pose, is abundantly settled by authority; and the mere fact that the payment was made under protest does not change the rule.”

It is my opinion, therefore, that the Public Service Commission is without authority to make or authorize the refund which is the subject of your inquiry.

ENGINEERS & LAND SURVEYORS, STATE BOARD OF REGISTRATION FOR PROFESSIONAL: Engineers—registration—authority of Board to require applicant to successfully pass examination before being granted registration.

August 13, 1937.

Mr. L. T. Goozee, Secretary,
Indiana State Board of Registration for
Professional Engineers and Land Surveyors,
State Capitol,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion concerning the authority of your board to require an applicant for registration as a professional engineer, to successfully pass a written examination as further evidence of his qualifications before being granted registration.

The specific case to which you refer deals with a person who filed his application for registration prior to the effective date of the Acts of 1935, and he claims that under the provisions of section 9, chapter 169, Acts of 1921, he was entitled to a certificate of registration upon the showing made by him in his application. This showing set out approximately eighteen years of engineering practice. However, upon investigation of your board it was determined that a part of the work set out in his application was of a character that did not constitute engineering practice and a serious doubt was entertained by your board as to whether the applicant had, in fact, engaged in active engineering practice for a period of ten years, and also a doubt as to his qualifications as an engineer.
The board, therefore, ruled that the applicant, as further proof of his qualifications, be required to successfully pass the regular written examination as prescribed by the board, before being granted registration.

The applicant took the examination but failed to make the grades required for passing.

He now contends that the board had no authority under the law to require him to take an examination, and that the board erred in not granting the registration on the required number of years of active engineering practice.

You then quote a part of paragraph 2, section 9, chapter 169, Acts of 1921, and request an interpretation of same as applied to the above facts. This quotation is as follows:

Clause I

"Unless disqualifying evidence be before the board, the following facts established in the application shall be regarded as prima facie evidence satisfactory to the board that the applicant is fully qualified to practice professional engineering or land surveying: (a) Ten or more years of active engagement in professional engineering or land surveying work."

Clause II

"Applicants for registration in cases where the evidence originally presented in the application does not appear to the board conclusive or warranting the issuance of a certificate, may present further evidence, which may include the results of a required examination, for the consideration of the board."

For the sake of clarity I have divided your quotation into clause one and clause two.

Transposing clause one, for better analysis, we find it to mean:

"Ten or more years of active engagement in professional engineering or land surveying work . . . established in the application shall be regarded as prima facie evidence satisfactory to the board that the applicant is fully qualified to practice professional engineering or land surveying, unless disqualifying evidence be before the board." (Our italics.)
“Prima facie evidence” is defined as follows:

“Prima facie evidence means evidence which is sufficient to establish the fact unless rebutted.”

Blough, et al., v. Parry, et al., 144 Ind. 463, 494.

Therefore, in this case there was prima facie evidence before the board that this applicant was qualified, but upon investigation, disqualifying evidence was discovered, which was sufficient in the minds of the board to rebut the prima facie evidence set forth in the application. Consequently, the board was within its rights in refusing a certificate of registration under clause 1 of your quotation.

Turning now to clause 2 it should be noted that it is supplemental in character to clause 1. In other words, if the applicant is refused a certificate under the evidence originally presented in the application, he may present further evidence, and this evidence may include the results of a required examination. (Our italics.)

The word “require” is defined by Webster’s new international dictionary as, “To demand; to claim as of right and authority; to exact. To impose a command or compulsion upon one to do something.”

It is therefore my opinion that the board was fully within its rights in requiring the applicant to take an examination.

But, could the board compel him to successfully pass this examination as a condition precedent to being granted a certificate of registration?

The second clause, quoted by you, places the burden upon the applicant to present further evidence if he so desires and this evidence may include the results of an examination which has been required of him. It is conceivable that he could have presented (supplemental) evidence for the consideration of the board without including the results of his examination.

In conclusion it is my opinion that:

1. Under clause 1, the board was within its rights in refusing to grant a certificate of registration where the disqualifying evidence was sufficient to rebut the prima facie evidence presented in the application.

2. That the board was within its rights in requiring the applicant to take an examination.
3. That the board exceeded its authority in holding that the applicant must necessarily pass the examination as a condition precedent to being granted a certificate of registration, inasmuch as he might have presented other evidence which would have satisfied the board of his qualifications.

CONSERVATION, DIVISION OF: Certification of seeds and plant parts, whether authority under the act extends to the certification of plants.

August 17, 1937.

Hon. Frank N. Wallace,
State Entomologist,
Department of Conservation,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official interpretation of certain parts of chapter 248 of the Acts of 1935, page 1257. As a basis for your questions you make the following statement:

"Two distinct situations have arisen under this statute. The first, a plant grower complies in all respects with the statute referred to above and receives from the proper officials a certification of his seed or plants, and he labels his plants that he sells 'Indiana State Certified' or just 'Certified.' Now, the second situation is where a plant grower simply produces a number of plants or seeds and makes no attempt to comply in any respect with the statute above referred to, and then attaches to the plants he sells or offers for sale a similar tag as is done in the first situation, but on this tag there appears only the word 'certified,' usually in large type, with the manifest intention of beguiling the public into purchasing his plants."

You submit the following questions:

"1. In the first situation, is the State of Indiana through its proper officials, under this Act, authorized to certify the plants?

"2. In the second situation, is the plant grower violating the Act above referred to by labelling his