to become depositories of public funds. In the event that the depositories and the boards of finance agree upon the depositories to be designated for particular funds, the several banks and trust companies shall file proposals and the board of finance shall designate depositories and “deposit the public funds within their disposal and, as nearly as practicable, maintain the balance in each depository according to the terms of the agreement. No agreement shall be made which shall require or permit any local officer to deposit funds which are within the disposal of the several boards of finance or maintain the balance thereof during the biennial period other than in the proportion that the total resources of each designated depository bears to the total resources of all designated depositories. The sum total of the maximum amount of all public funds within the disposal of the several boards of finance shall be considered as one fund in determining the proportions in which the public funds shall be deposited and balances maintained.” (Our italics.)

It is my opinion that the italicized portion of this section is conclusive and controlling. The answer to your question is therefore in the negative.

PUBLIC INSTRUCTION, DEPARTMENT OF: State Board of Education, authority to specify that teachers’ salaries have priority over other bills in State School Relief Territory and to earmark State School Relief Funds; enforceability of regular teachers’ pay day in State School Relief Territory.

July 12, 1939.

Hon. Floyd I. McMurray,
State Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter referring to chapter 167 of the Acts of 1933, as amended by chapter 197 of the Acts of 1935, and requesting an official opinion based on an interpretation thereof in answer to the following questions:

“1. Does the State Board of Education, in the distribution of State School Relief funds have the author-
ity to specify that salaries of teachers have prior claim over other bills in State School Relief Territory?

2. Does the State Board of Education have the power to ‘earmark’ State School Relief funds?

3. Can a regular pay day for teachers in State School Relief Territory be enforced?”

The only part of chapter 197, supra, which is pertinent to the questions is section 1 which amends section 7 of the 1933 Act (Acts of 1933, Chapter 167, page 867) and which provides as follows:

“Said township trustee or board of school trustees shall use the amount so received from the State, first, in the payment of any outstanding and unpaid items of operating expense included in the allowance originating such receipt from the common school relief fund, and any surplus in such receipt remaining thereafter shall be applied either for the payment of the salaries of elementary school teachers, or high school teachers employed in his township or its town or city for the current year, to enable him or it to maintain schools therein of the required term, or for current operating costs as hereinbefore provided in section 3 of this Act, or both, and shall use it for no other purpose.”


The reference to “section 3 of this act” is a reference to section 3 of the 1933 Act which provides for the preparation by the local officials of a certificate of certain facts bearing upon the eligibility of the unit making the certificate for school relief.


This section contains the following proviso:

“Provided further, That no items of expense for equipment; teachers’ salaries; institute fees; transportation contracts; transfers; fuel; janitor services; supplies; references, supplementary or miscellaneous books; magazines or repairs shall be included unless the expenditure has been approved and recommended by the board of department of education; * * *”

However, the above proviso contains no authority affecting or authorizing the control of the *distribution* of school relief after the same has been allowed. (See, however, Acts of 1935, *supra*, which governs *payment* of claims.) The proviso goes only to the prior approval of the several items of expense before they can be included in the certificate originating the final award of the relief. The award of the relief follows and is made dependent upon the action outlined in section 5 of the 1933 Act. After providing for the certificate of need by the local unit as provided for in section 3, already referred to, and after providing for the submission of the certificate of need to the proper county superintendent for his approval, as provided in section 4, it is provided by section 5 as follows:

