"2. Can they issue special bond issues for sponsoring W.P.A. projects?"

In reply I wish to advise you that I have made a very careful examination of all statutes relating to the questions propounded and I am of the opinion that each question must be answered in the negative.

INSURANCE, DEPARTMENT OF: Whether company may acquire its own stock upon default of payment of note given for purchase price.

February 8, 1940.

Hon. George H. Newbauer,
Insurance Commissioner,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter concerning the Standard Life Insurance Company, an Indiana corporation in which you request an official opinion in answer to the following question:

"Does the purchase by said company of its capital stock pledged by a stockholder to such company to secure payment of promissory note given by him in payment therefor, upon default by him, constitute a violation of Section 147, sub-section (i) of the Indiana Insurance Law?"

Section 147 of the Indiana Insurance Law referred to by you is quite lengthy and I do not think it will be necessary to copy same in its entirety. The relevant portions seem to consist of the three opening lines and subdivisions (i) and (r). I will, therefore, copy herein only the above designated portions indicating the omissions by asterisks. Except for said omission the section reads as follows:

"Section 147. All investments of any life insurance company, in order to be eligible for deposit under section 153 of this act, shall be made as follows, and not otherwise:

* * * * * * *
“(i) In common or capital stock of any solvent company incorporated under the laws of any state of the United States, the District of Columbia or the Dominion of Canada or any province thereof which in the last seven fiscal years earned an average of six per cent per annum upon the par value of its capital stock (in the case of stock having no par value, upon its issued or stated value). No life insurance company shall be permitted to invest in its own stock.

* * * * *

“(r) Nothing in this law shall prohibit a company from accepting in good faith, to protect its interest, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company.”


The underlined language of subdivision (i) supra seems to make it very clear that the Company referred to can not invest in its own stock unless the literal provision thereof is modified by some subsequent provision, or, at least, that such investments would not be eligible for deposit under section 153 of the Act. It has been urged that since the language used is in the section of the Act dealing with eligible deposits, it should be restricted to apply only to the availability of such stocks as eligible deposits; but I am inclined to believe that it should not be so restricted. The language is very direct and explicit,—“No life insurance company shall be permitted to invest in its own stock.” The language is not contained in a proviso and having regard to the way in which it appears in the subdivision, I think it should be considered as absolutely prohibiting such company from investing in its own stock for any purpose except as provided in subdivision (r) supra, which I think sufficiently and literally answers your question.

Note the language,—

“(r) Nothing in this law shall prohibit a company from accepting in good faith, to protect its interest, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company.”
Upon the basis of the above provision, I think if the stock referred to is accepted in good faith to protect the Company's interest, it may be accepted either in payment of or to secure a debt due to the Company, and your question is answered accordingly.

LIBRARY, INDIANA STATE: Fair trade law, application and effect as to libraries and books.

February 14, 1940.

Miss Hazel B. Warren,
Chief of Extension Division,
Indiana State Library,
Indianapolis, Indiana.

Dear Miss Warren:

I have at hand your letter of February 7, 1940, wherein you request an official opinion concerning the provisions of Chapter 17, Acts 1937—commonly known as the Indiana Unfair Trade Practices Act. The questions asked are answered in the same order as presented by your letter.

Your first question, desiring to know whether books are commodities under the provisions of the second section of the act, is answered in the affirmative. In my opinion, a book is a commodity and is included under the terms of the statute in that the unfair trade practices sought to be eliminated by the act are just as applicable to unfair trade agreements in the book publishing and selling business as in any other business in this state.

It is to be noted, however, that the provisions of the act are optional to a seller, wholesaler, or retailer and permit the parties to govern the terms of any or all resales of the commodity covered by the contract. This being the case, if you have not entered into such a contract with a wholesaler or publisher of books, you are not bound by any of the trade practices agreed to by previous contracts between the seller and other persons purchasing and re-selling books. It may be that a publisher who distributes solely by agents will refuse to sell you at a less price than he sells to all jobbers,