

GOVERNOR'S OFFICE: State Welfare Director, eligibility of senator to appointment as.

March 22, 1937.

Hon. Dick Heller,
Executive Secretary,
Indianapolis, Indiana.

Dear Sir:

Your office has submitted the following question:

“Can Senator Thurman A. Gottschalk be appointed to the office of State Administrator of Public Welfare on the condition that he serve in such capacity without pay?”

Section 30, article 4 of the Constitution of the State of Indiana, provides that:

“No senator or representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit which shall have been created or the emoluments of which shall have been increased during such term.”

It will be noted that the office of State Administrator of Public Welfare was created by chapter 3 of the Acts of the General Assembly, Special Session, 1936. The Act further provides that:

“He shall serve at the pleasure of the State Board and his salary shall be fixed by the Governor at not to exceed six thousand dollars per annum.”

Clearly, the office, as created by the Legislature, was intended to be an office of profit but if the Governor appoints on the condition that the Welfare Director shall serve without pay it is my opinion that such appointment is not an appointment to an office of profit, as contemplated in the Constitution. It is my opinion, therefore, that Senator Gottschalk may be appointed to the office of State Administrator of Public Welfare on the condition that he serve without salary.