application for the fee charged in section 5 without arriving at an unjust and absurd interpretation of section 34 of the Act. Such a construction would be against the general import of the Act considered in its entirety and would be an evasion of the intended purpose of the Act.

The Act adequately expresses the legislative intent to be to subject all establishments to all provisions of the Act, sections 3 and 5 inclusive, and it is therefore, in answer to your inquiry, my opinion, that all establishments making applications under the 1937 amendment are subject to the $25.00 permit fee of section 3 and are thereafter entitled to the renewal provisions of section 5.

WELFARE, DEPARTMENT OF PUBLIC: Secs. 5 and 24 of Welfare Act of 1937; appointment of assistant county Welfare director; appropriation not made for appointment of assistant county director; recovery of salary by assistant.

August 13, 1937.

Hon. T. A. Gottschalk, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

We have your letter of recent date in which you ask for a construction of section 5 (k) and section 24 of the Welfare Act, as amended by the Acts of 1937, and calling attention to the fact that the State Board of Public Welfare on July 1, 1937, fixed and determined the minimum number and classification of employees and salary ranges for each classification for the several county departments of the state, and asking for an official opinion in answer to the following questions:

> "1. Under these provisions of section 5 (k) and section 24 and the action so taken by the state board, will the appointment by a county director, with the approval of the county board, of an assistant, within the minimum number and classification fixed by the state department be prima facie a necessary appointment within the provisions of said section 24?

"2. If a county director, with the approval of the county board, complies with the requirement of the state department, and appoints an assistant within the minimum number and classification fixed by the state department and from an eligible list for the position established by the state department, and no appropriation had been made therefor at the time of the appointment, would such action be a proper and legal appointment and binding upon the county?

"3. If an appointment is made under the circumstances stated in question No. 2, can the appointee recover salary from the time of qualification and commencement of service if and when the appropriation is made?

"4. If an appointment of an employee was duly made under the provisions of section 24 of the Welfare Act of 1936 prior to its amendment and there was no appropriation from which payment could be made and an appropriation is subsequently made for such classification of services by the county council, can payment from the date of appointment be lawfully made from such subsequent appropriation?

"5. If appointment of an employee was duly made under the provisions of section 24 of the Welfare Act of 1936 as amended, over and above the minimum requirements of the state department and there was no appropriation from which payment could be made and an appropriation is subsequently made therefor by the county council, can payment from the date of such appointment be lawfully made from such subsequent appropriation?"

So much of the statutes to which you refer as affecting these questions are as follows:

Section 5 (k) of the Welfare Act of 1936, defining the duties of the state department was amended by chapter 41 of the Acts of 1937, by adding thereto the following:

"* * * Establish minimum qualifications of employees, based on education or experience or both, and the service requirements of each classification of position, classification of positions and salary ranges for each classification. and minimum number of employees

in each classification for the several county departments of the state, to be selected from eligible lists established by the state department under the rules and regulations of the state department, provided, that the provisions of this subsection shall not apply to institutional employees of the several county departments of public welfare."

Acts of 1937, page 237.

Section 24 of this Act, as amended in 1937, is in part as follows:

"County staff. The county director, with the approval of the county board, shall appoint from eligible lists established by the state department such assistants as may be necessary to administer the welfare activities within the county and to perform all other duties required of the department, and shall fix the compensation of such assistants within the salary ranges established by the state department. * * *"

Acts of 1937, page 241.

There are other provisions of the Welfare Act which are necessary to be taken into consideration. It is provided in section 5 of this Act that the state department is charged with the administration or supervision of all the public welfare activities of the state as therein provided. The state department shall:

"Make such rules and regulations and take such action as may be deemed necessary or desirable to carry out the provisions of this Act and which are not inconsistent therewith."

Section 5 (g), the Welfare Act; Acts of 1937, page 236.

"Provide services to county governments including the organization and supervision of county departments for the effective administration of public welfare functions. * * *"

Section 5 (f), the Welfare Act; Acts of 1937, page 236.

"The state board is given the power to remove the county director if the county welfare activities are not

performed in accordance with the rules and regulations prescribed by the state department."

Section 20, the Welfare Act; Acts of 1937, page 239.

Section 21 of the Act in prescribing the duties of the county department provides that they shall be exercised by the department:

"Subject to the rules and regulations prescribed by the state department."

Section 21, the Welfare Act; Acts of 1936, page 29.

The legislature in its amendment to the Welfare Act authorized and empowered the state department to fix the minimum number of employees in the county departments, together with the qualifications, classifications, salary ranges, and eligible lists. When this statute became in force, the state board acted and established a minimum number of employees with classifications and salary ranges for each county of the state. Under this amended section, together with the sections relating to rules and regulations of the state department above referred to and the binding power of the same upon the county departments, the county department, and all boards or officers having to do therewith, have no choice, but must comply with such requirements.

Valid rules and regulations adopted by an administrative body in accordance with the provisions of the Act creating such body, are, in effect a part of the statute.

Wallace v. Dohner, 89 Ind. App. 416 at p. 420.

The legislature may delegate to some agency of government the right to fix the salary of an officer or employee and when that is done, it is binding upon the appropriating bodies, so long as the statute is complied with.

State, ex rel., v. Steinwedel, 203 Ind. 457.

Your first question is then answered in the affirmative. The appointment by a county director, with the approval of his county board, of an assistant, within the minimum number and classification fixed by the state department is a necessary appointment under the provisions of the Welfare Act as amended.

Your second question is likewise answered in the affirmative. Where a county director has strictly complied with the law in the appointment of an assistant and had no alternative in so doing, the appointment will be legal and binding upon the county, even though no appropriation had been made by the county council for the payment of the salary of such assistant. However, such assistant cannot be paid until an appropriation has been duly made by the county council.

