measures and the county councils of such counties shall appropriate such sums of money as are necessary for the salary and maintenance of the office.”

In all cases, it seems clear that the exact amount of salary, subject to the minimum of $1,200 per year in counties of thirty thousand population or more, and the maximum of $5 per day in counties of less population, is to be fixed by the board of commissioners, and it is mandatory upon the county councils to appropriate such sums of money for salaries as are fixed by the boards of commissioners within the limitations provided by the act. It is also mandatory upon county councils, in counties where inspectors are appointed by the commissioners, to appropriate “such sums of money as are necessary for * * * maintenance of the office.” (My italics.)

In cases where the same inspector serves for both the county and city, under section 4 of the act, supra, it is mandatory upon the county council to appropriate the county’s share of salary and expenses, “as agreed upon” between the board of commissioners and the city officials.

I would answer both of your questions in the negative as to all cases referred to, assuming of course, that the appointment of such inspector has actually been made by the proper board of county commissioners and his salary fixed by such board in compliance with the statute.

GOVERNOR: Executive Administrative Act—whether it includes committee on buildings and grounds.

August 21, 1933.

Hon. Wayne Coy,
Under Secretary to the Governor,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you submit the following question:

“Does the executive administrative act include the committee on buildings and grounds?”

Section 2 of chapter 4 of the Acts of 1933, provides as follows:

“Sec. 2. That there be and there is hereby created and established eight executive including administrative
divisions of the executive including the administrative department of the State of Indiana, to exercise and discharge all of the executive including the administrative powers, duties and functions of said department, the same known and designated as and being:

(1) Executive department;
(2) Department of state;
(3) Department of audit and control;
(4) Department of treasury;
(5) Department of law;
(6) Department of education;
(7) Department of public works;
(8) Department of commerce and industries.


The language "the executive including the administrative department of the State of Indiana" clearly refers to the executive and administrative departments of the state government as distinguished from the legislative and judicial departments as the same are separated and defined in the Constitution, and it is the definitely expressed intent of the legislature in the language above quoted to consolidate all the powers, duties and functions of that department of government as then or thereafter to be administered in the eight departments therein named. Moreover, in defining such powers, duties and functions, it is evident that the legislature intended to make available all laws then in force including acts passed by the 1933 session, setting out such powers, duties and functions, without specific re-enactment, it being expressly provided that "all such powers, duties and functions shall continue without lapse, diminution or abatement to and in such department."


This method of legislation, whereby other statutes or the law as applied to some certain subject are adopted as a part of an act, while ordinarily it is not done on so large a scale, is not new. It is well recognized that such adoption of previous laws may be accomplished without their re-enactment, and I do not think any objection can be made to chapter 4, supra, upon that ground. It must be apparent, however, by lodging all executive and administrative powers, duties and functions in the above named eight departments, that every law granting
to boards, commissions or bureaus such powers, duties and functions, except as limited by the Constitution, are to that extent modified by chapter 4, supra.

The legislature did not in said chapter 4, specifically define the duties of each separate department created by it, but provided that all together should exercise all of such powers, duties and functions as belonged to the executive and administrative departments of the state government, and authorized the governor "to assign, and/or reassign, transfer and/or retransfer" such powers, duties and functions as were then exercised by different officers, boards, bureaus, and commissions to said departments as in his judgment would best promote the public interest.

This is a large power but its delegation to the governor does not, in my opinion, constitute a delegation of legislative power to the executive. All of the powers, duties and functions which the governor may assign and transfer are powers, duties and functions created by the legislature. The agencies to exercise them were likewise created by the legislature. What was left for the governor to do in that behalf was not to create new powers, duties or functions, but to designate as authorized by the legislature, which of the departments so created should perform any particular power, duty or function.

As said by the court, in the case of Wetzel, etc. v. McNutt, et al., No. 1462 in equity, U. S. Dist. Ct., Southern District of Indiana, Indianapolis Division—

"The plaintiff insists that the secretary is not the person threatening to abrogate the contract; that the contemplated cancellation emanates from the governor acting under and by virtue of the law hereinbefore mentioned. The governor acting under the provisions of the act, has transferred the particular activities here involved to another department. He has, under the same act, authority to control the tenure office of all appointive administrative officers. Plaintiff contends that the grant of power is an unlawful delegation of legislative power.

