is at the latter value, the depreciation fund would rightly be included in the order of sale. But, where, as in the present case, the value and sale price has been determined at the present value, taking into consideration all depreciation up to the present time, an order making the transfer of the cash in the depreciation fund mandatory, would amount to confisca-
tion.

It is, therefore, my opinion that you may properly approve an order permitting the Frankfort Water Works Company to sell to the City of Frankfort, without including in the order the transfer of the depreciation fund, if such sale is made at the present value of the property used and useful in the serv-

PROBATION, DIRECTOR OF: Whether present probation officers are required to take examinations to qualify for reappointment.

November 23, 1933.

Hon. Francis D. McCabe,
Director of Probation,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion as to the necessity of requiring an examination of present proba-
tion officers before they can be reappointed.

Section 4 of chapter 260, of the Acts of 1933, provides in part as follows:

"The state probation department shall from time to time conduct competitive examinations to establish lists of persons eligible for appointment as probation officers; shall prescribe the qualifications for entrance to such examinations and shall establish rules for the conduct of such examinations and for the eligibility of candidates for appointment."


The section further provides, that

"No person shall hereafter be appointed as a proba-
tion officer in any court in this state who has not been certified by the department in pursuance of such rules and examinations."
In my opinion, chapter 260 of the Acts of 1933, creating and establishing a state probation department, contemplates that probation officers shall hereafter be appointed only from the eligible lists established as the result of competitive examinations. I do not find anything in the law which exempts present officers from that examination.

In my opinion, all future appointments of probation officers must be from the lists of eligible persons as established under the provisions of section 4, supra, and that this rule applies to present probation officers coming up for reappointment.

ACCOUNTS, BOARD OF: Superintendent of waterworks—whether mayor of fourth or fifth class city may serve as such superintendent.

November 27, 1933.

Hon. William P. Cosgrove,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an opinion as to whether a mayor of a fourth or fifth class city in Indiana also may serve such city in the capacity of waterworks superintendent with or without compensation.

I desire to say at the outset, that I do not think the fact that the service may be rendered without compensation, is controlling so far as concerns the legality of the appointment. It may affect the question as to whether anyone is harmed by the appointment, but it does not affect the question as to the legality of the appointment.

Chapter 233 of the Acts of 1933, for example, makes provision for the allowance by the common council in its discretion of an additional salary to the mayor of a city, owning one or more public utilities for services rendered on account and for such utility or utilities. But such service is rendered as mayor and not as waterworks superintendent, it being expressly provided that the salary thus augmented (which is the salary of the mayor) shall be in full for all services performed for the city “including services for any public utility or utilities owned and operated by such city.”

Chapter 235 of the Acts of 1933, approved on the same day that the act for the classification of cities above referred to