DEPT. OF PUBLIC WELFARE: Whether employee paid by the calendar month who works on all days of such month except legal holidays, should suffer a deduction in his pay involved in such legal holidays.

November 21, 1941.

Mr. T. A. Gottschalk, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Gottschalk:

I have your request for an official opinion as to whether a permanent employee in the State and County Welfare Departments who is paid a monthly salary and whose effective date of employment was the first day of the month should receive his full monthly salary if he worked every working day of the calendar month but did not actually work on the first day thereof because it was a legal holiday.

"The word 'month' shall mean a calendar month, and the word 'year' shall mean a calendar year, unless otherwise expressed; and the word 'year' be equivalent to the words 'year of our Lord.'”

1-201 Burns Ind. Statutes, 1933.

Notwithstanding the above definition, it has been held in two cases that a month may mean 30 days, but in each of the two cases this construction was dependent upon the context.

Heaston v. Cincinnati R. R. Co. (1861), 16 Ind. 275, 280;

"Salary is a fixed annual or periodical payment for services, depending upon the time and not upon the amount, of services rendered.” (Citing cases.)

Vol. 7 Words & Phrases, 6288, 6289.

In an Indiana case the court quoted the definition of salary as used by Webster and Worcester. Webster defined the word "salary" to be "the recompense or consideration stipulated to
be paid a person for services; annual or periodical wages or pay;". Worcester's definition included "an annual or periodical payment for services; a stipulated periodical recompense; a stipend; wages; hire; an allowance."

Board of School Commissioners of Indianapolis v. Wasson, Treasurer (1881), 74 Ind. 133, 142.

Where employees are paid by the month, the compensation for such employment is based upon the time that such employee is to work during the month under the regulations of the department for which he is working. If he works the full working period of the calendar month, he should receive the monthly salary applicable to the work for which he was employed and at the rate fixed by such employment. A permanent employee who had been previously working for such department at a monthly salary would receive pay for the first day of the month, if the same was a legal holiday, and would do no more work in that month, if he worked the full working period, than a new employee who was as fully qualified to do the work who also worked for such full working period. I can see no distinction between the two characters of employment as long as each does the same amount of work. The salary is for *monthly compensation*, and if each employee puts in the full working period and does the work for which he is engaged at the monthly salary fixed, there should be no discrimination, and he should receive the same pay as others who do the like quality and quantity of work for the same period of time in the same department. If a new permanent employee was unable to work on the first day of the month because the place of work would be closed because it was a legal holiday, an older employee in point of service would also be unable to work upon the legal holiday in question. Neither the senior or junior employee in point of service would be working upon the legal holiday in question, and both of such employees would be putting in the full quantity of work if they each put in every working day for the rest of the month, and under such circumstances each should receive the same amount of pay in the same position for the same amount of working time. There should be no deduction of compensation of either of such employees for the legal holiday, and your question is thus answered.