"The enactment of legislation governing the issues of license for automobiles originally placed the authority in the secretary. As an officer of the state, it was his
duty to administer the law the legislature thus enacted. Now the legislature has said that instead of granting such power to a particular officer, it will grant to the chief administrative officer power to determine which of his subordinate officers shall exercise it, and the governor in pursuance of such power has transferred these administrative powers from the secretary to another department. The legislature has, in effect, said that the governor as chief administrative officer may designate which subordinate member of the administrative machinery created by the legislature shall administer the automobile license law. This is not a delegation of legislative authority."

The executive order effecting the transfer in the matter now under consideration is as follows:

"BE IT THEREFORE, HEREBY ORDERED, That the powers, duties and functions of the bureaus and departments of government of the State of Indiana, as now and before the promulgation of this order existing, be and the same are hereby transferred and assigned, respectively, to the respective departments named in section 2 of chapter 4 of Acts of the General Assembly for the year 1933, as designated and set out in this order, such assignments and transfers to include and comprise all state governmental powers, duties and functions of existing bureaus, departments, commissions, agencies, activities, or subjects designated, under any and all laws of the State of Indiana, including Acts of the General Assembly for year 1933, whether or not such law or laws be cited in this order, and such laws are made a part of this order, as fully as though written herein."

* * *

"It is further ordered by the governor of the State of Indiana that the powers, duties and functions of the following named departments, bureaus, commissions, offices, agencies and activities, be and the same are hereby transferred and assigned to the department of public works:"

* * *
“Board of Public Buildings and Property—Superintendent of public buildings and property:

“All powers, functions and duties relative thereto as provided by Acts of the General Assembly, as follows:

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and all acts amendatory thereof and/or supplemental thereto.”

* * *

“It is further hereby ordered by the governor of the State of Indiana that each and all of the respective funds, monies and appropriations heretofore made and now in existence and on hand, and all appropriations made by the general assembly for 1933, belonging to all of the departments, bureaus, offices and commissions be, and the same are hereby transferred to the department to which such offices, bureaus and commissions are by this order assigned and placed under the control and in the hands of the respective officers of the respective department to which the same is transferred.” * * * (Our italics.)

* * *

Effective June 15, 1933, at 12:00 o’clock midnight.

The above order does not abolish the board of public buildings and property made up of the governor, the secretary of state and auditor of state, acting ex officio, as such, but it does transfer its powers, duties and functions to the department of public works, which I think the governor is authorized to do under chapter 4 of the Acts of 1933, even though the members constituting said board are all constitutional officers. The board itself, is not a constitutional office. It is of legislative creation and, being of legislative creation, a subsequent legislature may modify, amend or repeal the act creating said board.

It is not entirely clear, however, from the order above set out, whether it was the intention to strip said board of its entire power, duty and function, in which case there would be no reason for continued existence, or whether the intention
was that it should continue to function as an agency of the
department of public works to which its powers, duties and
functions were assigned. I think the governor may under
the authority of chapter 4, supra, appoint an entirely different
agency within the department of public works to perform the
duties and functions of the board of public buildings and
property. If that has been done, the duties of the board of
public buildings and property have apparently been superceded
by that agency. If such an agency has not been provided, I
think it may be fairly assumed that said board should continue
to exercise its functions under and subject to the department
to which its functions have been transferred. Your question,
in any event, is answered in the affirmative.

AUDITOR OF STATE: Pension, old age—whether both man
and wife can receive same.

Hon. Floyd E. Williamson,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of August 21, 1933, asking
whether or not, both man and wife can receive an old age
pension under the provision of the Acts of 1933.

Chapter 36 of the Acts of 1933, page 164, relating to old
age pensions, does not specifically prevent the grant of pen-
sions to both man and wife at the same time, provided that
both comply with the requirements set out in section 4 of the
act. However, paragraph 2 of section 5 of the act provides
that where a husband and wife are living together, the value
of their combined properties shall be the criterion in determin-
ing the property valuation of the applicant.

Section 7 of the act provides that

"On the death of a person pensioned under this
act, or the survivor of a married couple, if the pen-
sioner is married, the total amount paid as a pension
to either or both of such married couple, together with
the simple interest at three per cent per annum, shall
be allowed and deducted from the estate of such per-
son or persons by the court having jurisdiction in the
settlement of the estate."