that one of such assistants was already on a regular monthly salary payable by the county seems to me to be immaterial. If such assistant neglected the duties of a deputy clerk or employee in the Clerk’s office, then the remedy is that the assistant be discharged from said office.

UNEMPLOYMENT COMPENSATION: Section 3 (c) of Act interpreted—Consent of Employees, whether same is necessary to authorize an employer to elect to come under the Act.

October 1, 1936.

Hon. F. C. McClurg,
Chief Counsel,
Unemployment Compensation Division,
Department of Treasury,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion construing Section 3 (c) of the Unemployment Compensation Law of 1936, Acts of 1936, page 80. The Section as an entirety is as follows:

"Section 3. Period, election and termination of employer’s coverage.

"(a) Any employing unit which is or becomes an employer subject to this Act within any calendar year shall be subject to this Act during the whole of such calendar year.

"(b) Except as otherwise provided in subsection (c) of this Section, an employing unit shall cease to be an employer subject to this Act only as of the first day of January of any calendar year, if it files with the board, prior to the 5th day of January of such year, a written application for termination of coverage, and the board finds that there was no twenty different days, each day being in a different week within the preceding calendar year, within which such employing unit employed eight or more individuals in employment subject to this Act. For the purpose of this subsec-
tion, the two or more employing units mentioned in paragraph (2) or (3) or (4) of Section 2 (g) shall be treated as a single employing unit.

(c) An employing unit, not otherwise subject to this Act, which files with the board its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the board, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1, of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such first day of January, it has filed with the board a written notice to that effect."


The particular question as to which you requested an opinion is as to whether the board could demand that the consent of all employees of an employing unit electing to come under the Act pursuant to Section 3 (c) supra be obtained prior to and as a condition of the board's approval of said election. I doubt whether such a condition can be enforced under said Act. It is true that the election to be effective requires the approval of the board, which ordinarily would imply the right upon the part of the board to exercise discretion. But in this case no measure is set up as a basis upon which this discretion may rest. Did the General Assembly, then, intend that the board should be vested with arbitrary veto power upon the right of an employing unit to elect to come under the Act? I do not think so. I think, rather, that the intention was simply to give official recognition to the election to come under the Act when properly made, and that all employing units which were not excluded from the right to elect would have that right. The General Assembly had adopted a classification of employing units which were under the Act. By Section 3 (c) it opened up the class so as to enable others to come in, thereby further exercising its power of classification. However, to be valid, such a classification must extend to all which are within the class. If the class is limited to those who elect, there is a reasonable basis for such a classifica-
tion and it includes all who are naturally within it, but if the board may withdraw some one from the class by an arbitrary refusal to approve the election, then not all who are naturally within the class are included and the classification becomes unreasonable. On the other hand, official recognition of the election is desirable, if not, indeed, absolutely necessary for record purposes and, in my opinion, that is as far as the board is authorized to go as to employing units which would otherwise be entitled to make the election. Clearly, there is nothing in Section 3 (c) which expressly requires the consent to the election of all employees of the electing employing unit, and I am not authorized by interpretation to supply such a requirement.

DEPARTMENT OF FINANCIAL INSTITUTIONS: Refinancing of Retail Installment Sales Contract, applicable finance charge.

October 1, 1936.

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

Dear Sir:

I have before me your letter in part as follows:

"In our investigations of licensees under the Retail Installment Sales Act we are confronted with the growing practice of the inclusion of a ‘balloon note’ as the final payment on finance deals. A ‘balloon note’ comes about when the purchaser of merchandise apparently does not have sufficient means to retire a contract in equal payments within the usual length of time. In the majority of cases it is not intended or expected by any of the parties to the transaction that the ‘balloon note’ will be paid off in full at maturity, but rather it is expected that such will be refinanced into another series of monthly payments with possibly another ‘balloon note’ as the final obligation of the deal.

"For example, a purchaser wishes to finance $580.