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-
ferring upon the holder any franchise in the public highways of the state. It was further decided that a certificate of convenience and necessity is in the nature of a revocable personal permit and that it does not have the attributes of a property right. Pennsylvania R. Co. v. Public Utilities Co., 116 Ohio St. 80, 155 N. E. 694; Cannonball Trans. Co. v. American Stages, 53 Fed. (2d) 1051. See also Gilmer v. Public Utility Commission, 247 Pac. 284 (Utah Sup. Ct.).

The Indiana Motor Vehicle Act of 1935 provides in Section 9 for the transfer of certificates. Whether this section of the statute should be construed as dealing with some property interest which a carrier has (such as its equipment) or with the authority or right to use the highways received from the state and which is evidenced by a “certificate”, is not necessary to be determined because I am of the opinion that the Commission has plenary power in either view to deal with the question of transfers of “certificates”.

Section 4 of the Act declares the business of operating as a motor carrier of persons and property, to be a “business affected with the public interest”. This, however, is but a statement of what was already recognized as the law.

By section 5, the Commission is vested with power to supervise and regulate motor carriers subject to the Act. The books and accounts of carriers are subject to the inspection and control of the Commission. Further in the Act, after various powers are named, it is provided:

“The Commission shall have power and authority under the Act, to do and perform all reasonably necessary things to carry out the purpose and intent of the Act, whether herein specifically mentioned or not”, etc.

In determining whether a certificate shall be granted, the Commission is required to consider certain things such as the existing transportation service, the public welfare, and the highway conditions, but these are to be taken into account “among other things”. This indicates the broad discretion conferred upon the Commission in granting certificates. It was certainly intended, by the Legislature, that the authority and discretion of the Commission should be as broad in authorizing transfers of certificates as it is in granting certificates. The public interest is the thing to be kept
in mind in each case. Only bona fide residents of Indiana or Indiana corporations are qualified to receive an intrastate certificate. (Section 20.)

In the matter of rates and charges and the division of rates and of joint rates, the Commission is given the power of supervision and regulation.

Also, in the matter of mergers and consolidations of properties, Section 16 confers power on the Commission to act if it finds that a proposed consolidation, lease or purchase is "in the public interest". This Section must be read along with Section 9, which is as follows:

"Any certificate owned, held or attained by any such carrier may be sold, assigned, leased, bequeathed or transferred as other property upon approval by the commission, and the commission may inquire into the responsibility of the person obtaining or seeking to obtain ownership or control of any certificate and, if it finds such person to be irresponsible or unable to render satisfactory and adequate service under said certificate, the commission may enter an order denying the transfer: Provided, however, That no certificate may be sold, assigned, leased, bequeathed or transferred except after a public hearing before the commission and after notice as required for other hearings before the commission."

This provision seems to contemplate a transfer of a property right of some kind and must be interpreted in the light of other provisions of the Act, some of which have been referred to above, and of the general policy of the motor carrier law. It has been suggested that the Commission is limited by Section 9 to an inquiry into the responsibility of the one to whom the certificate or property is to be transferred to continue the carrier service. I do not believe the Commission is so limited. That is one of the things the Commission should inquire into, but that is not all. It must keep in mind the larger interest of the state, the effect such a transfer might eventually have in the entire field of transportation, and, for example, whether the income of the state would be diminished, having in mind that the highways used by the motor carrier were built and are maintained at public expense.
It is my opinion, therefore, that when an application is presented to your Commission for a transfer or lease of a certificate which has been granted an intrastate or interstate motor carrier, you should consider all relevant facts having a bearing on the proposed transfer, and whether or not the public interest would be served by such transfer.

DEPARTMENT OF PUBLIC WELFARE: Co-operative agreement between Department of Public Welfare and Riley Hospital, whether same qualifies state under Federal Social Security Act. December 31, 1936.

Honorable Wayne Coy,
Acting Administrator,
Department of Public Welfare,
141 S. Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

1. When the James Whitcomb Riley Hospital and the State Department of Public Welfare have in effect agreed upon policies in the manner outlined above (see letter attached) by the preparation and approval of a statement of standards and policies, does the State Department have administrative responsibility under the Indiana law for the development and operation of a plan of services for crippled children?

2. Will the Department have the power to terminate such a program at any time it finds such action to be necessary or desirable?

3. Will the Department have the power under the State law to cooperate with the United States Children's Bureau in accordance with the provisions of Title V, Part 2, of the Social Security Act?

Reference to the letter to which you refer discloses that the question at issue is raised by the provisions of Section 87 of the Welfare Act of 1936 of the State of Indiana, Acts of 1936, page 59, in its relation to that provision of the Federal