county health officer, etc. They are not obligated to retain the incumbent who is a part time officer but may appoint in his place whomever they choose, provided, of course, the new appointee meets the qualifications prescribed by the act last above quoted.

DEPARTMENT OF PUBLIC WELFARE: Children, care of, at Rockville Sanatorium, whether cost a charge against County Welfare Fund.

WARRANTS: may warrants be drawn against County Welfare Fund without previous certification of approval by County Board or County Director?

December 29, 1936.

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

Dear Mr. Coy:

I have your letter of December 18 asking for a construction of the law regarding manner of payment by the county for the care and maintenance of a child at the Indiana State Sanatorium at Rockville. You ask the following questions:

1. Is not the expense for the care and treatment of a child sent to the Indiana State Sanatorium at Rockville a charge against the appropriation for the care of patients at that institution and payable out of the County General Fund for that purpose?

2. Has a County Auditor any authority to draw warrants against the County Welfare Fund for the payment of allowances for the care and maintenance of children, which have not been approved and certified by the County Director of Public Welfare?

The provision for the treatment of indigents at the State Sanatorium makes no distinction between minors and adults. The statute expressly states that the applicant shall be admitted to such hospital for treatment at a cost to the county, wherein such indigent resides, not to exceed $5.00 per week
and such cost shall be paid by the county and the claim shall be allowed by the Board of Commissioners and when such claim is thus allowed and an appropriation made by the County Council, the County Auditor shall pay the same out of the county treasury.

Sec. 22-2112 Burns Indiana Statutes, 1933.

The funds which were transferred to the County Welfare Fund included "all money appropriated for any of the purposes or for the use of any of the county agencies contemplated in this act."

Sec. 117 (b) of The Welfare Act.

With regard to the payment of claims from the Welfare Fund, the statute is as follows:

"Claims. No claim for an allowance, award or assistance which has been approved, made or given by the county department as herein provided, shall be subject to allowance by the board of county commissioners. All claims for administrative expenses of the county department shall be subject to the allowance of the board of county commissioners in the same manner as other county claims, as provided by law. Each such claim, allowance, or award, or the schedule thereof, as provided in sections 37 and 75 of this act, shall be approved and certified under oath by the county director, as required by law for the approval and certification of other claims against the county. The schedule or claims so approved and certified shall be submitted to and filed with the county auditor who shall thereupon issue a county warrant or warrants therefor, drawn on the county welfare fund, in payment thereof."


The statute governing the State Sanatorium makes no distinction between adults and minors but does provide that the expense of the treatment of indigent patients is a charge against the county to be paid out of the appropriation for that purpose made by the County Council, but the claim to be allowed by the County Board of Commissioners. This fund was not transferred to the County Welfare Fund under the
provisions of Section 117 (b) supra, as the obligation for the
care and treatment of the patients in this sanatorium is a
direct charge against the county and one over which the
county welfare agencies have no control. The township trus-
tee has a duty to perform in the first instance, for the appli-
cant must have a certificate from such trustee and from a
reputable physician before admission to the sanatorium; this
duty is not transferred to the County Welfare Department,
neither has it any duty as yet in this matter, either of placing
the patient or of making an allowance for the expense there-
of. Your first question then is answered in the affirmative;
the expense of treatment is payable out of the County Gen-
eral Fund.

Your second question is largely answered by the provisions
of Section 25 of The Welfare Act set out above. Claims for
allowances, awards or assistance made or given by the Coun-
ty Department are not subject to allowance by the County
Board of Commissioners. Each such claim, allowance or
award shall be approved and certified under oath by the coun-
ty director and filed with the County Auditor, who shall there-
upon issue a warrant therefor drawn on the County Welfare
Fund in payment thereof. It seems clear from the provisions
of this section that payments in the nature of assistance are
approved by the County Director and warrants drawn by the
County Auditor without further action; that the Board of
Commissioners has nothing to do with the allowance of such
claims; that the approval of the County Director of Public
Welfare is a prerequisite to the payment of any claim coming
within such provisions of the statute and the payment of
such claim without the approval of the County Director hav-
ing been first obtained is without authority.

If the claim is payable out of the County Welfare Fund
and is not part of the administrative expense but more in the
nature of an allowance or assistance and comes under Part I
of the budget as provided in Section 99 of The Welfare Act,
then in such case it should receive the approval and certifi-
cation of the County Director before a warrant is drawn. It
is true that there may be certain statutory claims which do
not come strictly within the provisions of assistance and yet
are not administrative expense. It would depend, in cases of
this kind, whether or not the matter was taken care of in the
budget prepared by the County Welfare Board. If there was a statutory allowance for the maintenance or expense of children, for example, which has heretofore been allowed by the Board of County Commissioners and for which they had a separate fund, which fund was not made a part of the County Welfare Fund, such allowance would not have to be certified to by the County Director and would not be payable out of the Welfare Fund. If not included within either Part I or Part II of the budget it could not be payable out of the County Welfare Fund without the appropriation first having been made.

If such claim should be properly chargeable against the Welfare Fund then the place in the budget, if there is some doubt as to the part of the budget in which it should be included, would properly be determined by the Board of Accounts. If so placed in Part I of the budget, certification and approval by the County Director would have to be had before the Auditor could draw his warrant for the payment of the same.


December 30, 1936.

Honorable Perry McCart,
Chairman, Public Service Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion as to the extent of control which the Public Service Commission has over the sale, lease, and transfer of interests in certificates granted to motor vehicle common carriers.

In considering this question, it is important to take into account the nature of such a certificate.

In some states, notably Ohio, it has been held that the holder of such a certificate does not acquire a property right in the route, and that the granting of a certificate is authorized only for the purpose of promoting the public convenience and necessity and is not issued for the purpose of con-