herein that these bonds are not legal investments for trusts as provided in the above Section. They are clearly not bonds which are the direct or indirect obligation of the United States or the direct obligation of any territory or insular possession of the United States. Subsection (a). They are not the bonds or obligations of any state of the United States or of any county, township, city, town, or other taxing district or municipality of the State of Indiana. Subsection (b). I may say in this connection that the term bonds, notes and certificates which are the "obligations of any state," etc., refers to legal obligations and is not satisfied by the existence of a moral obligation. These bonds are not secured by a mortgage on the fee simple title of improved real estate in the State of Indiana. Subsection (c). They are clearly not covered by subdivision (d) of Section 186. The specific enumeration in subdivision (e) of Section 186 excludes them.

It is my opinion, therefore, that such bonds are not legal investments for trusts under either subdivision (a), (b), (c), (d), or (e) of Section 186, supra. As to subsections (f), (g), and (h) their eligibility would depend upon factors which are not present in your request and I am, therefore, unable to answer as to them with any greater particularity.

GOVERNOR'S OFFICE: Workmen's compensation—Whether Indiana Act applies to laborers assigned to public projects by Resettlement Administration; whether state and other political subdivisions may use public funds to purchase insurance protecting above risk.

September 24, 1936.

Hon. Paul V. McNutt,
Governor of Indiana,
Indianapolis, Indiana.

My dear Governor:

I have before me the letter of Mr. R. C. Smith, Regional Director, Region III Resettlement Administration, which you have transmitted to me for an opinion in answer to the following questions:

"(1) May the public funds of the State and political subdivisions thereof and other local governing or pub-
lic administrative bodies be used for the payment of premiums or workmen's compensation insurance or other equivalent forms of insurance covering signatories of voluntary work agreements?

"(2) Are the State and its political subdivisions and other local authorities authorized by law to assume liability for injuries sustained by assigned voluntary work agreement signatories?

"(3) Will assigned voluntary work agreement signatories be otherwise similarly protected by such insurance by the operating of the provisions of any other applicable State statute?"

Accompanying the request is a form to be used by the Resettlement Administration called "Voluntary Work Agreement," which the client of the Resettlement Administration will sign prior to any assignment for work. This form is as follows:

"RESETTLEMENT ADMINISTRATION
RURAL REHABILITATION DIVISION
WASHINGTON, D. C.

VOLUNTARY WORK AGREEMENT

"I, ................., of ................, having applied for a grant of $................ from the Resettlement Administration, hereby agree, in accordance with the several provisions hereof, to perform unskilled work of semi-skilled nature for ........ hours on any activity selected by the skilled

Resettlement Administration and administered either by the Resettlement Administration or by a state, a political subdivision thereof or a local governing or public administrative body, (all of which are hereinafter referred to as 'administering authorities'), at any time designated by the Resettlement Administration, and within six months after the date hereof.

"It is further understood and agreed that:

"1. The total number of hours of work shall not exceed eight hours per day or forty hours per week, and
no work shall be performed on Sundays or legal holidays.

"2. Credits for work performed will be based upon the number of hours actually worked plus the number of additional hours required to be spent on the project.

"3. Insofar as possible, the administering authority will call for work at such times as will cause the least interruption to work done by the undersigned on the farm, and the undersigned may request postponement of performance of work pursuant to this agreement when interruption of farm work is inadvisable.

"4. The undersigned may substitute adult members of his own household to work in his place subject to all of the conditions set forth herein.

"5. The undersigned will work only on such projects as are located not more than .... miles from his home unless transportation to and from such projects is provided by the administering authority.

"Date ............. 193...... Signature: ............."

Accompanying the request is also a form called "Request for Labor," which the State, County, Township, or other administering agency will be required to sign before any labor will be assigned to such agency by the Resettlement Administration. This form is as follows:

"RESETTLEMENT ADMINISTRATION
RURAL REHABILITATION DIVISION

REQUEST FOR LABOR

"The .................. of ..................,
(Name of Administering Authority)
County .................., State .................., requests that .................. rural rehabilitation clients of the Resettlement Administration be assigned to work under the direction and supervision of the aforesaid administering authority on the following described projects:
"Located in ............ County ............
State .............., for the period from ............"
to ................. Approximately ...... man-hours of labor will be available for such clients, of which ........ man-hours will be skilled, ........ man-hours semi-skilled and ........ man-hours unskilled.

"The aforesaid administering authority agrees: (a) To supply all tools, equipment, materials and other supplies to be used on the above projects, and if for any reason it should fail to supply such material and supplies, to release the laborers for other work projects for which the labor is needed and supplies are available; (b) to use all reasonable care and consideration in the direction of such laborers, to provide adequate supervision of the laborers on the project, and to supply the necessary appliances and material for administering first-aid in case of injury; (c) that if it should accept for employment any client who lives more than ........ miles from the location of the project, it will provide him with the necessary transportation free of charge; (d) that no client shall be permitted to work more than eight (8) hours in any day or more than forty (40) hours in any week, and no client shall be permitted to work on a Sunday or a legal holiday; (e) that no client shall be permitted to work whose physical condition would make his employment dangerous either to himself or to other persons; (f) to make monthly reports to the Resettlement Administration of the number of hours of labor performed by each client.

