and allow it either as a part of the compensation or as an expense item to be added to any other sum payable for services rendered.” I am still of this opinion, and it seems to me that this statement answers your questions. But as you are requesting a more specific answer, I think your questions should each be answered in the affirmative; the method or procedure is to be determined by the County Director with the approval of the County Board so that the method adopted or the sum fixed would be accurately determined with fairness both to the employee and the county and with the least possibility of abuse.

If the method stated in your first question should be adopted, I would suggest that strict procedure be followed so that the interests of the State and county are fully protected. In the first place, care should be taken that there is no duplication; that is, the amount allowed as salary should be purely a salary allowance and no more and should be free from any compensation for travel or other expense. If the compensation is fixed by the County Board under the conditions stated in your third question, then there should be no additional amount allowed in the way of expense. Whatever method is used, appropriate rules and regulations should be adopted by the State Department to govern the procedure so as to insure accuracy in the submission for payment of expense items and to exclude improper charges.

SEcurities: Selling stock does not constitute the doing of business of such corporation. FOREIGN CORPORATIONS: Foreign corporations engaged in a business that would be illegal in this state not prohibited from selling securities if qualified under Securities Law. STOCK: Stock lawfully issued by foreign corporations may register same for sale in this state.

December 1, 1936.

Mr. Chester R. Montgomery,
Securities Commissioner,
203 State House,
Indianapolis, Indiana.

Dear Sir:

I have your request of October 2, 1936, for an opinion, which reads as follows:
“An application has been offered for filing before the Indiana Securities Commission, covering the proposed registration for sale in Indiana of certain shares of stock in the Narragansett Racing Association, Inc., of Narragansett Park, Rhode Island.

“The corporation is engaged in operating a race track in Rhode Island and derives a major portion of its income from a commission of 6½% of all money bet at the track on the races, under the pari-mutuel system which has been legalized by the laws of the State of Rhode Island.

“The stock concerned in the pending application is not being sold for the benefit of the corporation, and the corporation would receive no part of the proceeds of such sale. The stock now offered is owned by principal stockholders of the corporation, some of whom are officers, directors and original promoters of the corporation.

“Since the corporation is engaged in the conduct of an enterprise that is unlawful in this state, we request your official opinion as to whether or not the sale of this stock in Indiana is contrary to law.”

In answer to your question, Burns Indiana Statutes Annotated, 1933, Section 25-302, reads in part as follows:

“No foreign corporation shall be admitted for the purpose of transacting any kind of business in this state, the transaction of which by domestic corporations is not permitted by the laws of this state.”

The Narragansett Racing Association, Inc., is engaged in operating a race track in Rhode Island and derives a major portion of its income from a commission of 6½% on all money bet at the track on the races, under the pari-mutuel system which has been legalized by the laws of the State of Rhode Island. While a domestic corporation could not engage in such an enterprise in this state, the sale in this state of stock lawfully issued by such foreign corporation would not be in violation of the above Section of the Indiana Statute, since the sale of stock does not constitute the doing of the business of such corporation in the state within the meaning of the laws regulating the doing of business in this state by foreign corporations.
It seems to follow logically from the foregoing that in determining whether a security of any kind may be qualified for sale in the State of Indiana, the Securities Commission is governed by the provisions of the Securities Act. Prior to the enactment of the securities law there were no restrictions upon the sale of any security in the State of Indiana. While the state had the power to make reasonable regulations respecting the sale of securities, it had not exercised that power up to the time of the adoption of the first securities law. By the adoption of the Securities Act, however, that power was brought into effect and made the sale of securities subject to the limitations and conditions thereby imposed.

The general corporation laws of each state are enacted for the purpose of making provisions for the organization and internal management of domestic corporations and for the admission to do business in the state by foreign corporations. The sale of securities is not necessarily connected with corporate law or corporate management, and although Acts for the regulation of the sale of securities have been passed by practically every state in the Union, it does not seem to have occurred to the legislatures of any states that the general corporation laws thereof were in any way connected with the sale of corporate securities. That this is the general view is attested not only by the language of the Securities Acts of the various states, but also by whatever expressions of the courts may be found touching upon this question.

In the case of Edward v. Ioor, 205 Mich. 617, the court said (622):

"Compliance with the corporate act permits a foreign corporation to 'carry on its business,' the business for which it is organized, in the state; compliance with the Commission Act permits it to sell its stock and other securities. One is not in any way dependent upon the other.

"The sale of shares of its own stock is not 'doing business'."

Home Lumber Co. v. Hopkins, 107 Kas. 153; 190 Pac. 601.

"The sale of stock, the maintenance of a general fund, the holding of board meetings, the making of
contracts relating to and the sale of notes given in connection with such stock, do not constitute 'doing business,' as those are not the purposes for which the corporation was organized, but are only incidental there-to."

Meir v. Crossley, 264 S. W. 882; 305 Mo. 206.

As further proof of the fact that the statutory provisions above referred to have no bearing upon the matter of the sale of securities under the Securities Act of this state, it is to be observed that sub-section (g) of Section 4 of the Securities Act, exempts certain securities and reads as follows:

"(g) Common stock of any solvent corporation, of this or any state of the United States, which has been continuously in operation under its present corporate authority, without reorganization, for not less than 15 years immediately preceding a sale under the exemptions of this sub-section, and whose earnings in each fiscal year, determined in accordance with the rules of the commission relating to the particular business for the seven fiscal years immediately preceding any such sale, have been an amount not less than 6 percent on the par value of all common stock outstanding in each year (or if the stock has no par value, then upon the stated or issued price of such stock), and upon any additional stock being offered for sale and the current price of which stock in open market trading is reported at least once each month in the news reports of a daily newspaper of general circulation printed in the English language, in New York or Chicago, and whose annual sworn financial statements are included in any standard manual of securities approved by the commission."

The fact that such stock was issued by a foreign corporation engaged in a business that it could not conduct in this state does not prevent the sale of such stock in this state when it meets the requirements of sub-section (g) of Section 4 of the Securities Act, above quoted. Such stock is an exempt security and may be sold in this state without qualification.

Summarizing, the answer to your question must depend en-
tirely upon the language and intent of the Securities Act itself, and an examination of this Act discloses that there is neither any expressed nor implied prohibition against the sale in this state of the stock of a foreign corporation which is engaged in a business that could not be conducted in this state; in fact, as already pointed out, that under certain circumstances such stock may become an exempt security.

I am, therefore, of the opinion that the fact that a foreign corporation is lawfully engaged in a business in the state of its origin that a domestic corporation could not lawfully conduct in this state, is not sufficient grounds in itself to disqualify the registration and sale of stock lawfully issued by such foreign corporation.

FOOD AND DRUGS: Cold Storage Law. Refrigerating firm in renting part of plant to another for storage purposes not exempt from Indiana Cold Storage Law of 1911.

December 8, 1936.

Hon. Martin L. Lang, Commissioner,
Bureau of Food and Drugs,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

Receipt is acknowledged of your letter dated November 24, 1936, requesting an opinion on the following, to-wit:

"I should appreciate receiving your opinion as to whether or not a refrigerating firm renting a room in their cold storage establishment to another firm on a strictly month to month basis would be exempt from the requirements of the Indiana Cold Storage Law of 1911. (Cold Storage Law on page 23 enclosed booklet).

"The firm in question is discontinuing their cold storage business with the exception of renting one room to a meat market company for storage of meat on a month to month basis. This firm contends they do not come within the cold storage law, which law requires a license.

"I should also appreciate receiving your opinion as to whether or not the storage company would be com-