DEPARTMENT OF PUBLIC WELFARE: Old Age Assistance, whether recoveries are to be paid into the County Welfare Fund.

October 28, 1936.

Hon. Wayne Coy,
Acting Administrator,
Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your communication of October 3, 1936, in which you request an official opinion in answer to the following questions:

1. Are recoveries for assistance paid under Chapter 36 of the Acts of 1933 to be paid into the County Welfare Fund or into the County General Fund?

2. Are recoveries for assistance paid under Chapter 36 of the Acts of 1933 on which the State receives reimbursement to the extent of 50% to be paid into the General Fund of the State or into the Old Age Assistance Account of the General Fund as established in subsection (a) of Section 16 of the Welfare Act of 1936?

In answering these questions let us consider such Sections of both these Acts as may be applicable thereto. Under the Old Age Pension Act (Chapter 36 of the Acts of the Indiana General Assembly, 1933) the administration and control of the old age pension system was placed in the hands of the Board of County Commissioners.

On the death of a pensioner this Act provides that the amount paid as a pension (to either the pensioner or his wife) shall be allowed and deducted from the estate of said decedent, but this Section does not designate who shall file the claim or whether it is to be paid into the general or special fund. It merely provides the amount recovered is to be paid into the county and state treasuries. (Section 7, p. 166, Acts 1933.)

All expenses incurred by the State in the payment of pensions were to be paid out of the State General Fund, but as regards the county, this law provided that the county council shall annually appropriate and levy a sufficient tax to carry
out the provisions of the Act and the pensions and expense of administration were to be paid out of that tax or paid from the General Fund. (Secs. 20-21, p. 171, Acts 1933.)

This law was expressly repealed by Chapter 3 of the Acts of 1936 known as The Welfare Act (Section 129), but all rights thereunder were saved (Section 119) and the recovery against the estate of a pensioner of the amount paid as an old age pension was thereby continued in force.

The local administration of assistance is delegated to the County Department of Public Welfare, and it is given authority to prosecute and defend suits and perform all duties necessary to administer the provisions of this Act. (Sections 21-23 of The Welfare Act.)

As a part of its administrative duties and powers, the law imposes upon the County Board the requirement of an applicant to reimburse the county and the assignment and transfer of the property to the county and recovery from a recipient during the life or after the death of such recipient. (Sections 44, 45, 46 and 47 of The Welfare Act.)

It is also provided that the county's share of the money repaid or recovered be paid into the Welfare Fund of the county and the State share shall be paid into the old age assistance account of the General Fund of the State. (Section 48 of The Welfare Act.)

A separate Welfare Fund is created by this law which provides for a tax levy, grants in aid, and such other money as may be provided by law to be paid into the County Treasury and constitute the Welfare Fund. (Section 98 of The Welfare Act.)

In order that funds might be available for the immediate purposes of the Act, sufficient funds for that purpose were appropriated out of the General Fund of the State (Section 117, subsection (a)) also all money appropriated for the use of the county agencies and purposes contemplated by this law are made available for the use of the County Department and transferred to the Welfare Fund, and not to be repaid to the General Fund. (Section 117 (b) of The Welfare Act.)

Under the Old Age Pension Law there is no direct provision as to who shall file and collect a claim for pensions paid under that Act, except the provision that the Board of County Commissioners was empowered to administer and control the sys-
tem. Under The Welfare Act, the duty of protecting the State and county for reimbursement and recovery of assistance paid is expressly imposed upon the County Department. The only body that can collect, upon the death of a pensioner, the amount paid as old age pensions, is the County Department. Any right or duty imposed upon the Board of Commissioners in this connection is taken away from them by the latter Act. All funds of any kind appropriated for any of the agencies included under The Welfare Act to be expended by local authorities became a part of the County Welfare Fund expressly created by this Act.

In repealing the 1933 Act, however, all rights vested or accrued thereunder were expressly saved, it being further provided that the transfer of the rights, powers and duties of any board, commission or officer to any board or officer created or provided for under the provision of the 1936 Act shall not affect "any suit pending, rights of action conferred or duties, restrictions, liabilities or penalties imposed or required by or under any such law or laws, but all such actions hereafter performed shall be subject to the provisions of this Act." *** (Our italics.)


As already stated, the only body which can now make such recoveries, whether accruing under the 1933 Act or the 1936 Act, is the County Department, and in view of the above provision that such actions shall be subject to the provisions of the 1936 Act, it seems reasonable to conclude that such recoveries on account of liabilities accruing under the 1933 Act would follow the same course as similar recoveries under the 1936 Act.

Taking The Welfare Act as a whole, it is my opinion that the provisions that all moneys recovered by the county as its share are to go into the Welfare Fund would include its share of any money recovered under the Old Age Pension Law and your question is answered that such recoveries are to be paid into the County Welfare Fund.

In answer to your second question, I wish to call your attention to Sections 15, 16 and 51 of The Welfare Act, in addition to those above noted.

It is provided that the Treasurer of State is authorized to take charge of "all money received from any other source,
other than money received from taxes levied by the county,” and pay it into the proper fund or the proper accounts of the General Fund. (Section 15 of The Welfare Act.)

All money received from any other source which, by the provisions of this Act, the State and County Departments of Public Welfare are authorized to collect, receive, and administer, shall be paid into the respective funds or accounts of the General Fund. (a) Old age assistance account includes all money received for old age assistance. (Section 16 of The Welfare Act.)

The amount certified to the Auditor of State by the State Department of Public Welfare for reimbursement to the county shall be paid from the old age assistance account of the General Fund. The State Department also certifies to the State Auditor the amount received from recipients or their estates. (Section 51 of The Welfare Act.)

With the passage of this new legislation a special fund or account was created for the disposition of the money received by the State from Federal, county and any other source to be known, as regarding this question, as old age assistance account. The provision for repayment of old age pensions would have to be under The Welfare Act as the pension Act was thereby repealed. The payment of funds to the counties by the State is made from the old age assistance account. It would be a natural conclusion that any money paid back by the county as a recovery for assistance granted either to an old age pensioner or under The Welfare Act should be paid into that fund, but Section 48 expressly provides the proportionate amount of funds collected under certain Sections of that Act shall be paid into the old age assistance account of the General Fund of the State.

It follows, in my opinion, that a logical construction of this Act, even without the quotation from Sections 15 and 16, would be that all sums due the State as recoveries from old age pensioners or their estates would be paid into the old age assistance account, but the specific language of Sections 15 and 16 as to “all money received from any other source,” would, in any event, include such recoveries.

Your second question is thus answered that reimbursement to the State of recoveries under Chapter 36 of the Acts of 1933 should be paid into the Old Age Assistance Account of the General Fund of the State.