STATE EGG BOARD: Whether Board appointed by Governor from lists selected by various organizations is a legal Board.

March 8, 1943.

Mr. E. R. Menefee,
Executive Secretary-Treasurer,
State Egg Board,
c/o Hassil Schenck,
Farm Bureau Building,
Indianapolis, Indiana.

Dear Mr. Menefee:

This will acknowledge receipt of your letter of March 5, 1943, requesting a letter from me as to the validity of the appointment of the present members of the State Egg Board of Indiana. The present members of the Board were appointed by Governor Schricker pursuant to the provisions of Section 1 of Chapter 232, Acts of 1941, page 893. This section provides that: the Board shall be composed of seven members appointed by the Governor, and that the persons appointed should be selected from a list of not less than three persons submitted and recommended to the Governor by the following organizations, to wit:

State Poultry Association of Indiana, Inc.;
Indiana Farm Bureau, Inc.;
Indiana Retail Grocers' and Meat Dealers' Assn., Inc.;
Indiana Chain Store Council, Inc.;
Indiana Poultry and Egg Improvement Assn., Inc.;
Agricultural Experiment Station, Purdue University;

and one member at large to represent the consumer.

Under the law, as declared and established by the Supreme Court of Indiana in the case of Harrell v. Sullivan (1942), 40 N. E. 2d 115, the provisions of Section 1 of Chapter 232, supra, restricting the Governor to the appointment of a person recommended by each of the above associations is unconstitutional and void. However, the Governor did accept the recommendations made by each of the various associations and appointed the present members of the Board from the list of names submitted to him. When this was done each member of the Board, as now constituted, became the
appointment of the Governor to the same extent and as effectively as if Section 1 of Chapter 232 had not required him to make such appointments. It is a firmly established rule of law that, where a person is elected or appointed to an office under an unconstitutional statute, before such statute is adjudged unconstitutional, such person is a de facto officer and his acts are valid in respect to the public, whom he represents, and a third person with whom he deals, notwithstanding there was a want of power to appoint him in the body or person which professed to make such appointment.

Standard Oil v. Henry, 192 Ind. 171;
Felker v. Caldwell, 188 Ind. 364;
Brossman v. Michigan City, 105 Ind. 259.

For the reasons above stated, it is my opinion that the appointment of the present members of the State Egg Board by Governor Schricker is legal and valid in every respect.

Trusting that this fully answers your inquiry and will relieve the minds of the members of the Board as to any question concerning the legality of their appointment.

AUDDITOR OF STATE: Whether Auditor may pay expense of transporting a prisoner to the State Reformatory, who has been found guilty of escaping from State Farm.

March 9, 1943.

Mr. Richard T. James,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 26, 1943, in which you request an opinion on the following subject:

"The Act relative to such escape states that when a person is found guilty of escaping from the Indiana State Farm they shall be sentenced to the Indiana State Prison (Chapter 122, Acts 1927, B. R. S. 10-1808). Payments for such services are authorized under the provisions of Chapter 124, Acts 1919, amended by Chapter 183, Acts 1921, B. R. S. 49-1318."