"The aforesaid administering authority certifies that it has obtained a policy of workmen’s compensation insurance or other equivalent form of insurance for protection of any clients employed by it on the aforementioned project and/or agrees to assume responsibility for the payment to such employees of compensation for injuries or death arising out of and in the course of their employment, and/or warrants that such clients will be otherwise similarly protected by the operation of the provisions of any applicable state statute.

..............................

(Name of Administering Authority)

Date ............... By ......................"
As stated in the letter accompanying the request, quoting from it:

"The making of a monetary grant to a person otherwise eligible for public aid will not be contingent on such person's executing a voluntary work agreement. Such agreements will be used only in those instances where the recipient of the grant indicates a willingness to perform work in return for the grant to be received by him. The number of hours to be worked by a voluntary work agreement signatory will be determined by dividing the total amount of the grant by the hourly prevailing wage rate of the locality for the type of labor to be performed, as determined by the appropriate administrative unit of the Works Progress Administration. It is the intention of this Administration to make available the services of signatories to such voluntary work agreements to States or political subdivisions thereof, or other local governing or public administrative bodies in their prosecution of certain useful local public projects not financed in whole or in part out of funds appropriated by the Emergency Relief Appropriation Act of 1935 or the Emergency Relief Appropriation Act of 1936. Each local authority to which labor is assigned will certify monthly on forms designated by this Administration as to the number of hours of work performed by each assigned voluntary work agreement signatory."

As stated earlier in the letter, it should be noted, also, that the right to execute the "Voluntary Work Agreement" is solely upon the permission of the Resettlement Administration, thus indicating even more conclusively that the execution of the agreement is strictly voluntary and that the work performed under it is not for the purpose of repaying in labor the amount of the grant.

The State and its political subdivisions are not liable in a tort action by an employee based upon the negligence of its or their officers in connection with governmental duties.

Freel vs. Crawfordsville, 142 Ind. 27.
Smith vs. Board, 131 Ind. 116.
However, the State Workmen’s Compensation Act expressly brings both the State and its political subdivisions and their employees under it and makes them amenable to its provisions.

Burns Indiana Statutes Annotated (1933), Section 40-1218.

The question as to whether the Act applies in the case submitted, resolves itself, therefore, in the first instance, into the question as to whether the assumed facts operate to create the relation of employer and employee between the public administrative agency using the client of the Resettlement Administration and such client.

It has been held in this State in a case where a workman was used by a public institution upon a work assignment by the Governor’s Commission on Unemployment Relief and where there was no expectation of pay and no obligation contractual or otherwise upon anyone to pay for the service, that the relation of employer and employee did not arise.

In re Moore, 97 Ind. App. 492.

Briefly, the facts in this case were to the following effect, namely:

The workman who was fatally injured while working on a work relief project, being in need of subsistence relief, made application therefor to the proper authority. Pursuant to a co-operative arrangement between the township trustee, certain local social agencies and the Governor’s Commission on Unemployment Relief, the application was investigated and found to be proper to entitle the applicant to relief. From that point forward, the plan was to issue to the applicant in duplicate a work relief slip, one copy of which was presented to the township trustee who issued groceries to the applicant as required and the applicant was then assigned to work. The relief given was given before the work was actually done, but in order to obtain further relief it was the practice that the work slip should be signed showing that the work had been done, whereupon new slips were issued for the next week. With reference to this situation the court said on page 500,—

“The statement of facts presented does not show that any person was using the services of the deceased, Mathew Sylvester Moore, for pay, at the time he re-
ceived the injuries resulting in his death, nor does it show that he was in the service of another under any contract of hire or apprenticeship, either express or implied. It is true that he was performing service for the Ball State Teachers' College at the time, but it is also true that this service was rendered by the deceased without any expectation of pay for his labor from said college, and, under an arrangement existing between the college, the Governor's Commission for Unemployment Relief, the Delaware County Employment Committee, the Social Service Bureau, and the Trustee of Centre Township of Delaware County, Indiana, that unemployed men, applying for relief, would, when requested, be furnished to said college to do work for it without cost to the college. This was done pursuant to and in accordance with a plan of procedure adopted by the various relief agencies operating in the community, and in order that such applicants might be given a chance to perform some service in appreciation for the relief they were receiving. It does not appear that any person was to pay for the labor deceased was performing, nor that ANY person was ever to be remunerated in any manner for the service he rendered to the college. The contractual element is absent. While the deceased was performing work with the expectation of additional aid from the township, in the event that necessity required it, the question of whether he would have been entitled to such relief, had he lived and applied for it, would not have depended upon his having done work that was offered him to do.” (Our italics and capitals).

