the set of facts as presented by the Board in its letter of the 27th, the actions taken by the Board were legal.

SMALL LOAN COMPANIES: Whether Department of Financial Institutions has the power to limit the number of licensees.

August 28, 1940.

Hon. Robert R. Batton, Chairman,
Commission for Financial Institutions of
The State of Indiana,
Indianapolis, Indiana.

Dear Mr. Batton:

I have your letter of August 22, 1940, in which you ask for an official opinion on the following question presented in your letter:

"In a case where an individual, a co-partnership, or a corporation, has made a proper application for a small loan license, and has given the bond required by the Act, and has tendered the license fee, and the Department is unable to find any fault with the financial standing and character of the applicant, the members of the co-partnership, or the officers and directors, if the applicant be a corporation, individual or partnership, can the Commission, nevertheless, deny the application for a license on the ground that in the opinion of the Commission there are already sufficient licensees located in the county proposed to be served by the applicant, and already sufficient, efficiently operated capital among the licensees already located in such county to furnish adequate service to all necessitous borrowers therein?"

In my judgment your question should be answered in the negative. The language used in paragraph eight of Section 18-3001 Burns', 1933, lends some strength to the position that the Commission may limit the number of licenses issued in any one community. However, it is my opinion that the language used in the third paragraph of Section 18-3001, supra, is mandatory and if the applicant meets the require-
ments of said paragraph, it becomes the duty of the Commission to issue the license. The Legislature, in my opinion, could give the Commission power to limit the number of licensees in any one community, but I do not think it has given this power to the Commission under the present Act.

The foregoing opinion is fortified, in my judgment, by the general law governing the Department of Financial Institutions. It provides for an application for the organization of banks, trust companies, building and loan associations, saving banks and credit unions. No application shall be approved by the Department until a public hearing in the city or town in which the applicant proposes to establish such institution. Notice of the hearing must be given and a hearing held. The Department is required to make an examination relative to the financial standing and character of the incorporators or organizers and of the public necessity for the financial institution in the community. If after such examination and investigation, the department finds there is no public necessity for such institution, then the application shall not be approved. As to the foregoing named institutions, the legislature has laid down a clear and explicit rule governing the granting of applications and the power of the department. We find no such legislation as to small loan companies. There is no power given the department to determine whether there is a public necessity in the community for a small loan company. No public hearing is required to determine such necessity.

On the contrary, it appears from Section 18-3001, supra, that upon filing an application, the payment of the license fee, the approval of the bond and the finding by the department that the financial standing and character of the applicant is such that the business will be operated honestly and fairly within the purpose of the Act, then a license shall be issued to the applicant. It seems to me the department has no other alternative. Why the legislature made such a distinction between banks, trust companies, building and loan associations and credit unions and small loan companies is not known, but in my judgment there is a clear distinction. If the legislature had intended to give the department the power to determine the public necessity of a small loan application, then it would certainly have used language as clear as it used relative to the other named financial institutions.
As heretofore stated, your question is answered in the negative.

INSURANCE: Life insurance broker not authorized by law.

August 28, 1940.

Honorable Frank J. Viehmann,
Insurance Commissioner, Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

You request an official opinion by your letter of August 13th which reads as follows:

"This Department respectfully requests an opinion from you in regard to the contents of the enclosed letter.

"This letter requests a reply to the question as to whether or not this Department will issue to an Indiana corporation a brokers license which will permit said corporation to act as a life insurance broker."

The enclosed letter to which you refer, written you by a firm of attorneys of this state, is an exhaustive, carefully prepared, six page analysis of the question involved. I quote that part of the letter which furnishes a summary of their opinion:

"1. The general definition of an insurance broker allows the broker to engage in all kinds of insurance business, which necessarily includes life insurance, (39-3203-j).

"2. The chapter of the insurance law, (Chapter 45) providing for the licensing of an insurance broker makes no exception of life insurance, and so we must conclude that life insurance was intended to be included within the scope of the broker's license. The only contrary statement in the entire insurance law is contained in the caption to this chapter and a section of the insurance law, (Section 39-5032) expressly