

necessary employees who will be essential in the carrying out of such a reassessment? Does the State Board of Tax Commissioners have the power and authority to fix the amount of the compensation of assessing officers who are required to make a reassessment under its general order, and can it compel the issuance of warrants by county officials of the payment therefor, although the county council refuses to make any appropriation?"

This question is in two parts. In answering the first part, I desire to say that, upon the basis of this opinion, no appropriation by the county council is necessary. However, I think the right and duty devolves upon the county council to fix the per diems and salaries of assessors and deputies and I do not think your Board has anything to do with that particular feature. The answer to the second part of the question is, therefore, that your Board has no authority in the fixing of compensation of assessors or of their deputies but the party performing the service can compel the issuance of warrants by the proper county official for the payment of the costs including salaries within the limitation fixed by the Board in its order without an appropriation by the county council.

INSURANCE COMMISSIONER: Deposits by Indiana Insurance Companies in banks within foreign state, but not required by law, whether such companies are entitled to credit for same in making up their deposit liability.

May 14, 1943.

Hon. Frank J. Viehmann,
Insurance Commissioner,
State of Indiana,
Indianapolis, Indiana.

Dear Mr. Viehmann:

This will acknowledge receipt of your letter of May 1, in which you request an official opinion as follows:

"May we respectfully request an opinion as to whether or not an Indiana insurance company may receive credit for deposits held in a bank of a foreign State or Country primarily for convenience of operations in the same manner as Sub Section D of Section 153 permits credit for deposits held in other States or Countries requiring such deposit to be held within the boundaries of such States."

In regard to deposits by life insurance companies, Section 153 of Chapter 162 of the Acts of 1935 (39-4208 Burns' 1940 Replacement) provides as follows:

"(a) * * * Upon ascertaining, in the manner above provided, the net reserve value of all policies in force in any life insurance company organized and doing business in this state, the department shall notify said company of the amount thereof, and within sixty (60) days after the date of such notification, the officers of such company shall deposit with the department, solely for the security and benefit of all its policyholders, assets in an amount, invested as required by the provisions of this act, which together with the sum already deposited with the department and such additional sums as may be deposited by said company with other states or governments, pursuant to the requirements of the laws of such other states or governments in which said company is doing business shall be not less than the amount of such ascertained valuation of all policies in force. * * *

"* * *

"(d) * * * If, pursuant to the law of a foreign or alien state or country in which an Indiana life insurance company is doing business, securities belonging to such a company are required to be deposited within the boundaries of such foreign or alien state or country, credit for the amount of such deposit, not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such foreign or alien state or country, may be taken by the company as an offset against its deposit required under this law."

It will be noted, upon reading Subsection (d) as above quoted, that those deposits for which credit may be taken by the company are deposits required "pursuant to the law of a foreign or alien state or country." The answer to your question will turn upon the definition of "required pursuant to law." Volume 37 of the permanent edition of Words and Phrases contains, at page 104 et seq., a number of definitions of a similar phrase, "required by law." In those various case definitions, "required by law" is interpreted to mean required by statute or by the exercise of an appropriate power conferred by statute.

"Excise and Income Tax Acts, providing that, in determining net income of insurance companies to be taxed, any addition 'required by law' to be made within the year to reserve funds may be deducted from gross income, applies to reserves required by rules and regulations of state insurance departments, when promulgated in the exercise of an appropriate power conferred by statute. *Maryland Casualty Co. v. United States*, 40 S. Ct. 155, 157, 251 U. S. 342, 64 L. Ed. 297."

"Phrase 'required by law', in statute providing that in case of a life insurance company net income means gross income less amount equal to 4 per cent. of mean of reserve funds 'required by law' and held at beginning and end of taxable year, included only reserve directly pertaining to life insurance, and did not include other reserves, even though required by state statute regulatory of business authorized to be carried on by life insurance company. Revenue Act 1928, Sec. 203(a) (2), 26 U. S. C. A., Sec. 203 note. *Helvering v. Illinois Life Ins. Co.*, 57 S. Ct. 63, 64, 299 U. S. 88, 81 L. Ed. 56."

See also *State ex rel. Minniear v. Eckman*, 205 Ind. 550, at page 555:

"The word 'requires' is definite, and prefixing the words 'absolutely' or 'positively' gives it no new meaning and adds nothing more than would be indicated by a positive tone of voice in speaking the word."

Subsection (d), I believe, should be similarly interpreted.

It is, therefore, my opinion that an Indiana insurance company may not receive credit for deposits held in a bank of a foreign state or country, which are not required by the law or regulation of that foreign state or country and which are held for the convenience of the insurance company.

DEPARTMENT OF PUBLIC WELFARE: Eligible lists, establishing same.

May 14, 1943.

Hon. T. A. Gottschalk, Administrator,
Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 2, 1943, requests an opinion in substance as follows:

“We would like your official opinion as to what law controls concerning the eligible lists from which the county boards of public welfare shall appoint the county director of public welfare, that is, whether Senate Bill 172 effective March 3d, 1943, controls the selection of eligible lists for that office or does that power solely pertain to the duties of the state department of public welfare?”

“Please give us your official opinion whether these eligible lists shall be furnished by the state department of public welfare or the state personnel board.”

Senate Bill 172, Chapter 101 of the Acts of 1943, was approved on March 3, 1943, and became effective that day under an emergency clause. Section 1 of said Act in substance abolished the State Personnel Board as then existing, and terminated, revoked and abolished all terms of offices and employments made pursuant to Section 60-1301 et seq., Burns' 1942 Supplement, Chapter 139, Acts of 1941.