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,
under the well established rule of statutory construction in such cases Section 15 (d) would govern.

State ex rel., etc., v. Board, etc., 170 Ind. 595 at p. 600.
Woodring v. McCaslin, 182 Ind. 134 at p. 139.

In my opinion, however, there is no such irreconcilable conflict between the two provisions as requires the invoking of the above rule, when the two provisions are properly construed with reference to each other.

The portion of Section 10 necessary for consideration in this connection is as follows:

"Any licensee hereunder may purchase any retail installment contract on such terms and conditions not inconsistent with the provisions of this Act, and at such price and upon such terms as to the payment of the price, as may be agreed upon between the licensee and the retail seller. The record of the licensee shall show the price actually paid for retail installment contracts separately assigned to such licensee but retail installment contracts may be assigned in group or in bulk to any licensee as may from time to time be authorized by the department by regulation without disclosing the purchase price of the individual retail installment contracts. The department is authorized to make regulations from time to time concerning the purchase by licensees of retail installment contracts in group or in bulk and any purchase of such retail installment contracts made within the terms of the regulations SHALL NOT BE CONSTRUED AS AN ATTEMPT TO AVOID THE OPERATION AND EFFECT OF THIS ACT." (Our italics and capitals.)


Section 15 (d) insofar as necessary for the consideration of the question before me is as follows:

"The department is hereby authorized to revoke or suspend any license issued under this Act, if, after hearing, it finds:

* * * * * * * * * *
“(d) THAT THE LICENSEE HAS WILFULLY AVOIDED OR ATTEMPTED TO AVOID THE OPERATION OR EFFECT OF THIS ACT by purchasing any retail installment contract or contracts at a less price than the unpaid balance thereon or by entering into any agreement, combination or understanding (,) express or implied (,) with any retail seller the effect of which agreement, combination or understanding may be to avoid or attempt to avoid the operation or effect of this Act.” (Our italics and capitals.)


While at first blush Section 10 seems to permit a licensee to purchase a retail installment contract without limitation as to price, when considered in connection with other provisions of the Act, especially Section 15 (d), it is apparent that such is not the case but that such right is subject to the limitation that the terms of such purchase, including the price, must not be “inconsistent with the provisions of this Act.” It will doubtless be suggested that the language “not inconsistent with the provisions of this Act” is so placed in the Section as not to be in limitation of the price and perhaps, literally speaking, that is true; but it is not an unusual procedure in the construction of ambiguous language in statutes to make necessary transpositions where it is apparent from other parts of the statutes that it is necessary to do so in order to arrive at the legislative intent.

Endlich on the Interpretation of Statutes, page 434.

Board, etc., vs. Scanlan, 178 Ind. 142 at p. 148.

I think it is obvious, in view of the provisions of Section 15 (d), that the above limiting language is intended to apply to the price as well as to the other terms of the purchase.

Going now to Section 15 (d),—the provision is that it shall be a ground for the revocation of a license for the licensee to have bought a retail installment contract for less than the unpaid balance where it was done with the intent of avoiding the operation or effect of the Act; or stated in the language of Section 15 (d),—
"The department is hereby authorized to revoke or suspend any license issued under this Act, if, after hearing, it finds,

*d* * * * * * * * * * * * *

"(d) that the licensee has wilfully avoided or attempted to avoid the operation or effect of this Act by purchasing any retail installment contract or contracts at a less price than the unpaid balance thereon. * * *"

Section 15 (d) thus was intended to supply a means whereby the intent of the Act could not be defeated and a higher finance charge than that set in the contract or a higher finance charge than that permitted by the Department actually collected through the subterfuge of a sale and purchase at less than the unpaid balance. Section 15 (d), however, does not prohibit a purchase of a retail installment contract at less than the unpaid balance in all events and under all conditions but it does prohibit the use of such as a method of defeating the intent of the Act. The revocation of license in such a case, however, cannot be done except upon a hearing and a finding that the licensee has wilfully avoided or attempted to avoid the operation or effect of the Act by such purchase.

What has been said with respect to Section 15 (d) does not apply to group or bulk purchases made within the terms of the regulations of the Department governing such purchases because the statute (see Section 10) expressly provides that such a purchase within the terms of such regulations "shall not be construed as an attempt to avoid the operation and effect of this Act." No such provision applies to single purchases which, if made for less than the unpaid balance, opens up the question as to whether the purchase for such amount was for the purpose and with the intent of defeating the operating or effect of the Act.

I trust that the foregoing may serve your purpose.