

It is my opinion that in view of the quoted language the proposed board created by House Bill No. 39 could not make any rule or regulation which would conflict with any of the specific provisions of the law regulating disposal and rendering plants and that any rules or regulations which might be adopted pursuant to the provisions of Section 7 would be construed as supplemental to the provisions of the specific act regulating such disposal and rendering plants. However, the question might arise as to whether or not the title of the act as written is broad enough to include any specific power and authority to regulate or control the operation of a disposal and rendering plant.

**WEIGHTS AND MEASURES, BUREAU OF: Eligibility of
former inspector,—whether new examination required.**

February 5, 1943.

State Bureau of Weights and Measures,
State House,
Indianapolis, Indiana.

Gentlemen:

I have your letter of February 1, in which you request an interpretation of Sections 4 and 6 of Chapter 86, Acts 1926, in a case where “* * * the State Commissioner of Weights and Measures is being requested to establish, without examination, the eligibility of a former inspector of Weights and Measures who resigned her position in 1926 after serving in that capacity for approximately one year. The company examination was conducted by Mr. I. L. Miller, State Commissioner of Weights and Measures at that time.”

Section 6 of Chapter 86 provides two standards of eligibility, the second of which, and the only one here involved is: those persons are eligible for appointment as inspectors who “have passed an examination * * * to test the ability of the person so examined to perform the duties of a county or city inspector of weights and measures.” In view of the wording of the statute, it is my opinion that a person once rendered eligible under the Act and not disqualified for any reason

therein provided remains eligible for later appointment without further examination.

DEPARTMENT OF INSURANCE: Whether insurance agents may be legally classified for licensing upon the sole basis of method of payment.

Validity of section 209 of insurance code.

POLICE POWER: Classification of insurance agents.

February 8, 1943.

Department of Insurance,
State House,
Indianapolis, Indiana.

Gentlemen:

I have your letter of February 3, in which you request an opinion upon the apparent constitutionality of Section 209, of the Indiana Insurance Law, relative to qualifications for agents' licenses and particularly that part of Section 209 which provides that only those representatives may qualify for a license who operate "on a commission basis only."

In *Hartford Co. v. Harrison*, 301 U. S. 459, 1936, a similar provision of a Georgia Statute was held unconstitutional, because in Georgia there was additional statutory provision for licensing mutual agents who were on either a salary or commission basis and stock company agents only if they operated on a commission basis. Obviously, the Indiana Statute contains no such discrimination against agents of stock companies.

The more recent case of *Osborne v. Ozlin*, 310 U. S. 53, although involving a somewhat similar statute of Virginia, does not pass directly upon the police power aspect of the question.

As a question of police power, the connection between public health, safety or welfare and a requirement that agents be compensated on a commission basis only appears to be rather tenuous. Concededly, any opinion as to the ability of the statute to withstand a charge that it unreasonably interferes with property rights or liberty of contract must necessarily