ACCOUNTS, STATE BOARD OF: Public Welfare Act of 1936, whether burial expenses of blind persons payable under said Act must be paid by county; also whether state may reimburse county for same.

July 1, 1936.

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

Dear Sir:

I have before me your request for an official opinion in answer to the following question:

> "With regard to the payment of burial expenses of a blind person, as provided by Section 61 of the Welfare Act of 1936, is this burden placed upon the county without reimbursement by the state, or is it the intent of this Act that it will be repaid by the state and the state can recover this amount from the estate of the blind person under Sec. 69 of the Welfare Act, where the blind person has a sufficient estate to pay such claim?"

Two Sections of Chapter 3 of the Acts of 1936 are relevant in the consideration of your question. The first is Section 61, which reads as follows:

> "Sec. 61. Burial allowance. Upon the death of any recipient who is receiving assistance as a blind person, designated as such in this Act, such recipient shall be eligible for, and there shall be paid the sum of seventy-five dollars for the funeral expenses of the decedent, subject to the rules and regulations of the state department. The sum of seventy-five dollars shall be paid by the county department, when and in the event the estate of the deceased is insufficient to pay such funeral expenses, and when and if the persons legally responsible for the burial of the deceased are unable to pay such funeral expenses. If the deceased, or the persons legally responsible for the deceased, do not possess a burial plot, an additional amount not to exceed twenty-five dollars shall be paid for a burial plot for the deceased, which shall be paid, in addition

to the seventy-five dollars hereinbefore provided for, by the county department."

Acts of 1936, page 48.

The second relevant section is Section 69, which reads as follows:

"Sec. 69. Recovery from the estate. On the death of any recipient who is a blind person, the total amount of assistance paid under the provisions of this Act, including funeral expenses, together with 3% interest thereon, shall be allowed as a claim against the estate of such person and shall have priority over all general claims. It shall be the duty of the state department to prepare and file such claims, which shall be filed in the name of the state department, for the benefit of the state department. No claim shall be enforced against any real estate of a blind person who is a recipient while it is occupied by the surviving spouse, and no claim shall be enforced against any real or personal property of a recipient who is a blind person and who has a dependent child or children surviving."

Acts of 1936, page 51.

These two sections are involved in difficulty for the reason that Section 61 expressly and literally provides that the burial allowances are to be paid by the county department and Section 69 equally as clearly provides that the state is to be reimbursed from the estate of the deceased on account of such burial expenses. Such a reimbursement in behalf of the state from the estate of the blind person could be predicated only upon the basis that the state had paid the burial expenses either directly or by reimbursement of the county. A direct payment by the state can hardly be assumed in view of the fact that there is an express provision that the county department shall pay. On the other hand there is no express provision by which the state may reimburse the county. I am obliged, therefore, to resort to construction in an effort to find the intent of the legislature which, when found, must govern. An examination of the files indicates that this Act as introduced provided that the funeral expenses in the case of blind persons were to be paid by the state department. This

was in harmony with the general plan of the Act to place the entire responsibility for assistance to the blind upon the state. As matters then stood, of course, there was no necessity for a reimbursement section, that is, a section providing for the state to reimburse the county, as was the case as applied to old age assistance. However, in the course of the legislative procedure Section 61 was amended so as to provide that the county should pay the burial expenses in the first instance, evidently, I think, having in mind a reimbursement provision similar to the provision as applied to old age assistance. Such an express provision, however, was omitted and the question is whether by construction I am authorized to determine what was clearly the legislative intention, namely, that the amount of such burial expenses should ultimately be paid by the state. I think that a court would be within its legitimate province to so determine in view of the very clear expression in Section 69 that any claim for reimbursement from the estate of the blind person should be filed by the state department and "for the benefit of the state department." In view of the foregoing, I think, the proper procedure would be for the counties to make such payments in the first instance. They should then file claims with the state department for reimbursement, which claims, if otherwise proper, should be allowed.

SINKING FUND FOR PUBLIC DEPOSITS: Whether state may sell claim against bank in liquidation for less than face value pursuant to power of Governor and Attorney General to compromise claims.

July 1, 1936.

Mr. Ross Teckemeyer,
Secretary, Sinking Fund Division,
Department of Treasury,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion as to the right to compromise, in the manner described in your letter, a claim of the State against a public depository bank in process of liquidation. The Governor and Attorney General are expressly authorized to compromise claims in favor of the