Therefore, I am of the opinion that a provision could be inserted in a labor contract between the union and the employer, which, if properly drawn, would not constitute a violation of the above statutes prohibiting assignment of wages.

INSURANCE DEPARTMENT: Authority of Title Insurance Companies.

March 22, 1943.

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

Dear Sir:

I have before me your letter concerning the Lake County Title Company of Crown Point, Indiana, in which you ask for an official opinion as to the company’s authority under its charter to do a certain type of business which will later be set out. The Lake County Title Company was organized under “The Voluntary Association Act” enacted by the Legislature in 1901, using section 18 of the Act as the authority for the organization. This section was amended in 1919, Acts of 1919, page 429, so as to provide as follows:

"Such association may be formed for one only of the following purposes: * * *
"Section 18. To organize companies for the purpose of carrying on the business of insuring titles to real estate, and to make abstracts, loans and collections in connection therewith, and to buy, own, hold and sell real estate and collect rents thereon, in the manner to be fully stated in such articles, or for the purpose of making abstracts, loans and collections."

As originally enacted, the section read as follows:

"Sec. 18. To organize companies for the purpose of carrying on the business of insuring titles to real estate, and to make abstracts, loans and collections in connection therewith, in the manner to be fully stated in such articles."

This company was organized in 1905 and before the enlarged purpose was authorized by the amendment of the section in 1919. It is stated further that the company thus organized has not undertaken to avail itself of any of the more recent acts passed on the subject.

In setting out the objects for which the company was organized it was provided as follows:

"The objects for which this corporation is established are:

"To make and prepare abstracts of title to real estate; to make, own and control a complete set of abstract books of the records of title of all real estate situated in Lake County, Indiana; and to do and perform all things necessary to carry on and engage in a general abstracting business; and to furnish for individuals and the public generally, complete abstracts of title to real estate, upon request therefor;

"To carry on the business of insuring the validity of titles to real estate and guaranteeing the validity therefor, and to furnish complete abstracts of title to such real estate in connection therewith;

"To borrow and loan money, taking personal or other security for the payment thereof, and to secure the payment of any loans made by mortgages upon real estate; to act as agent in making loans for individuals and corporations and the public generally, and to make collections therewith; and to carry on a general collection business, collecting rents, accounts, notes, mortgages, drafts and claims of any kind whatsoever."

The activities concerning which the question arises are described by the company as follows:

"(A) Receive money from a purchaser of real estate and a deed from the seller, and when the company is prepared to guarantee title in accordance with the instructions of both buyer and seller, record the deed, deliver the purchase price to the seller, and issue and deliver to the purchaser a title guarantee policy covering the title he has received through the transaction."
“(B) Receive the proceeds of a mortgage loan from the mortgage lender and disburse such funds as directed, simultaneously with the recording of a deed or mortgage or both and thereupon to issue its guarantee policy covering the mortgage and the title conveyed by the deed.

“(C) Receive the proceeds of a mortgage loan from the mortgage lender, disburse the same as a construction loan and issue a fee or mortgage title guarantee policy, or both, to cover the transaction.

“(D) Receive funds from mortgage lender and disburse such funds on construction loans as the buildings progress, under a contract with the title company which provides in substance that the title company guarantees the construction of the building in accordance with the contract between the owner and the contractor, and that the title company agrees with the money lender that the title company will within a limited time fixed in the contract between the money lender and the title company turn over to the money lender a mortgage completed in accordance with the requirements of the Federal Housing Authority and ready for FHA insurance, or that the funds of the money lender turned over to the title company by the money lender will be returned to the money lender.”

The question submitted is as to whether the company, without amendment of its articles, may engage in the above type of activities.

Fundamentally, as I see it, the question does not involve a consideration so much of the limitations of the statute, but rather as to whether the articles as written contain the authority for such activities as are above set out under Paragraphs A, B, C, and D.

The activity described under Subdivision A, supra, provides that the company may act as escrow agent for the buyer and the seller of real estate, with authority to deliver the purchase price to the seller, to record the deed for the buyer, and to deliver to the buyer a title guaranty policy covering the title sought to be conveyed by such deed. The delivery of a title guaranty policy of course is authorized by the articles of incorporation but, in my opinion, there is no authority in
such articles to authorize the other activities described in said paragraph. In this connection it will be noted that the first two paragraphs of the objects as set out in the articles has to do entirely with the preparation and furnishing of abstracts of title and with the business of insuring the validity of titles. The third paragraph of such objects as set out in the articles would authorize the company to engage in a loan business and as agent in making loans. But Paragraph A, supra, in addition to providing for the guaranteeing of titles, has to do not with loaning money or acting as agent in making loans, but has to do with purchases and sales and acting as escrow agent in such transactions.

I desire now to pass to a consideration of paragraph numbered B, supra. This paragraph provides that the company may receive the proceeds of a mortgage loan from the mortgage lender and disburse such funds as directed, simultaneously with the recording of a deed or mortgage or both. It seems to me that this activity is perhaps authorized under Paragraph 3 of the objects wherein it is provided that the company may act as agent in making loans for individuals and corporations and the public generally. As I view it, the other authorities provided under Paragraph B, supra, are clearly incidental to the acting as agent in the making of such loans.

As to Paragraph C, supra, I do not think such company is authorized, under its declared objects, to act as agent of the owner in the construction of a building which to a certain extent is involved in making disbursements of a mortgage loan on a construction contract.

A consideration of Paragraph D, supra, requires a separation of the activities therein described. I think the company would be authorized to act as agent in the loaning of money. I do not think, however, that such company would be authorized to undertake the duty of disbursing such funds as agent for the mortgagee as construction loans are disbursed as the construction progresses. This would be especially true with reference to guaranteeing the construction of the building in accordance with the contract between the owner and the contractor. Clearly, in my opinion, this company would not have the authority to issue such a contract of guaranty. It of course would be authorized to guarantee the title to real estate.