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 in-
terest 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 in-
terest earned on funds given to the university because
of federal participation belongs to the federal govern-
ment.

"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 institu-
tion, 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 de-
posited as public funds, but the institutions have re-
tained 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, or-
organized and operating under the laws of Indiana, may law-
fully invest its funds in bonds or other evidences of indebted-
ness proposed to be issued by the School City of Huntington,
Indiana, under the provisions of chapter 240 of the Acts of
1933.