GENERAL ASSEMBLY: House Bill No. 39, whether same is valid, if enacted.

STATE LIVE STOCK SANITARY BOARD: Whether "fowl" are comprehended in the term "live stock".

Constitutional objections to House Bill 39.

February 3, 1943.

Hon. Howard Johnson, Chairman,
Senate Agricultural Committee,
Indianapolis, Indiana.

Dear Senator Johnson:

This will acknowledge receipt of your letter of February 1, 1943, requesting an official opinion as to the constitutionality of House Bill No. 39, entitled: "A Bill for an Act concerning the prevention and control of infectious and contagious diseases of domestic animals; creating the Indiana State Live-
stock Sanitary Board, and the Veterinary Examining Board; providing for the appointment of an Indiana State Veterina-
rian; prescribing their powers and duties; repealing all laws in conflict therewith, and making an appropriation therefor."

Your letter states:

"We would like your opinion as to the constitutionality of this bill.

"Section 1 provides for the appointment, by the Governor, nominees from the Indiana State Dairy Association, State Poultry Association and the Indiana Veterinarian Association. The bill provides that the Governor shall appoint. Is this constitutional?

"The question is also raised as to whether the State Poultry Association of Indiana can be included in an act pertaining to the Livestock Sanitary Board.

"Section 4 provides the tenure of the present Livestock Sanitary Board shall be terminated and the bill also provides for the creation of a new board. Is this constitutional?

"Section 7, beginning at line 9, provides for the regulation and control of rendering plants. At present there is a specific law on disposal plants and rendering plants. Does this section in any way affect the present disposal plant act?"

Answering your first question relative to the constitution-
ality of the provision of Section 1, which provides that the
governor shall appoint as members of the new board nominees submitted by the Indiana State Dairy Association, State Poultry Association and the Indiana Veterinarian Association, I beg to advice that in my opinion such provision and requirements are unconstitutional under the law as established and declared by the Supreme Court of Indiana, in each of the following cases, to-wit:

Tucker v. State (1914), 218 Ind. 614; 55 N. E. (2d) 270;

Until each of these two cases have been modified or overruled by the Supreme Court of Indiana the law as therein declared and established is binding upon the General Assembly in the State of Indiana. However, it is my opinion that the legislature does have the right to provide that persons appointed as members of the proposed board shall be persons possessing certain qualifications leaving the right to select the particular individual possessing such qualifications to the discretion of the executive.

Your second question states that a doubt has also been raised as to whether the State Poultry Association of Indiana can be included in an act pertaining to the live stock sanitary board. The title to House Bill No. 39 is “A Bill for an Act concerning the prevention and control of infectious and contagious diseases of domestic animals * * *.”

Volume 3 of Permanent Edition of Words and Phrases, page 464, contains the definition of animals as construed by various courts of last resort in the United States to include all moving creatures excepting human beings.

State vs. Bogardus, 4 Mo. App. 215, 216.

“The word ‘animal’ is used in this Topic in a broad sense to include not only animals strictly so-called but also birds, fish, reptiles and insects.”

Restatement, Torts, Sec. 506.

“The common-law rule requiring owner of domestic ‘animals’ at his own peril to keep them on his own land or within inclosures includes domestic turkeys and
poultry, since word ‘animals’ viewed in broad sense is used in contradistinction to a human being, and signifies an inferior living creature generally having the power of self-motion.”

Tate v. Ogg, Va., 195 S. E. 496, 499.

In Illinois it has been expressly held in the case of McPherson v. James, 69 Ill. App. 337, and under the Illinois Statute that:

“A domestic fowl is an ‘animal.’”

The Indiana Supreme Court in the case of State vs. Bruner, 111 Ind. 98, held that a domestic fowl, i.e., a goose, was an animal within the purview of the statute prohibiting cruelty to animals.

In view of each of the above cases it is my opinion that your second question must be answered in the affirmative and that the State Poultry Association can be included in an act pertaining to the live stock sanitary board and that the title to House Bill No. 39 is sufficient for said purpose.

Your third question asks whether it is constitutional for Section 4 of House Bill No. 39 to terminate the tenure of the present Live Stock Sanitary Board and create a new board. It is my opinion that the answer to this question is in the affirmative for the reason that it is a well established rule of law that where the legislature has the power and does create a board or bureau it also has the power and authority to terminate the same and create a new board or agency to perform the duties of the former board.

Your fourth and final question states that beginning at line 9, Section 7, of House Bill No. 39, it provides that the proposed Indiana State Live Stock Sanitary Board shall have the right to establish rules and regulations pertaining to the operation of rendering plants for the disposal of dead animals and you inquire as to whether or not this section in any way would affect the present disposal plant act which is a specific law regulating disposal plants and rendering plants.

At line 18 of Section 7, is the following language:

“Provided, that said board shall not be empowered to make any rule contrary to the enacted laws of the State of Indiana * * *.”
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