cretionary with the common council of the city. The state board of tax commissioners, in my opinion, would not be authorized to substitute its judgment for the judgment of the common council of the city involved. The making of such a transfer does not in any sense devolve upon such board.

Your attention also is called to section 2 of the 1933 act, supra, which provides that such a transfer may be prevented by a remonstrance by three per cent of the resident taxpayers other than those who pay poll tax only.

CONSERVATION DEPT.: Hunting and fishing—right of legislature to discriminate as to certain areas or waters—delegation of powers to conservation department.

November 7, 1933.

Hon. Kenneth M. Kunkel, Director,
Fish and Game Division,
Conservation Department,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter of October 3, 1933, enclosing a copy of a resolution passed at a recent state meeting of the Indiana division of the Izaak Walton League of America and asking my opinion concerning matters contained therein. That portion of the resolution material to your inquiry reads as follows:

"NOW, THEREFORE, BE IT RESOLVED, That the league in convention assembled favors the enactment of timely and fitting legislation, placing absolute power and authority, in conjunction with the recommendations of recognized sportsmen's organizations, in the department of conservation of the State of Indiana to open and close hunting and fishing seasons at its discretion, to open and close various streams, lakes, and parts thereof to fishing and various areas and counties to hunting, and in short to clothe the department with the weapon of authority to provide an abundance of fish and game."

You ask whether an act embodying these proposed changes would be constitutional.
The question can only be answered in a general way, inasmuch as the constitutionality or unconstitutionality of such an act would depend to a large measure upon the manner in which it might be drafted and the extent of authority attempted to be conferred upon the department of conservation. It embraces, in effect, two separate and distinct questions, as follows:

1. The power of the legislature to open certain waters and areas to fishing and hunting while closing certain others and to vary the length of open seasons in different areas and waters.

2. The power of the legislature to delegate authority to a state administrative department in determining the opening and closing of seasons or the opening and closing of certain waters or areas.

The first question, may be disposed of readily. Statutes regulating or restricting fishing or hunting rights in particular waters or particular portions of the state, have been upheld in numerous instances. The courts have taken the view that such statutes do not deny equal rights, privileges or immunities as long as they apply equally to all persons who may avail themselves of such rights.

Long v. State, 175 Ind. 17;
McCready v. Virginia, 94 U. S. 391;
Osborn v. Charlevoix Cir. Judge, 72 N. W. (Mich.) 982;
State v. Hals, 156 Pac. (Wash.) 395;
State v. Adams, 218 S. W. (Ark.) 845;
26 Corpus Juris 625;
27 Corpus Juris 946.

The second question presents considerably more difficulty, in view of the general rule that functions of the legislature must be exercised by it alone and cannot be delegated.

Groesch v. State, 42 Ind. 547;
Langenberg v. Decker, 131 Ind. 471;
State v. Barrett, 172 Ind. 547;
12 Corpus Juris 839.

This rule arises from provisions of Article 4, section 1, and Article 1, section 25, of the Indiana Constitution. These constitutional provisions are as follows:
“The legislative authority of the state shall be vested in the general assembly, which shall consist of a senate and a house of representatives. * * *” (Article 4, section 1, supra.)

“No law shall be passed the taking effect of which shall be made to depend upon any authority except as provided in this Constitution.” (Article 1, section 25, supra.)

However, the recent trend of decisions has been toward a more liberal interpretation of these constitutional provisions, to the end that rather large ministerial powers may be granted by the legislature to officers, departments or boards in passing regulations or making determinations of fact upon which the application of the law may or may not be invoked. This view follows the theory that upon the exercise of the discretion granted the ministerial agency, it is the legislature and not the ministerial agency that actually pronounces the law. In other words, the action of the ministerial agency springs from the law and not the law from the action of the agency. When the ministerial duty has been performed, the law operates upon the things so done, but while unperformed, the law remains ready to be applied whenever the preliminary conditions exist.

McPherson v. State, 174 Ind. 60;  
Isenhour v. State, 157 Ind. 517;  
12 Corpus Juris 846, 911.

The general limitation is still recognized, however, that the legislature cannot abdicate its own police power on any subject and confer such power on a board to be exercised according to the uncontrolled discretion of such board.

12 Corpus Juris 911;  
Noel v. People, 58 N. E. (Ill.) 616.

In conclusion, it is my opinion that an act could be framed so as to attain substantially the results sought in the resolution quoted above. However, extreme care should be exercised in drafting the act, to the end that the law is contained in the act itself, and only determinations of fact and the right to issue regulations necessary for the proper carrying out of the object and spirit of the law, are left to the department of con-
ervation. Further, the discretion granted to such department should be confined within certain limits prescribed in the act itself, and provision should be made for due notice by publication of findings made or regulations issued.

The State of Michigan has a law similar to the one proposed. (Sections 6138-6143, Compiled Laws of 1929.) Its constitutionality was attacked and upheld in the case of People v. Soule, 238 Mich. 130. I call it to your attention as a possible guide to be followed in drafting appropriate legislation in this state.

RICHMOND STATE HOSPITAL: Insane: law as to disposition of unclaimed body of insane patient in state hospital for the insane.

Richard Schillinger, M. D.,
Medical Superintendent,
Richmond State Hospital,
Richmond, Indiana.

November 8, 1933.

Dear Sir:

I have before me your letter in which you request an opinion as to the proper disposition of the bodies of persons dying in the hospital.

Section 13730 of Burns Annotated Indiana Statutes 1926, makes it the duty of every public officer, agent, and servant of every county, township, city, village or other municipality, and of any and every almshouse, poorhouse, prison, morgue, hospital, asylum, jail, lockup, station house, workhouse or other public institution, and every charitable or benevolent institution supported in whole or in part at public expense, having in his or their possession, charge or control, the dead body of any person not claimed by any relatives or legal representatives, which body may be required to be buried at public expense or at the expense of the institution, excepting only the dead bodies of such persons as shall have died with smallpox, diphtheria or scarlet fever—under such circumstances said section makes it the duty of such agent or officer to notify the anatomical board or such person as may be designated by the board.

Said section further provides that the notice shall be given in writing and forwarded to said anatomical board within