FINANCIAL INSTITUTIONS, DEPARTMENT OF: Petty loan companies, right to include interest due in negotiating new loan.

April 12, 1937.

Hon. Homer O. Stone, Supervisor,
Division of Small Loans,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of April 10, submitting the following questions:

> "First—If a loan previously made is delinquent as to principal and interest and the borrower has no cash with which to pay, could a new loan be made by the licensee to furnish the borrower with sufficient cash to pay off the old loan and accrued interest due on such loan? By following this procedure would a licensee operating under the Petty Loan Act be guilty of compounding interest?
>
> "Second—Can a licensee legally renew a delinquent account where accrued interest exists, the amount of such new loan being the sum and total of the unpaid principal balance, and the accrued interest."

In reply to the first question submitted, beg to say that it is my opinion that the same should be answered in the affirmative in so long as the new loan negotiated does not exceed the maximum statutory limit of three hundred dollars. Where the borrower has failed to pay the principal and interest on a loan when due the authorities seem to hold that the making of a new loan in a sum sufficient to cover the principal and interest due does not violate the rule forbidding the compounding of interest.

> "The general rule of law seems to be, that compound interest will not be allowed where there is no agreement to pay it, nor where there is such an agreement, if it is made at the time the principal debt is created, for the reason that it is oppressive and tends to usury; but, on the other hand, it may be recovered where there is a contract to that effect, made after

the simple interest on which the compound interest is charged becomes due, and in consideration of the forbearance of said simple interest."

Niles v. Board of Commissioners of Sinking Fund —8 Blackford, 158 at 159.

It is my opinion, therefore, that such a loan would not violate the provisions of the statute with reference to interest charges.

Section 2, chapter 154 of the Acts of the Indiana General Assembly, 1933, further provides that:

"No licensee shall directly or indirectly charge, contract for, or receive any interest or consideration greater than he would be permitted by law to charge if he were not a licensee hereunder, upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than three hundred dollars."

It is apparent, therefore, that the licensee may renew loans and constitute as the new principal the principal and interest due on the old loan at maturity, provided, however, such does not operate to exceed the maximum of three hundred dollars.

ACCOUNTS, STATE BOARD OF: Deputy county officials, salary increase.

April 12, 1937.

Hon. William P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of April 7th, submitting the following question:

"Are the deputies to the various county officers, who are now serving, entitled to the increase as provided for as soon as chapter 45 of the Acts of the General Assembly, 1937, becomes effective, provided, of course, that the county council makes the necessary appropriation?"