It is my opinion, therefore, that the board should require evidence which is sufficient in the minds of the board to prove the fact that this person's apprenticeship began prior to January 1, 1920.

Turning now to the question, "Is an affidavit sufficient?"

> "Affidavits when admissible as a general rule are only prima facie evidence, and it has been said that they should not be used where better evidence is obtainable."
>
> 2 C. J. 376 (Sec. 149).

It is, therefore, my further opinion that an affidavit would be only one link in the chain of evidence which you should require of the person attempting to establish the fact.

INSURANCE DEPARTMENT: Insurance company, capital deposit. Evidence of real estate as capital deposit. Hoosier National Life Insurance Co.

October 6, 1937.

Hon. George H. Newbauer,
Insurance Commissioner,
State House,
Indianapolis, Indiana.

Dear Sir:

In your letter of recent date you ask for an official opinion as to whether or not a stock insurance company organized under the Acts of 1899, as amended in 1907 and 1929, can, as a portion of their capital stock deposit pursuant to statute, the same being section 39-205, Burns 1933, deposit the deed to real estate?

It is a well settled rule of law in Indiana that a statute should be so construed that every part of it, if possible, may be operative.

> State, ex rel., Hopper v. Board of Election Commissioners of Tipton, 196 Ind. 472.

In the case of Lime City Building, Loan and Savings Association v. Black, 136 Ind. 544, it was laid down as a rule of construction that in construing a statute, it is not to be presumed that any part of the statute was intended to be without meaning, and every part of the statute must be viewed in connection with the whole, so as to make all parts harmonize, if practicable, and give a sensible and intelligent effect to each.

These two above quoted rules of statutory construction, as has been said, are extremely well settled rules in Indiana and elsewhere as well. In the light then of these rules of construction, we must proceed to a construction of the meaning of the insurance law, under which this company of which you speak is seeking to make its deposit.

The statute which controls the capital stock deposit is section 5 of chapter 28 of the Acts of 1899, as amended by section 1 of chapter 262 of the Acts of 1907, as amended by section 1 of chapter 165 of the Acts of 1929. Such section reads in part as follows:

> "Stock companies organized under this Act shall have not less than one hundred thousand dollars ($100,000) of capital stock subscribed, fifty (50) per cent of which shall be paid up and invested in bonds of the United States, or of this state, or certificates of deposit of any solvent bank or trust company, or in bonds and mortgages upon unencumbered real estate in the State of Indiana, *worth at least double the sum loaned thereon* (if buildings are considered as part of the value of such real estate, they must be insured for the benefit of the mortgagee), twenty-five thousand dollars ($25,000) of which said securities shall be deposited with the auditor of state, and upon said deposit, and satisfactory evidence to the auditor of state that the capital stock of at least one hundred thousand dollars ($100,000) is all subscribed in good faith, and fifty (50) per cent thereof paid in by the subscribers of said stock and invested as herein prescribed, he shall issue to said company a certificate authorizing said company to do business. But no part of the fifty (50) per cent aforesaid shall be loaned to any stockholder or officer of the company." (Our italics.)

I wish particularly to call your attention to that portion of the above quoted section which I have italicized. This, it seems to me, is a clear expression on the part of the legislature of their apathy toward real estate and evidence of indebtedness thereon as a capital stock deposit. You will notice too that bonds and mortgages on real estate can be accepted only when the real estate bonded or mortgaged is worth double the

amount loaned thereon. The purpose, of course, is protection against a rapid depreciation in value likely to result in loss. Thus, we see then as a reasonable conclusion to be drawn therefrom that if before mortgages and bonds are to be accepted, the real estate upon which the loans have been made must be worth double the amount of the loan, it would be unreasonable to assume that the legislature intended that real estate should be accepted at its appraised valuation.

Furthermore, I think there can be no misinterpretation of this section relative to what may be put up as the deposit required. The language, it seems to me, is clear that the money must be invested in bonds of the United States, or of this state, or certificates of deposit of any solvent bank or trust company, or in bonds and mortgages upon unencumbered real estate (subject to certain conditions).

It might be argued that another portion of this same Act relative to the valuation of policies and the deposit of securities therefor, nullifies in part the section relative to capital stock deposit. It is my opinion that this argument is without merit and for the reason that in view of the rules of construction set out at the beginning of this opinion, meaning must be given to each of the two sections. Thus, we must inevitably conclude that that section dealing with the valuation of policies and the deposit therefor sets up a separate type of deposit as over against the capital stock deposit.

I believe it well to also point out to you that the argument might be advanced that the section of the same general insurance law to which we have been referring, which section provides for investments, conflicts with that section setting up a capital stock deposit. It is my opinion that this argument also is without merit and for the reason that again we have a separate type of thing designed for a separate purpose.

You will notice also that section 39-228 of Burns 1933 sets up the purpose for which real estate may be purchased and held by an insurance company. Part (a) of this section provides, in speaking of the right to purchase and hold real estate by an insurance company organized under this Act, as follows:

> "Such as shall be needed in whole or in part for the transaction of its business, including that acquired for future occupancy."

In addition to this, there is a provision of this same action which says:

> "That the value of real estate hereafter acquired under item (a) of this clause shall be determined by two (2) disinterested freehold appraisers, to be approved by the insurance commissioner, residing in the county in which the real estate is situated."

The purpose of this portion of the statute was to make provision for the purchase by an insurance company of a so-called home office building and was not intended as an investment under the capital stock deposit section.

It might also be argued that the section which provides for the changing of securities is in conflict with that section on capital stock deposits. It might be said that since the section which makes provision for the changing of securities, provides in part as follows:

> "Companies shall have the right, at any time, to change their securities on deposit by substituting for those withdrawn a like amount in other securities of the character provided for in this Act,"

that the restriction on securities eligible for deposit under the capital deposit section is a useless thing. That is to say, that if the company can change its securities at any time, there is no need to hold rigidly to the restrictions under the capital deposit section. This argument, in my opinion, is unsound for the reason that the $25,000 which must be deposited must remain intact and the section providing for the changing of securities has no application to this original $25,000 deposit.

Thus, to answer your question specifically, it is my opinion that the insurance company of which you speak can not put up as a deposit pursuant to the section of the statute demanding such capital stock deposit the deed to their home office building. Nor can they put up as a deposit with your department the evidence of ownership of any other real estate in an attempt to comply with chapter 165 of the Acts of 1929.