other agency, or that the results of the examination should be conclusive on the State Department. After the results of the examination are reported to the State Department it must exercise its own discretion in the matter, taking into consideration the results of the examinations.

If the State Department, in its discretion, deemed it proper to do so, it could "establish" the eligible list as recommended by the Indiana Personnel Board, or it could revise or reject the list. Or the State Department could establish a list after giving its own examination as authorized by the statute. In any event, before any list of eligible applicants could be submitted to any county department, it should appear by record made by the State Department that the list was "established" by the State Department.

Therefore, in answer to your questions, I beg leave to state that in my opinion Senate Bill 172, Chapter 101 of the Acts of 1943, does not control the selection of eligible lists from which the county departments of public welfare shall appoint the county directors, and that the eligible lists for such appointments shall be established and furnished, subject to the methods permitted above, by the State Department of Public Welfare.

STATE CHEMIST AND SEED COMMISSIONER: Commercial fertilizers, whether companies selling same may return unused tags.

COMMERCIAL FOOD STUFFS: Whether unused tags may be redeemed more frequently than once a year.

May 17, 1943.

Mr. F. W. Quackenbush,
State Chemist and Seed Commissioner,
Purdue University Agricultural Experiment Station,
Lafayette, Indiana.

Dear Sir:

I have before me your request for an official opinion in which you ask whether it is possible for commercial fertilizer companies to return tags sold to them under the provisions of Sections 15-1001 to 15-1006, inclusive, of Burns' Indiana Stat-
utes Annotated, 1933, and receive a refund for the cost of such tags less the printing expense. The basis for this question grows out of the fact, as stated by you in your letter, that the War Production Board Conservation Order M-231 and Food Production Administration Order 5 excludes certain grades and analyses of fertilizer from sale in the State of Indiana. You further state that many of the fertilizer companies had in stock a large inventory of Indiana state fertilizer tags which cannot now be used because of this order.

You also request an official opinion on a similar situation growing out of the enforcement of the Indiana Feeding Stuffs Control Law. You state, in this connection, that due to government orders and shortages of feed materials, formulae for mixed feeds change rapidly, and, consequently, feed manufacturers find they have a considerable investment in tags which have become obsolete. You state that their situation would be improved if you could exchange tags more frequently than once a year as has been done in the past, and submit the question as to whether you may simply announce that tags will be redeemed more frequently or whether the change must be approved first by the committee set up by the 1943 Legislature.

I shall consider your questions in the reverse order of their statement in your request. On January 26, 1937, this last question was before this department for consideration and in an opinion to the State Chemist bearing that date, it was held that there was no authority in the Act which would authorize the adoption of a rule or regulation permitting such exchanges to take place. Apparently, however, in order to supply the power, which the opinion withheld under the then existing law, Section 3 of the Act was amended, to contain, among other things, the following provision:

"* * * Provided, further, That the state chemist may, at his discretion, exchange, under reasonable conditions and circumstances, unused tags for new tags."

Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated, 1933, Sec. 16-1003.

The law now, therefore, authorizes the adoption of such a rule as is now in effect, permitting exchanges once a year,
and it seems to me to be clear that, with respect to the element of time when the exchanges may be made, the State Chemist is authorized to provide by rule for a more frequent exchange. I am not sure that I know just what you mean by the “committee set up by the 1943 Legislature”, unless you refer to Chapter 213 requiring officers, boards, and commissions clothed with power to make, promulgate, adopt, and enforce rules or regulations to first submit them to the Attorney General and, after approval by the Attorney General and by the Governor, to file a copy with the Secretary of State and the Legislative Reference Bureau. This provision is Chapter 213 of the Acts of 1943. It contains no emergency clause and, therefore, is not now in effect so that at the present time submission of such rule to the Attorney General would not be required.

With respect to your first question, the law on that subject is found in Burns’ Indiana Statutes Annotated, 1933, Section 15-1001 to Section 15-1006 as already indicated. The fee provision of the law is contained in Section 15-1005, which reads as follows:

“The professor of agricultural chemistry at Purdue University is hereby constituted the state chemist of Indiana, and it shall be his duty to comply with the provisions of this act so far as they relate to him, and for his expenses and compensation in inspecting and analyzing fertilizers, he shall receive, for analyzing a sample of fertilizer and making his certificate of the same, two dollars ($2.00), for labels furnished, one dollar ($1.00) per hundred (100). The state chemist, or any person by him deputized, is hereby empowered to procure from any package of commercial fertilizer offered for sale or found in Indiana a quantity of fertilizer not exceeding two (2) pounds: Provided, Such sample shall be drawn during reasonable business hours, or in the presence of the owner of the fertilizer, or of some party claiming to be the representative of the owner. Any person who shall prevent or strive to prevent the state chemist or any person deputized by the state chemist from inspecting and obtaining samples of fertilizers, as provided for in this act, shall be deemed guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty dollars ($50.00) for the first offense, and not less than one hundred dollars ($100) for each subsequent offense. The state chemist is hereby empowered to prescribe and enforce such rules and regulations relating to fertilizers as he may deem necessary to carry into effect the full intent and meaning of this act.”

No express provision is made for the exchange of tags or labels. Apparently, however, these fees belong to the Professor of Agricultural Chemistry at Purdue University who, by the Act, is constituted the State Chemist of Indiana. It seems to me that upon that basis, the State Chemist, or his employer, Purdue University, would have the right to make reasonable regulations providing for refunds on tags sold to commercial fertilizer companies, but which can no longer be used in Indiana, owing to controlling Federal orders and regulations which exclude from sale in the State of Indiana grades and analyses of the product on which such tags could be legally used.


PUBLIC INSTRUCTION: Distribution of school funds.

May 19, 1943.

Hon. Richard T. James,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. James:

I am in receipt of your letter dated May 12, 1943, requesting my official opinion as to the proper interpretation to be placed upon the following language contained in Section 3 of House Bill 50, which will be Chapter 263, Acts of 1943, to-wit:

“Provided, however, That on or before June first preceding any year in which distributions under this