It will be noted that section 6 of the act, requires each such agency to file with the industrial board a schedule of fees, charges and commissions which it expects to "charge and collect" for its service. The same section also makes it unlawful for any such agency to "charge, demand, collect or receive" a greater compensation for its services than is provided in the schedule filed with the industrial board. It seems clear that the purpose of requiring the monthly report to include a report of fees, as provided in section 9, *supra*, is to enable the board to determine whether or not the agency has violated the law by exceeding the fee schedule theretofore submitted. The mere *charging* of such an excessive fee would constitute an unlawful act under section 6, regardless of whether or not all of the fee so *charged* had actually been *received*. It is my opinion, that you have interpreted section 9 correctly, as intending a report of the fee *charged*.

Further support of this view is found in section 9, *supra*. The section requires the keeping of a "permanent record" containing certain information regarding each person placed for employment, and the submission of a copy of "such record" monthly to the industrial board. Clearly the legislature did not intend the submission each month of a copy of the entire record made to that date, including persons placed prior to the monthly period covered by the report and already reported. It intended a monthly report covering only those persons placed for employment during the month. This being true, a report of the fee actually received during the month would not furnish the board with the information which the act clearly contemplates, where the fee is payable on an installment basis and only partial payment has actually been received.

ELECTION COMMISSIONERS, BOARD OF: Elections—Interpretation of Registration Act of 1933.

October 19, 1933.

Hon. Robert E. Mythen, Clerk,
State Board of Election Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of October 10, 1933, submitting certain questions relative to the interpretation and operation of chapter 178 of the Acts of the General Assembly of 1933.

Chapter 178, *supra,* is entitled "An act providing for the permanent registration of voters and prescribing penalties for the violation thereof." The first section of the act provides that:

> "It shall be unlawful for any person to vote at any general, primary, or city election held in this state unless such person is, at the time such election or primary, a registered voter under the requirements of this act."
>
> Acts 1933, page 886.

Your first question is as follows:

> "In view of chapter 178 of the Acts of 1933 (Acts 1933, page 886), can there legally be an election held in any county of the state in 1934 if there is no registration of voters in such county, as provided by said chapter?"

In view of the provisions of section 1 above quoted, it seems to me that there is only one possible answer to your question. Other laws, it is true, require an election to be held in 1934, but in the very nature of the case, if there is no registration of voters, there will be no legal voters.

You next inquire whether it is necessary that the county council make an appropriation to cover the necessary expenses of such registration. I think the answer to your question is obvious. Section 5 of chapter 178, *supra,* provides expressly that "except as hereinafter otherwise provided, the expense of registration and the preparation therefor, as herein provided, shall be paid out of the general fund of the county treasury, by the board of county commissioners, in the same manner as election expenses are paid, *and the county council shall make the necessary appropriations therefor.*" (Our italics.)

Acts 1933, page 887.

It is the mandatory duty of the county council to make the necessary appropriation. I see no escape from such clear language as the language above quoted.

You next inquire whether the clerk of the circuit court under section 9 of said act, can procure or contract for the necessary blanks and supplies or incur any other expense required by said act prior to such appropriation being made. In this

connection, I call your attention to section 5886, Burns Annotated Indiana Statutes of 1926, which provides that:

> "No board of county commissioners, officer, agent, or employee of any county shall have power to bind the county by any contract or agreement or in any other way to any extent beyond the amount of money already appropriated by ordinance for the purpose of the obligation attempted to be incurred and all contracts and agreements, express or implied, and all obligations of any and every sort beyond such existing appropriation are declared to be absolutely void."

The above section was held to apply to contracts for the printing and delivery of election ballots in the case of Board, etc., v. Babcock, 33 Ind. App. 349. I do not think the provisions of section 9 of the Acts of 1933, *supra*, change the rule. This is especially true, I think, because section 5 places the mandatory duty to make the appropriation upon the county council. In other words, an appropriation was deemed necessary, since otherwise there would have been no reason for the provisions contained in section 5. In my opinion, therefore, the clerk is not authorized to bind the county in incurring any election expenses of the character described in section 5 of the act without a previous appropriation by the county council.

Your third question is as follows:

> "If, at the time such registration is to be conducted under the provisions of said act, there has been no appropriation made by the county council for the expenses thereof, can the clerk legally appoint deputy registration officers for such county, as required by section 6 of said act, or can such deputies, if appointed, be paid for their services from the county treasury?"

I think the answer to this question is obvious from the answers made to the previous questions. It seems to me, however, that the question is more academic than real. It certainly can not be true that an entire county will suffer itself to be disfranchised by the neglect of such a clear and mandatory duty of its county council.

Your fourth question is as follows:

> "In the event an appropriation is necessary before any expense may be incurred by the clerk, under said

act, and no appropriation has been made at the time the act provides for such registration to be held, what shall be the duties of the clerk in respect to the same?"

As a practical matter, there is very little that the county clerk can do under the conditions set out in the above question. He is, of course, charged with certain duties under the act and these duties he must perform, but practically all of them are dependent upon an appropriation previously made that would enable him to proceed.

Your fifth question is whether the wilful refusal of the county council to make the appropriation is a violation of the act. I think sufficient has already been said to show clearly that it is the mandatory duty of the county council to make such appropriation and its failure is a violation of the act.

TREASURER OF STATE: State sinking fund—whether interest on institutional trust funds are liable to interest diversion and whether such funds are protected. Purdue University—whether interest on funds received from U. S. are protected by state sinking fund.

October 21, 1933.

Hon. William Storen,
Treasurer of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter submitting the following:

"Two questions have arisen with reference to certain funds held by the state educational institution as trust funds and federal funds turned over to the university. The federal government holds that any depository interest earned on funds given to the university because of federal participation belongs to the federal government.

"This interest does not, therefore, come to the state sinking fund. The question arises that should a bank fail which is a depository for the educational institution, would the sinking fund be responsible for funds lost by suspension of said depository?