PROBATION DIVISION, STATE: Probation officers—
Whether funds heretofore appropriated for salaries and expenses become a part of the County Welfare Fund.

July 27, 1936.

Francis D. McCabe, Director,
State Probation Department,
State House,
Indianapolis, Indiana.

Dear Sir:

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

"Can funds appropriated for the payment of salaries and expenses of probation officers in the various counties of the State of Indiana be turned over to and become a part of the welfare fund of the county Welfare Department and disbursed therefrom, or do they remain in a special budget and be disbursed as they were before the passage of the Public Welfare Act of March 18, 1936?"

Your question requires a consideration of Section 117 (b) and certain portions of Section 21 of the Welfare Act of 1936. Section 117 (b) provides as follows:

"All money which shall have been appropriated for any of the purposes or for the use of any of the county agencies contemplated in this Act is hereby made available for the use of the county department and shall be transferred to and shall constitute a part of the county welfare fund and may be expended by such board for the respective purposes for which such appropriations were made. No part of the money which, by the provisions of this Act, is transferred during the year of 1936 from the general fund to the county welfare fund shall be repaid to the general fund of the county."


The applicable portion of Section 21, supra, is as follows:

"The director of public welfare and his assistants shall, under the supervision of any court having juris-
diction of persons on probation and in compliance with the laws of this state relating to probation, perform such of the functions of probation officer or agent of the court in any welfare matters which may be before it as the court may direct."


From a consideration of the above provisions it will be observed that Section 117 (b) is intended to provide a county welfare fund with which to defray the expenses of the county welfare department during the year 1936 by making available for the use of the county department of public welfare all appropriations for any of the purposes or for the use of any of the county agencies whose duties and functions are taken over by the county department of welfare.

With that in mind it remains to consider the question as to whether the probation services within a county and for which appropriations may have been made have been taken over by said department. This question must be answered upon the basis of the provision of Section 21, supra, which has been quoted earlier in this opinion. It will be observed, I think, that the above quoted language is not sufficient to transfer to the county department of public welfare the duties of the probation officers. That is accomplished only when and if the court decides to use the county director and his assistants to perform the duties otherwise required to be performed by probation officers. It follows, I think, that the answer to your question must depend upon more than simply the provisions of the statute itself. If the court decides not to avail itself of the county director and his assistants and decides to operate the court's probation service through a regularly appointed probation officer there is no authority for the transfer of any appropriation for such purpose to the county department of public welfare. If, on the other hand, the court decides to avail itself of the services of the director of public welfare and his assistants in lieu of the services of a regularly appointed probation officer, in that event, I think the statute requires that the appropriation for such purpose should be transferred to the county department of public welfare and made available to it for the purpose for which the appropriation was originally made. In the absence of a more detailed statement of the particular situation to which your
question applies I am unable to answer it more definitely. I trust, however, that the above observations will be sufficient for your purposes. If they are not and you will indicate specifically the situation which you have in mind I shall be glad to give the question further consideration and make my answer specifically with reference to the situation set out by you.

AUDITOR, OFFICE OF: Taxes, procedure for refund by State.

August 4, 1936.

Hon. Laurence F. Sullivan,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an opinion with respect to the refund by the State of certain taxes wrongfully assessed and paid, as to that portion which shall have been paid for state purposes and which has been paid into the state treasury. The certificate of the Board of Commissioners to the Auditor of State is as follows:

"TO THE AUDITOR OF STATE:

"In compliance with Section 64-2820 of Burns R. S., 1933, the Board of Commissioners of Lake County hereby certify that there has been a claim filed and duly allowed for the sum of $42,851.16 for refund of taxes. That said claim contains the amounts allowed various individuals by a Lake County Superior Court order and by virtue of an opinion of the Supreme Court of the State of Indiana in the case of Postlewaite, Treasurer, vs. Hasse, 205 Indiana 396. The Board of Commissioners of Lake County have verified the amount alleged to have been wrongfully paid and have computed the share owed by the State of Indiana. The claim for refund is for taxes paid for the year 1924, payable 1925, and the total rate was 2.22 per hundred with the State rate .28 per hundred. The amount due each individual designated in said claim together with the share due by the State of Indiana for refund is as follows: