records of deaths, births and cases of contagious and infectious diseases shall be kept by health officers in record books, the forms of which shall be supplied by the state board of health. * * *"

Section 35-116, Burns 1933, being Sec. 2, Ch. 239, Acts of 1913, provides the State Board of Health shall collect and tabulate the vital statistics, and provides further in part:

"* * * They shall have supervision of the system of registration of deaths, births, infectious and contagious diseases, and they shall make up, from time to time, such blank forms as they may deem necessary for collection, registration and report of vital and sanitary statistics throughout the state. They shall, upon request, furnish any applicant a certified copy of the record of any birth or death registered under the provisions of this act, and such copy of the record of a birth or death, when properly certified by the secretary of said board to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated. * * *"

Section 35-118, et seq., Burns' 1943 Supp., being Ch. 217, Acts of 1935, provides for the appointment of county health officers and city health officers and provides for their compensation. Section 35-126, Burns' 1943 Supp., being Sec. 9, Ch. 217, Acts of 1935, gives the power to the State Board of Health over any local health authorities to require them to perform their duties as required by law, or as required by the rules and regulations adopted by the State Board of Health.

From a consideration of each of the above statutes it is my opinion that county, city or town health officers, and the State Board of Health, are each "custodians of such vital statistics" within the meaning of Section 28-519, Burns' 1943
Supp., supra, and that in performing the duty enjoined upon them by said statute in issuing such transcript of said birth record they would not be entitled to make a charge for such service.

INDIANA WOMAN'S PRISON: Transfer of inmates—State Department of Public Welfare may transfer sixteen-year-old girls from the Indiana Girls' School to the Indiana Woman's Prison.

August 15, 1944.

Opinion No. 77

Mrs. Marian F. Gallup, Supt.,
The Indiana Woman's Prison,
Indianapolis, Indiana,

Dear Mrs. Gallup:

Your letter of July 15, 1944, received requesting an opinion on whether the Welfare Acts give the right to transfer girls under the age of eighteen from The Indiana Girls' School to The Indiana Woman's Prison.

Your letter further furnishes the information that this girl is sixteen years of age, and you are informed her presence in The Indiana Girls' School appears to be seriously detrimental to the welfare of the institution.

This question is controlled by Section 52-1104, Burns' 1943 Supplement, same being Acts 1936 (Spec. Sess.), Chapter 3, Section 5, as amended by Acts 1941, Chapter 179, Section 3, which 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:

"* * *

"(N) May classify the patients and inmates of the respective institutions of the state and transfer patients and inmates from one state institution to another, at will, when, in its discretion, it is deemed advisable for the welfare of the patient or inmate, but no patient or inmate of a benevolent institution shall be transferred to a penal or correctional institution except in