Your remaining questions relate to the payment of the salary of a welfare employee, after an appropriation has been made by the county council, and whose appointment was duly and legally made in the first instance by a county director but was made before the county council had made any appropriation therefor. This question in some form has been before our courts of last resort in a number of different ways, most of which related to the duty to make an appropriation, but where the officer recovered the salary after the appropriation had been made. A case involving the payment of the salary of a county superintendent is much in point. In that case the salary as fixed by the county commissioners was $2,400.00 and the county council appropriated $1,500.00, the first year and for later years appropriated $1,700.00. The county superintendent filed his estimate with the auditor for $2,400.00 salary and an additional amount for back salary each year, until the fall of 1923, when he failed to file an estimate until November. The court in deciding the case holds:

> "Appellee county council was required, as its legal duty, to make the necessary appropriation, to pay relator's salary as fixed by law."
>
> State, ex rel., Fox v. Board of Commissioners, Carroll County, et al., 203 Ind. 23 at page 38.

It further held that:

> "Appellees maintain that the county council was not legally required to make an appropriation at its meeting in September, 1923, for relator's salary for the current year, 1924, because relator had not filed with the appellee auditor an estimate of his salary as fixed by law, if payable out of the county treasury; and, that no appropriation being required, and none made

for that purpose, relator is not entitled to salary for the current year, 1924. The business of government cannot be made to depend upon such a legal construction of the sections of the Act, 'an act concerning county business,' which concern the filing of estimates of funds necessary to operate the corporate divisions of the state, and of the business of the officer of this relator, in particular. The operation of the business of government as provided by law is a public necessity. The business of public education cannot be determined in the case at bar to be of greater or less necessity than the business of public highways, the business of raising public revenue, or of any other particular public business, but, we may, and do, determine, for the purpose of deciding this case, that the business of public education, as provided by the Constitution, and statutes is equal to and not inferior to any other business of government. *In a case, such as is here presented, where the necessary funds which the county council shall appropriate with which to pay the salary, which is certain and fixed in amount, and the official duty is specifically enjoined upon the county council to appropriate such ncessary funds, such duty is not dependent upon any action of the school superintendent to file an estimate of the amount of his salary with the auditor, for his use in preparing the ordinance of appropriation for the consideration of and adoption by the county council."* (Our italics.)

State, ex rel., Fox v. Board of Commissioners, Carroll County, et al., 203 Ind. 23 at pp. 38-39.

The failure or refusal of a county council to make an appropriation to pay a claim against a county does not affect the validity of the claim. Its payment, however, is postponed until an appropriation is made, and public funds are provided to meet it.

State, ex rel., v. Wayne County Council, 157 Ind. 356-359.

Another case very much in point is the case of State v. Steinwedel, *supra*. The relatrix was appointed attendance officer and her salary fixed by the school board, but the county

council failed to make an appropriation for the payment of the same. Relatrix performed her duties without an appropriation and in an action to mandate the council it was urged that she had not filed an estimate and the appropriation could not be made at a special session.

The court says:

> "It was not necessary, as urged in point 7 of appellees' memoranda, that appellant allege facts to show that she had filed an 'itemized statement,' or that 'she has a valid liquidated claim.' The statute authorizes the school board to fix within certain limits the amount of the salary for the attendance officer and then provides that 'the county council shall appropriate, and the board of county commissioners shall allow the funds necessary to make such payments.' * * * *The school board fixed the amount of the salary for the years 1930-1931 and notified the county council and it was then the council's imperative duty to make the appropriation. The General Assembly may decide that certain activities of the busines of government are so important that the supplying of funds to carry on these activities must not be left to the discretion of local authorities.*" (Our italics.)
>
> State, ex rel., v. Steinwedel, 203 Ind. 457, pp. 472, 473.

> "It is true that the 'County Council Act' limits appropriations at special meetings to emergency appropriations; and we assume that such Act must be followed in all cases where the county council may, in its discretion, refuse to make an appropriation for payment of a claim. *But the General Assembly has the power to require a county council to make specific appropriations without regard to usual procedure and, in such cases, the General Assembly, in effect, makes the appropriation, and the Act of the council amounts merely to registering in proper form the will of the General Assembly.*"
>
> State, ex rel., v. Steinwedel, 203 Ind. 457, pp. 473, 474.

Without extending this opinion unduly, I call your attention to the opinion rendered you on July 29, 1937, with reference to the mandatory duty resting upon a county council to make the appropriation, where the salary of an officer or employee is fixed by the legislature or delegated by it to some governing body and fixed by such body leaving no alternative to it except to make the appropriation requested, and wherein I cited a number of authorities in support thereof. These authorities all affirm this proposition in positive terms.

Your third question is then answered in the affirmative and the appointee can recover the salary approved by the county board within the salary range established by the state department.

Your fourth and fifth questions are likewise answered in the affirmative. Both of these questions are based upon an appointment being *duly* made in the first instance and a subsequent appropriation made by the county council. The county director with the approval of the county board has the power to appoint the necessary assistants to administer the welfare activities. The question of necessity in some instances may be an open question, until it is ratified or acknowledged by some authorized body. The burden of showing a necessity would not be on the appointing body, but upon the one raising the question, that is upon the county council if it refused to make an appropriation. The making of the appropriation subsequent to the appointment would be an acknowledgment that the necessity existed and the appropriation would then relate back to the time of qualification by the appointee and the commencement of service, and the appointee could lawfully be paid for services so rendered from the time service commenced.