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
was approved, provides a method whereby cities owning and operating waterworks plants may create a department of waterworks. Under the above act the waterworks plant is under the control and management of the board of trustees of the waterworks department who shall have power among other things to employ a superintendent of waterworks. Construing these two acts together, as I think they must be construed, in view of the fact that the mayor may be allowed an additional salary for services rendered on account of the city's ownership of a public utility, I do not think he could also be appointed as superintendent of the waterworks. I think this conclusion must follow, because section 21 of chapter 233, provides that the salary paid the mayor shall be in full for all services rendered, including his service for the public utility, which provision would be defeated by his election or employment as superintendent of waterworks to which of course, an additional compensation might attach.

Without entering upon the discussion in detail of the various other statutes for the acquisition and operation of a waterworks plant by a city, I call your attention to the fact that in some cases, the authority to employ the superintendent of waterworks rests with the board of public works, which is appointed by the mayor. In such case, sound public policy would, I think, prevent a body appointed by the mayor from exercising authority to appoint the person responsible for their appointment to some lucrative office.

I can see no reason which would prevent legislation making the mayor of a fourth or fifth class city, superintendent of the municipally owned waterworks of such city by virtue of his office, but as the statutes now exist, the relation between the mayor and the authorities authorized to control such plants is such that, in my opinion, public policy would forbid such appointment; in addition to which, I think section 21 of chapter 233, of the Acts of 1933, in providing for an additional salary to mayors of cities owning public utilities and making such salary, all the salary which he may receive for service rendered for such utility,—I think said section clearly precludes his appointment as waterworks superintendent. What he does for the utility, he does as mayor and he is paid for such service as mayor and not otherwise.