It will be noted, from a reading of the above section, that peace officers of the state or any division thereof are not allowed within fifty feet of the polls, except to serve process of courts or to vote, unless summoned by the election sheriffs. It is apparent, from the above section, that the election boards and the sheriffs who are duly appointed to attend such elections are, under the law, the only law enforcing officers who are permitted within fifty feet of the polling places during the time when such election is in progress.

It will be noted that the above quoted sections apply to general elections. However, your attention is directed to section 29-507, Burns' Indiana Statutes 1933 Revision, which governs primary elections and is substantially the same as the law governing general elections, except that the county chairman may nominate such election officers within five days of the date of holding such primary.

This Act further provides that the sheriffs for such primary shall be appointed in the same manner as sheriffs are appointed at regular elections, and “the said members of said primary boards and the officers thereof shall perform the same duties, have the same qualifications, take the same oath as are required of the said officers at any general election.”

It is my opinion, therefore, that the election sheriffs have superior authority over any peace officer in the enforcement of the election laws in both the primary and general elections at the polling places, including the distance of fifty feet thereof.

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LABOR, DIVISION OF: Assignment of wages, construction of statute with reference to amount which may be assigned.

April 26, 1938.

Mr. Thomas R. Hutson,
Commissioner of Labor,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion with reference to the construction of section 40-206 Burns'
Indiana Statutes Annotated (1933). This section provides as follows:

“No assignment of his or her wages by any employee or wage earner to any wage broker, or any other person for his benefit, shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part of the wages or salary earned or to be earned during a period not exceeding thirty (30) days immediately following the date of the assignment. Any assignment which shall be post-dated or dated on any other date than that of its actual execution shall be void and of no effect for any purpose whatever.”

The particular point which you desire to have covered in the opinion is as to what aliquot part of the employee’s wages may be assigned and as to whether, in assigning such aliquot part, wages earned at the time of the assignment and wages unearned, but to be earned during the thirty-day period following the assignment, may be considered together.

The above section of the statute presents some very evident difficulties of construction. I do not find any case which gives assistance in the consideration of the questions submitted by you, and I am obliged, therefore, to consider the statute and the questions submitted by you as questions of first impression.

An analysis of the language used, breaking it down into its simplest form, may be of some assistance. It will be noted that, thus treated, the provision is that “no assignment of his or her wages or salary by any employee or wage earner to any wage broker * * * shall be valid or enforceable * * * unless it be for a fixed and definite part of the wages or salary earned or to be earned during a period not exceeding thirty (30) days immediately following the date of the assignment.” It will be noted from the foregoing that such an assignment may affect “wages or salary earned or to be earned during a period not exceeding thirty (30) days immediately following the date of the assignment,” and while the above quoted provision is wanting in punctuation, I think it is evident that it is intended to cover two classes of wages or salary, namely: that which has been earned at the time the assign-
ment is made and that which will be earned during a period of not exceeding thirty (30) days immediately following the date of assignment. As to the wages earned at the times of the assignment, there apparently is no limitation as to the time during which they may have been earned, but as to future wages, the employee is prevented from mortgaging, as it were, his future earnings for a period of more than thirty (30) days. This seems to be the underlying public policy involved in the limitation. I do not think, however, that the employee is prevented from including in an assignment of future wages, thus limited, wages which had been earned prior to the assignment. While the disjunctive "or" is used, in the construction of statutes, it is not at all infrequent that such expressions may be construed as "and," or as including both the conjunctive and disjunctive. I think the word is so used here, and, in my opinion, the assignment may include not only wages earned prior to the assignment, but wages to be earned, limited, however, to such as will be earned during a period not exceeding thirty (30) days immediately following the date of the assignment.

Your further question as to "what aliquot part may be assigned" is more difficult. I think the major consideration of the Legislature was to require that the part, whatever it may be, shall be "fixed and definite." There certainly is no limitation in the statute as to what aliquot part may be assigned. So far as the statute is concerned, any aliquot part could be assigned, and since that is true, there is some question raised as to whether the word "part," as used in the foregoing section, should be given its conventional meaning of "something less than the whole." It is sufficient, however, to answer your question, that there is no limitation in the statute to any particular part, as, for instance, one-third, one-half, four-fifths, nine-tenths, or any similar fractional part. The aim of the statute, as I see it, is that the amount assigned shall be "fixed and definite." A fractional part of a known amount, as would be the case of wages which were earned, would be "fixed and definite," but I do not see how a fractional part of an unknown amount, which would be the case as applied to wages to be earned, could be "fixed and definite." If, during the first week of a thirty-day period, the employee earned $30.00, the second week $40.00, the third week $20.00, and so on, the employment of the aliquot part method would obviously result in the
failure to fix a "fixed and definite" amount, when the amount to be earned was unknown at the time of the assignment. In my opinion, as applied to unearned wages, the statute has in mind that the assignment shall fix a definite amount which is to be covered by the assignment rather than a percentage of an unknown amount.

As already stated, the language is rather ambiguous, but in the consideration of the evident purpose of the enactment, it seems to me that the above conclusion is correct.

Summarizing my opinion on the question submitted by you as to the aliquot part which may be assigned, I doubt whether the statute has reference to an aliquot part of an unknown amount. I think it has reference to a definite and fixed amount, which is to be set out in the assignment.

SECRETARY OF STATE: Trust receipts—Foreign corporations must be qualified in this State before engaging in trust receipts transactions.

April 29, 1938.

Hon. Joseph O. Hoffmann,
Chief Corporation Counsel,
Department of State,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your letter of April 26, 1938, requesting an official opinion. Said request is as follows:

"This department has frequently had the question before it if the qualification by a foreign corporation for the purpose of engaging in and entering into trust receipt transactions pursuant to the provisions of an act entitled, 'An Act Concerning Trust Receipts and Pledges of Personal Property unaccompanied by possession in the pledgee, and to make uniform the law relating thereto.' Acts of 1935, page 993, thereby constitute such a foreign corporation doing business in the State of Indiana within the meaning of section 56, et seq. of an act entitled, 'An Act concerning domestic and foreign corporations for profit providing penalties