WELFARE, DEPARTMENT OF PUBLIC: Whether employees of County Department may be paid prior to certification by State Board that the County Department is organized.

April 16, 1936.

Hon. Wayne Coy,
Acting Administrator,
Department of Public Welfare,
217 N. Senate,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following questions:

"1. If a County Department of Public Welfare employs personnel before the State Department of Public Welfare has certified in writing to the Board of County Commissioners of such county, that the County Department of Public Welfare is organized as prescribed in this Act and is prepared to assume the duties assigned to it by the provisions of this Act, can payment be legally made to the County Director of Public Welfare or other personnel for any employment or services rendered prior to the date of certification?"

"2. Would there be any distinction between types and classes of personnel such that certain classes of persons rendering services prior to date of certification could legally be paid and others could not? If so, please explain."

Chapter 3 of the Acts of the Special Session of 1936 entitled "An Act concerning public welfare," was approved on March 18, 1936, and by virtue of an emergency declared in Section 130 of the Act went into effect immediately after its passage. As respects the particular questions submitted the Act established in each county of the state a county department of public welfare to be administered by the county board of public welfare and authorized the uniting of two or more counties into a district department of public welfare under the conditions outlined in said Act. The Act provided for the appointment in each county of a county board of public welfare consisting of five members. The members of this
board are to be appointed by the Judge of the circuit court of the county. Presumably the Judge of the circuit court should appoint this board with reasonable promptness after the effective date of the Act. The board so appointed is directed to appoint a county director of public welfare who shall be appointed solely on the basis of merit and who shall be the executive and administrative officer of the county board and who shall serve as the secretary of the board. It is noted also that the county board is required to hold one regular meeting each month and such called meetings as may be prescribed by the rules of the board.

Before entering upon the discharge of his official duties the director is required to execute a bond payable to the State of Indiana conditioned for the faithful discharge of his official duties and is required also to subscribe an oath which shall be endorsed upon his official bond and which bond and oath when so executed shall be filed in the office of the Clerk of the circuit court.

Upon its organization and certification by the State Department, the County Department of Public Welfare is charged with the administration of assistance to dependent children in their own homes, old age assistance, service and assistance to persons otherwise handicapped, the care and treatment of dependent, neglected and handicapped children, children in danger of becoming delinquent and such other welfare activities as shall be delegated to it by the State Department of Public Welfare under the provisions of the Act including services connected with the assistance to the blind. Section 120 of the Act provides for a continuation in the previously existing officers, agencies, and boards of all duties which are transferred by this Act to the County Department of Public Welfare "until the State Department of Public Welfare shall certify, in writing, to the Board of Commissioners of any such county that the County Department of Public Welfare is organized, as prescribed in this Act, and is prepared to assume the duties assigned to it by the provisions of this Act."

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The purpose of this last provision is obvious, it being intended to prevent any lapse in the performance of such public welfare services as are provided for in the Act which might
otherwise result from such a sweeping change as the Act contemplates. The Act thus inferentially recognizes the practical impossibility of setting up such an organization immediately and assumes that considerable organization preliminaries will be necessary in the county before a final certification can be made. As already pointed out the first step in such an organization is the appointment of the Board and after that the appointment of the Director whose duty among other things is to act as the secretary of the Board. It is apparent that the Board and the Director will have to consider together the question of the further necessary organization, including the appointment and the fixing of compensation of such assistants as may be necessary to perform the duties required of the county department. They will be required to consider the number of assistants necessary. They will be required to pass upon applications. There will be correspondence between the county department and the state department, all of which are necessarily preliminary to the actual taking over of the full duties to be performed by the county department under the Act. It is probably true that there will be no necessity for the actual appointment of some, at least, of the assistants to the Director which go to make up the county staff, but even such assistants will need to be selected before the state department would be authorized to certify that the county department is organized as prescribed by the Act and is prepared to assume the duties assigned to it by the provisions of the Act.

It seems to me, therefore, that the county Director, and for that matter the personnel of the county department, will be entitled to compensation for their services from the time when they assume and begin performing the duties of their respective offices. There can be no possible question as to when the Director will be required to assume the duties of his office. He will have duties to perform as soon as he is appointed and qualified. As to the other members of the staff, it seems to me that the time when the period of compensation should begin will depend upon when their services begin. It may be that the county department before actual certification can legally use some clerical assistance. That will depend upon the facts as they develop. There is a type of assistants, however, which cannot possibly begin until the department assumes its full duties under the Act after certification by the
state department. As to such personnel their compensation period, in my opinion, begins upon their appointment and subsequent commencement of duties after certification by the state department.

It is evident from the foregoing discussion that your first question cannot be answered categorically except as to the county Director. As applied to the county Director the answer is in the affirmative. As applied to the other personnel the answer is dependent upon the facts as to whether the services required of them is incident to the organization or is a service required of them in fulfilment of the duties of the department after certification. If of the first class the answer is in the affirmative; if of the second class the answer is in the negative.

Your second question is answered in the affirmative. You ask that I explain this answer. I think the previous discussion has already explained it. I think services could be paid for prior to certification which are incident to organization. Services, however, which have to do simply with the fulfilment of the duties of the department after certification, such as investigations performed by investigating visitors, could not be paid for until certification by the state department. This, I think, is quite evident since there would be no such duties to perform prior to certification by the state department.

ALCOHOLIC BEVERAGES DIVISION: Manufacturer's permit—Subsidiary corporation cannot operate under permit of parent corporation but must procure separate permit.

April 17, 1936.

Hon. Paul P. Fry,

Excise Administrator,

Alcoholic Beverages Division,

Indianapolis, Indiana.

Dear Sir:

I have at hand your request for an official opinion upon the following question submitted by you:

"Will a permit issued by the Alcoholic Beverage Commission of Indiana to an Indiana manufacturer of