> 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?

"The second question is in reference to certain trust funds held by the educational institution which are deposited as public funds, but the institutions have retained the depository interest earned thereon as part of this trust fund.

"The question is, should the institutions retain this depository interest as part of the fund, and if they do is the state sinking fund responsible for any loss through suspension of the depository?"

In my opinion, the right to participate in the benefits of the state sinking fund for public deposits depends upon whether the deposit to be secured is liable to a diversion of interest thereon to create and sustain the fund. Assuming that such funds are not liable to such interest diversion, in my opinion, no liability against the state sinking fund for public deposits would exist in the case of loss of such funds through bank failure.

The question as to the liability of such funds to interest diversion is involved in an action now pending in the Supreme Court awaiting decision. The decision of the Supreme Court will be conclusive on that point and pending such decision, I do not think it is desirable that this department express its opinion other than by way of argument in the above case.

INSURANCE COMMISSIONER: Whether legal reserve life insurance company may invest its funds in bonds proposed to be issued in Huntington School City.

October 21, 1933.

Hon. Harry E. McClain,
Commissioner of Insurance,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of October 10, 1933, in which you ask whether a legal reserve life insurance company, organized and operating under the laws of Indiana, may lawfully invest its funds in bonds or other evidences of indebtedness proposed to be issued by the School City of Huntington, Indiana, under the provisions of chapter 240 of the Acts of 1933.