This holding is obviously influenced by the particular definition of employer and employee as contained in the Act. See Section 40-1701, Burns Indiana Statutes Annotated (1933), which, so far as necessary to be copied in this connection, provides as follows:

“(a) ‘Employer’ shall include the state and any political division, any municipal corporation within the state, any individual, firm, association or corporation or the receiver or trustee of the same, or the legal
representatives of a deceased person, using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

"(b) The term 'employee,' as used in this act, shall be construed to include every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer.” (Our italics.)

It is, however, in harmony with the decisions in most of the other jurisdictions where the question has arisen upon similar facts.

To meet this situation the General Assembly enacted Chapter 249 of the Acts of 1935 but I do not think it is sufficiently broad to cover the worker in the instant matter. The above Act applies only to persons employed on work relief projects approved by the Governor’s Commission or its successor “for the purpose of providing relief employment.”


Reserving the further discussion of whether the worker is protected by the Workmen’s Compensation Act, I desire to say, without further discussion, that the Act of 1935 does not apply and I know of no other applicable statute unless it be the Workmen’s Compensation Act. The answer to the third question is in the negative.

The answer to the second question is in the negative subject to the following explanation: If the relation existing is that of employer and employee within the meaning of the Workmen’s Compensation Act, the measure of liability is that provided in the Act. If that relationship does not exist, then neither the State nor any of its political subdivisions, in my opinion, could, by contract, take upon itself such a liability without prior legislative authority. The State and its political subdivisions act by and through its officers and agents whose authority must be prescribed by statute or by the constitution or whose express authority is such as to imply the existence of further authority in the carrying out of the purposes of the express authority. I do not find any such legislative or constitutional authority.
It will be noted from what has been said that, in my opinion, that part of the "Request for Labor" form above referred to which provides that the Administering Authority agrees to assume responsibility for the payment of Workmen's Compensation to injured workmen assigned to it, including payments to dependents in case of death or warrants that they will be similarly protected by the operation of some applicable statute other than the Workmen's Compensation Act is ultra vires such Administering Authority.

Returning now to the question of whether such worker is protected by the Workmen's Compensation Act, we have seen that persons commonly referred to as relief workers under the facts appearing in In re Moore supra are not protected by the Workmen's Compensation Act because the relation of employer and employee does not exist within the meaning of said Act. The same reasoning which was applied in that case, I think probably would lead the court to the same conclusion in this case unless the agreement to provide Workmen's Compensation or equivalent insurance would change the result. It is made very clear in the case under consideration that the work done is voluntary and without an agreement or expectation of reward. Grants made are not contingent upon the execution of the Voluntary Work Agreement and the work is not in repayment thereof, although apparently credit is given as against the grant upon the basis of an established wage scale, and there is, therefore, some ground for holding that a wage is involved. In at least one case it has been held that the agreement of the Administering Authority to furnish Workmen's Compensation Insurance supplies the needed element to establish the relationship of employer and employee. Michels vs. City of St. Paul (Minn.), 258 N. W. 162. Another case likens the procedure to the procedure of an employer applying to an employment bureau for laborers. Hattler et al. vs. Wayne County (Pa.), 182 Atl. 526. In this latter case, however, the "food order" for $5.00 was issued as compensation for twenty hours labor when it was performed and the element of compensation was definitely a part of the contract. There are a number of other cases, but as heretofore stated the most of them are in harmony with In re Moore supra. See also Schmueser vs. Copelin, 99 Ind. App. 209, to the same effect as In re Moore.
It does not follow, in my opinion, however, that the State and its political subdivisions are precluded from expending public funds, where proper appropriations exist, for the purpose of supplying insurance covering signatories of Voluntary Work Agreements which is equivalent to Workmen's Compensation Insurance, provided, of course, such insurance can be procured. The State and its several political subdivisions undoubtedly have the right to employ labor to effect any legally authorized public improvement and to contract for the payment of wages therefor. If they can do this, no reason is apparent which would preclude them from accepting assignments of laborers by the Resettlement Administration who are working voluntarily, and to agree as an inducement to such assignment to pay a reasonable premium to procure insurance for their protection. In view of the Indiana cases above cited the right of such Administering Agencies to procure at public expense Workmen's Compensation Insurance in the strict sense as well as the extent of its coverage is involved in enough doubt to suggest that special coverage provisions should be embodied in any such policy contracts. As to the procuring of such equivalent insurance, however, I think the Administering Agencies above referred to would have that right. Your first question is answered accordingly.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Retail Installment Sales Act—Whether licensees may purchase contracts at less than unpaid balance.

September 28, 1936.

Hon. R. A. McKinley, Director,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter concerning an interpretation of Sections 10 and 15 (d) of the Retail Installment Sales Act of 1936. You state that the principal question concerning which you are in doubt is whether Sections 10 and 15 (d) are in conflict with respect to the purchase of contracts at a less price than the unpaid balance. If they are, of course,