ex officis. By article 3, section 10, 5 members of the committee constitute a quorum. The question is whether the by-law authorizing a special assessment to be made by a majority of the committee means by a majority of the quorum, or a majority of the whole committee. We are of the opinion that the judge was right in holding that it means a majority of the whole committee. It gives an unusual and important power. It uses words which naturally signify more than half of the whole number of the committee. * * *.”

I am of the opinion that the words majority of all the beneficiaries should be taken in their general accepted meaning; that they are clear and unambiguous and not subject to construction and require the actual consent of more than 50% of the beneficiaries before said pension plan could be modified.

It is, therefore, my opinion that a vote in favor of such modification of such pension plan by 126 out of 356 employee beneficiaries is not equivalent to “the consent of a majority of all the employee beneficiaries” of such fund, regardless of the number failing to vote on such modification.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Department of Financial Institutions has no jurisdiction or control over the management of a trust of unacceptable assets upon reorganization of a bank unless reserved in the trust agreement.

March 3, 1944.

Opinion No. 21

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

Dear Sir:

I have your letter of February 28th enclosing a Rehabilitation Trust Agreement of the Citizens Trust and Savings Bank of South Bend. Your question is:

“Will you please give us your official opinion as to whether or not, under the terms and conditions of this
trust agreement and under the law applicable to and defining the jurisdiction of the Department of Financial Institutions, such department has any jurisdiction or control over the manner and methods employed by the liquidating trustees with reference to this trust?"

My understanding from reading the trust agreement is that at the time of the agreement the capital of the Citizens Trust and Savings Bank of South Bend was thought to be impaired. It was agreed that the bank might reorganize and continue business upon alteration of its capital structure and disposition of certain assets which were unacceptable to the Department of Financial Institutions. Accordingly, those assets were set aside in charge of trustees under the Rehabilitation Trust Agreement, and the income from those assets in the course of liquidation were to be applied to the payment of stockholders who had lost 50% of their stock in the course of reorganization. Our interest now is solely with the trustee assets.

The Department of Financial Institutions as an administrative body has only those powers and duties conferred by statute.

State Board, etc. v. McDaniel, 199 Ind. 708-716; Chicago, etc. v. Public Service Comm., 49 N. E. (2d) 341.

By the Indiana Financial Institutions Act its supervisory powers are limited to financial institutions. See Section 4, Chapter 40, Acts of 1933 (18-201, Burns' 1933.) The definition of a financial institution is contained in subsection (a), Section 3 of the Indiana Financial Institutions Act (Section 1, Chapter 223, Acts of 1941, amending Section 1, Chapter 5, Acts of 1935, amending Section 3, Chapter 40, Acts of 1933, 18-103, Burns' 1933 Supplement):

"(a) The term 'financial institution' means any bank and/or trust company, building and loan association or credit union organized or reorganized under the provisions of this act; any bank of discount and deposit, private bank, and loan and trust and safe deposit company, trust company, building and loan association, rural loan and savings association, guaranty loan and savings association, mortgage guarantee company or
credit union organized under the provisions of any law enacted prior to the passage of this act; and any savings bank or small loan company heretofore or hereafter organized under the provisions of any law of this state."

The trust created by the Rehabilitation Trust Agreement does not come within that definition.

Nor does the trust appear to be a liquidation of a financial institution since the institution itself, upon reorganization, continued to do business under its original charter. If the trust is not a financial institution nor the liquidation of such an institution, I find no basis for the application to it of supervision or control by the Department of Financial Institutions, unless a reservation of that right were contained in the trust agreement. Section 47 of the Indiana Financial Institutions Act (18-307, Burns' 1933 Supplement) provides that when a financial institution has been closed or placed on a restricted license it may be authorized to resume business upon such conditions as may be approved by the department. It has been suggested that one of those conditions might well be that the department retain a measure of supervision and control over the liquidation of unacceptable assets, and further, that as a matter of contract such a provision might be included in the trust agreement. However that may be, the only control I am able to find which was reserved by the department in the Rehabilitation Trust Agreement under consideration was that the department should have the right to make amendments to the agreement in order to facilitate the reopening of the Citizens Trust and Savings Bank. Thus, upon the reopening of the bank, even the right of the department to amend would terminate.

The case of Snyder v. Miller, 216 Ind. 143, is somewhat analogous but not very illuminating of this situation. The exact problem was not then before the court. In that case a private bank was taken over by the Farmers and Merchants State Bank and the latter bank assumed all deposit liabilities. In order to liquidate the assets of the private bank, a note signed by the private bank in the full amount of all deposit liabilities was delivered to the Farmers and Merchants State Bank. Later the Farmers and Merchants State Bank was threatened with impairment and certain unacceptable assets
were trustees, including the note in question. The terms of the trust agreement are not set out. The trustees sued upon the note and it was contended that the sole right to bring the action was in the Department of Financial Institutions. In dismissing that contention the court did not consider the effect of the trust agreement except to treat it as a contractual obligation properly enforced by the trustees.

In the instant case, although the Department of Financial Institutions may exercise supervision and control over the Citizens Trust and Savings Bank, residuary beneficiary under the trust agreement, I am of the opinion that it has no direct supervisory power over the trust itself.

DIRECTOR OF STATE PERSONNEL: Eligibility lists—limitation of time for which provisional or emergency appointee may be employed deemed suspended during war emergency.

March 6, 1944.

Opinion No. 22

Hon. Dudley A. Smith,
Director of State Personnel,
Indiana Personnel Board,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

Your letter of recent date in substance requests an official opinion upon the following question:

"Is it permissible under the general intent of the Indiana Personnel Act, as stated in Section 1 of the said Act, to interpret Section 23 of said Act, in regard to the making of provisional appointments throughout the emergency of the present war, in such an administrative manner as to permit the continuance of provisional appointments until such time as appropriate eligible lists can be established and certifications made?"

Your letter further states that the employment situation is such that it is impossible to provide eligible lists for the