and I see no legal objection to the employment of the person who is city controller.
Your question No. 1 is answered in the affirmative.

BARBER EXAMINERS, STATE BOARD OF: Transfer of funds may be made from one division to another division of same department provided amount transferred when added to appropriation does not exceed annual collections made by said department.

July 18, 1936.

Mr. Frank McKamey,
Secretary, Indiana State
Board of Barber Examiners,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion which reads as follows:

"Section 21 of the Barbers License Law, Acts of 1933, provides for the establishment of a 'Barbers Examiners Fund.' It also provides that all expenses, including per diem and salaries, shall be paid from this fund, etc.

"Section 22 of the same Act, provides the number of employees that may be employed to carry out the provisions of this Act. In 1935 the Legislature in the regular biennial appropriation bill, appropriated the following amounts:

   Personal Service ............... $9,000.00
   Other Operating ............... $6,000.00

for each year of the period. These amounts are insufficient to carry out the provisions of the Law and during the year just closed, it was necessary for the Governor to advance from his Emergency Contingent Fund $4,172.49.

"The question is, in your opinion, can this Board have the Department of Treasury, acting under provisions of the Board of Finance, transfer from the receipts in excess of the appropriation, sufficient moneys to carry out the provisions of this Act."
Section 21, Chapter 48, Acts of 1933, provides for payment of money from fees and licenses collected to be made to the Secretary of the Board. This money shall be turned over by the Secretary of the Board to the State Treasurer; the Secretary shall also report monthly to the State Auditor on all money received. This money goes into a special fund known as “State Board of Barber Examiners Fund.” The section further provides that the said Board shall certify to the Auditor the amount expended from this fund for expenses, including salaries and per diem of the members. It is noted that the expenses, salaries, and so forth, are all paid from this special fund and that the same do not come from the general fund.

Section 2, Chapter 109, Acts of 1935, same being the biennial appropriations Act, on pages 365 and 366, makes an appropriation, relative to the Board of Barber Examiners, of personal service for nine thousand ($9,000) dollars and for other operating expenses, an appropriation of six thousand ($6,000) dollars. On page 366 the following is noted:

“Such appropriation to be in lieu of any and all provisions heretofore made for the payment of salaries and expenses of said board: Provided, That all fees collected by said board shall be paid to the general fund of the state: and, Provided, further, That the appropriations above made are hereby limited to the amount of fees collected in the same fiscal year.”

It will be noted from the last above quotation that monies collected by the Barber Board are paid into the general fund and not into the State Board of Barber Examiners Fund.

The Acts of 1933, same being Chapter 137, Section 3, reads as follows:

“The department to which such rights, powers and duties may be from time to time assigned or reassigned is hereby given power and authority from time to time to transfer from one fund of the state to any other fund of the state any of the money thereof and/or said department is hereby given power and authority, from time to time, to transfer, assign or reassign from any board, department, commission, office,
or benevolent and penal institution of the state any part of the appropriation or appropriations made therefor to any other board, department, commission, office, or benevolent and penal institution of the state, and when so made the same shall be available for the use of the board, department, commission, office, or benevolent and penal institution to which the same is transferred. When any such transfer is made the portion of the appropriation so transferred shall not thereafter be available to the board, department, commission, office, or benevolent and penal institution to which such appropriation was originally made, unless the same or any remaining portion of the same be re-transferred to such board, department, commission, office or benevolent and penal institution, but such authority shall not apply to trust funds. Any such order of transfer when so made by such department shall be sufficient authority for the making of appropriate entries showing such transfer on the books of the auditor and treasurer of state."

It is noted that the said Department of Finance, as spoken of in said Section 3, is given authority to transfer from any Board * * * any part of the appropriation or appropriations made therefor to any one Board, * * *.

In my opinion this Board can have the Department of Treasury, acting under the provisions of the Board of Finance, transfer from an appropriation made to another Board under the following conditions:

(1) Said transfer must be made from a division of the same department; 

(2) That the amount to be transferred, when added to the amount already appropriated to the State Barber Board, will not exceed the annual collections made by said Board for the fiscal year.