"Upon receipt of such statement from the county superintendent, the board of department of education shall make a thorough examination of such statement, and for the purpose of determining the amount which shall be allocated to such school taxing unit out of the funds provided for in section one of this Act, shall submit such statement and all supporting files to the State Board of Accounts, which board shall thereupon proceed through its state examiner, deputy examiner, or field examiner to make a thorough audit of same *under and pursuant to the rules and regulations promulgated by the board of Department of Education* and shall certify its findings to the board of Department of Education. Said board of Department of Education or said State Board of Accounts shall have the right and authority to call upon for and require of any department, agency or governmental division of the State, or of any person, any additional information which may be necessary to a proper finding on such certificates; the said board of Department of Education shall thereupon, *under and pursuant to the regulations heretofore promulgated by such board of Department of Education*, as in this Act provided, determine the amount of such relief fund which shall be allocated to the said school taxing unit and shall thereupon certify the said determination to the Auditor of State. AND THE AUDITOR OF STATE SHALL AT ONCE DRAW A WARRANT ON THE TREASURER OF STATE PAYABLE OUT OF THE FUNDS PROVIDED FOR IN SECTION
ONE OF THIS ACT, IN FAVOR OF SAID TOWNSHIP, TOWN OR CITY, PAYABLE TO THE TRUSTEE OF SUCH TOWNSHIP OF TREASURER OF SUCH SCHOOL TOWN OR CITY AND MAIL THE SAME TO HIM; Provided, That the expense of auditing such statement by the State Board of Accounts shall be paid out of the moneys to be withdrawn from the relief fund as provided in section 10 of this Act."
(Our italics and capitals.)


I have called special attention to certain language in the above section by the use of italics and capitals. The language in italics in connection with the "rule and regulation" provisions of section 6 of the 1933 Act appears to give very broad power to the State Board of Department of Education, but that power is limited by the requirement that such rules must be general, and if classification is undertaken, it must be based upon such inherent differences in situation, having regard to the purposes of the Act, as will wrest the classification from being arbitrary and special in character. See my opinion in the Opinions of Attorney General (1937), page 276.

However, the above provision of section 5 does not go so far as to authorize the determination of anything dealing with priority of payment of claims. The language is "the said board of Department of Education shall thereupon under and pursuant to the regulations heretofore promulgated by such board of Department of Education, as in this Act provided, determine the amount of such relief fund which shall be allocated to the said school taxing unit and shall thereupon certify the said determination to the Auditor of State."

The duty of the Auditor of State thereupon becomes mandatory in the language of section 5, already set out, to draw a warrant in the amount determined.

I have gone into this question because, at first blush, it might be deemed that the rulemaking power of the State Board of Department of Education is broad enough to make possible an affirmative answer to your questions. But it is fundamental that a rule cannot be made and enforced which is contrary to the statute governing the same question. That statute in this case is section 1 of chapter 197 of the Acts of 1937, already
quoted. Its terms are plain and unequivocal and, in my opinion, govern the local officers in their use of the school relief fund allocated to them. The statute (chapter 197 of the Acts of 1937) does not enlarge the powers of the state board, but in my opinion, furnishes a statutory check upon the local officers, which, if violated by any such officers, should result in a charge by the State Board of Accounts, when the account is examined, recoverable by proper legal action. The answer to your first question is in the negative.

I desire to say with respect to question No. 2, that I think the statute requires local officers to so far earmark funds received by them from the relief fund as to demonstrate that they are used in their entirety as provided in section 1 of chapter 197 of the Acts of 1937. I do not think there is any authority in the state board, either by rule or otherwise to earmark such funds. As already pointed out, when the amount has been determined and certified to the State Auditor, he is required to issue his warrant without limitations, and the local officer upon receiving it then must so handle such funds as to comply with chapter 197, supra.

As to your third question, in my opinion, the right of the state board to fix a regular pay day for teachers in State School Relief Territory is doubtful, other than as is contained in the uniform contract for teachers. The statutory requirement that such contracts in State Aid Territory be approved by the state board in order to make them valid has been held to be unconstitutional by the Supreme Court of Indiana in an opinion rendered on June 13, 1939, in the case of Marion School Township of Pike County, Indiana v. Charles F. Smith. Moreover, the enforcement of such a rule, in my opinion, would have to be done by individual teachers by the ordinary legal process appropriate to such a situation which would render same very burdensome and inadequate.

I trust that this discussion sufficiently answers your questions.