their financial means for service rendered by nurses of the Association, the fee charged and collected to go into the budget of the Association and not to the individual nurse. The budget for the Association is made up in due time and contributed to by every taxpayer of Vanderburgh County. Why should the patients without the city limits be given a privilege (free nursing service) when other patients of like financial means are required to pay for the same?

My answer to your question, therefore, is in the affirmative.

MILK CONTROL BOARD: Liability on distributor's bond.

November 10, 1936.

C. W. Humrickhouse, Executive
Secretary, Milk Control Board of Indiana,
332 State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your recent request for an opinion based on the following state of facts: On June 15, 1936, the Greenwood Dairy Farms, Inc., a corporation, which is hereinafter referred to as the Dairy Company, applied to the Indiana Milk Control Board for a license to distribute milk in Indiana for the year beginning July 1, 1936. At the time of the application the company gave a bond in the sum of $6,000.00 with sureties as required by the statute which provides for the payment to all producers of milk by the Dairy Company. The bond was as follows:

"That Greenwood Dairy Farms, Inc., as principal, and Arthur Admire and Julia Joan Rudd, as sureties, are bound unto the Milk Control Board of the State of Indiana in the sum of Six Thousand Dollars ($6,000) for the payment of which we bind ourselves jointly and severally, firmly by these presents.

"Sealed and dated this 15th day of June, 1936.

"The condition of this obligation is such that whereas the above bounden Greenwood Dairy Farms, Inc., has made application to the Milk Control Board of the State of Indiana for a license to engage in the busi-
ness of milk distributor in said State for the period from July 1st, 1936, to June 30th, 1937.

"Now, if said Greenwood Dairy Farms, Inc., shall promptly pay all obligations becoming due from it to producers of milk from whom it shall make purchases during said license period, then this obligation shall be void, otherwise to remain in full force and effect.

GREENWOOD DAIRY FARMS, INC.,
By (signed) RONALD ADMIRE, Seal
President.
(signed) Arthur Admire, Seal
(signed) Julia Jean Rudd, Seal

ATTEST:
Jane Corrie,
Secretary."
(Corporation Seal)

The Dairy Company also gave a check to the Milk Board in payment of the fee required by the statute for the issuance of the license. However, the Dairy Company stopped payment on the check and it was not paid. No fee whatever was paid and the license was not issued. The management of the Greenwood Dairy Farms, Inc., was changed in July, 1936, and a request was made for the return of the bond. It was not returned as requested.

The Dairy Company continued to operate after July 1, 1936, without a license. In October, this year, a receiver was appointed for the Dairy Company. You also say that the Dairy Company submitted reports to the Board as contemplated by the law for a licensee but that the reports were erroneous and did not correctly set forth the true financial condition of the company.

Your board, after stating the above in substance, submits the following:

"This company has failed to pay its producers a total of five thousand dollars for milk purchased by it since this bond went into effect. Who is the proper party plaintiff? Should the Board bring the action or should it be brought by the producers themselves? Since there is a receiver, should the suit be filed in the receivership or not? Do you think that the change in ownership
and management affects this bond in any way and what effect do you think the oral request for the return of this bond would have on the question of its validity? What is the effect of refusal to grant license?"

As to the change in ownership and management, in my opinion the change would have no effect whatever on the question of liability on the bond. The execution of the bond required by the Milk Control Law was the act of the Greenwood Dairy Farms, Inc., a corporation. The producers looked directly to the corporation and not the managers or stockholders for payment of milk purchased by the Dairy Company. Moreover, I do not believe that the request for a return of the bond would change the situation. No reason is suggested for a return of the bond other than that there had been a change in management or that the company was in financial straits. The provision of the statute applicable to the giving of a bond, after naming certain things which must accompany the application for a license, is as follows:

"(C) In the case of each distributor, such application shall also include and be accompanied by the following:

"(a) Either a bond in such form and amount as the board may prescribe, with surety satisfactory to the board, conditioned for the prompt payment of all obligations to producers when due; or a financial statement showing evidence satisfactory to the board to the effect that the applicant is of sufficient financial responsibility to insure prompt payment for sixty days' supply of milk."

(Part of Section 7, Chapter 281, Acts of 1935.)

The Board acted within its authority when it required the execution of the bond, and the retention of the bond by the Board in the absence of another bond tendered in its place was proper. I believe it is the intention of the Milk Control Law to place on the Milk Board some responsibility of seeing to it that obligations due milk producers for milk purchased by distributors are paid.

The question next arises as to the effect of the refusal of the Board to issue the license. The reason for the withhold-
ing of the license in this case was the refusal of the distributor to pay the license fee. The giving of a check and the subsequent stopping of payment on the check was not payment of the license fee as required by Sections 7 and 14 of the Milk Control Law. Did the fact that the Greenwood Company operated as a distributor for several months without any license have the effect of releasing the Company or the sureties from the obligations of their bond given for the protection of the producers? The sureties on the bond did not ask that the bond be canceled, or demand that they be allowed to withdraw from the obligation, and I am unable to conclude under the facts that the sureties are in any different position than the Dairy Company. The Dairy Company appears to have continued its operation, and to have purchased milk from producers upon the assumption that it had a right to do so. It cannot be heard to say that its failure to pay the license fee, or the holding up of its license by the Milk Board had the effect of canceling the bond which it gave to protect the producers of the milk it purchased and sold. I believe the Dairy Company and the sureties on the bond are liable for the obligations due and owing since July 1, 1936, by the Dairy Company to the milk producers, which you say amounts to $5,000.

Any action on the bond should be brought by the Milk Control Board for the benefit of the producers and not by the producers themselves. The Board has implied power to do this. I do not believe that an action on the bond should be filed in the receivership suit. The court in that proceeding no doubt has possession and control over the property of the Dairy Company. Recourse may be required later to that receivership case in enforcing a judgment or claim, but the corporation has not been dissolved and the individuals on the bond may be proceeded against in a separate action independent of the pending receivership case.