Education of Jennings County or perhaps to the superintendent of the Jennings County schools. I think the answer to this question should be in the negative; that is, neither the county board nor the superintendent of schools would be a proper relator in such an action. It seems to me that the proper relator in such a case would be the attendance officer, and until such an attendance officer is appointed no action would lie. However, in case an attendance officer is appointed, it seems to me that an action would lie in his behalf as relator to require the county council to make the necessary appropriation to pay the salary, and your first question is answered accordingly.

As to your second question, the appropriation to cover the period from August 1, 1938, to January 1, 1939, should have been made in September, 1937. Such an appropriation, now, would have to be presented as an emergency appropriation, and I doubt whether the facts stated indicate such an emergency as would require the additional appropriation to be made.

INDUSTRIAL BOARD: Reciprocal Insurance. Whether foreign companies writing workmen’s compensation insurance in Indiana are subject to the reasonable rules of the Industrial Board.

October 3, 1938.

Hon. Ira M. Snouffer,
Chairman, Industrial Board of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following questions:

“1. Can Indiana employers insure their compensation risks under the Indiana Workmen’s Compensation Act in a mutual or reciprocal insurance company organized under the laws of a foreign state or territory?

“2. Do the rules and regulations adopted by the Industrial Board of Indiana regulating mutual and reciprocal insurance companies apply to mutual or reciprocal insurance companies organized under the laws of
a foreign state or territory who are engaged in writing workmen’s compensation insurance in the State of Indiana?

“3. Does the Industrial Board of Indiana have the right to revoke said board’s approval of an insurance company’s policy form for the failure of said insurance company to comply with the provisions of the Workmen’s Compensation Law and duly adopted rules of the Industrial Board of Indiana?

“4. Does the Industrial Board of Indiana have the right to refuse to approve the policy form of any insurance company who has been by the Commissioner of Insurance of the state authorized to write workmen’s compensation insurance in the State of Indiana.”

In order to adequately present my views in answer to the above questions it will be necessary for me to refer briefly to the original Workmen’s Compensation Act, and especially to that part of it which provided for the organization of mutual insurance companies and reciprocal insurance associations authorized to carry the risks of employers who were under the Act.

The Act referred to was enacted in 1915. Section 68, thereof (Acts of 1915, p. 413), required every such employer to either insure and keep insured his liability thereunder in some corporation, association or organization “authorized to transact the business of workmen’s compensation insurance in this state” or to furnish to the Industrial Board satisfactory proof of his financial ability to pay direct the compensation provided in the Act.

There was at that time no provision in any Act of the General Assembly of Indiana authorizing the organization of reciprocal associations with power to write workmen’s compensation insurance except the provision in section 71 of the 1915 Workmen’s Compensation Act which provided as follows:

“For the purpose of complying with the provisions of section 68, groups of employers, to form mutual insurance associations or reciprocal insurance associations subject to such reasonable conditions and restrictions as may be fixed by the Industrial Board, are hereby authorized. Membership in such mutual insur-
ance associations or reciprocal insurance associations so approved together with evidence of the payment of premiums due, shall be evidence of compliance with section 68."


The foregoing is the first statutory authorization for the organization of a reciprocal association with power to write workmen's compensation insurance in Indiana which would comply with the Workmen's Compensation Act. A similar provision is contained in the present Workmen's Compensation Act, which, at the time of the enactment of the Indiana Insurance Law of 1935, was the only statutory authority for the organization of reciprocal associations for the purpose of writing and authorized to write workmen's compensation insurance in Indiana which would comply with the Indiana Workmen's Compensation Act. The provision of the present Act is as follows:

"For the purpose of complying with the provisions of section 68 hereof, groups of employers are hereby authorized to form mutual insurance associations or reciprocal or inter-insurance exchanges subject to such reasonable conditions and restrictions as may be fixed by the Industrial Board. Membership in such mutual insurance associations or reciprocal or inter-insurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with section 68 hereof; Provided, That mutual insurance associations and reciprocal or inter-insurance exchanges heretofore formed and operating at the time of the passage of this Act may continue to operate subject to the provisions of this act."

Acts of 1929, p. 568;
Burns' Indiana Statutes Annotated (1933), sec. 40-1703.

Note: The above provision is from chapter 172 of the Acts of the Seventy-Sixth Regular Session of the General Assembly.

I have said that at the time of the enactment of the Indiana Insurance Law of 1935, the above quoted provision contained in Acts of 1929, at page 568, was the only statutory
authority for the organization of reciprocal associations for the purpose of writing and authorized to write workmen's compensation insurance in Indiana which would comply with the Indiana Workmen's Compensation Act. In 1919 the General Assembly authorized the organization of reciprocal associations for the purpose of providing indemnity among its members "from any loss which may be insured against under other provisions of the law relating to fire insurance and all classes of automobile insurance, and any other kind of insurance included with fire insurance in one classification."


The foregoing provision with reference to risks permitted obviously does not include workmen's compensation.

Note: The above Act is chapter 102 of the Acts of the Seventy-First Regular Session of the General Assembly of Indiana.

It must be apparent from what has already been said that the only law in existence in the State of Indiana expressly authorizing the formation of reciprocal associations for the purpose of writing and with the authority to write workmen's compensation insurance at the time of the enactment of the Insurance Code of 1935 is the one contained in the Workmen's Compensation Act of 1929.

Chapter 172 of the Acts of 1929, supra.

Your attention is now called to the fact that neither the 1929 Act authorizing the organization of reciprocal associations ("subject to such reasonable conditions and restrictions as may be fixed by the Industrial Board") to write workmen's compensation insurance in Indiana; nor the 1919 Act for the purpose of writing fire and all classes of automobile insurance in Indiana were repealed by the 1935 Insurance Code. Moreover, the 1935 Act does not, itself, authorize the organization of such associations and contains no provision setting up a procedure to be followed. On the other hand, it places definite limitations upon the organization of such companies under the 1919 Act.

Note the following quoted from section 272 of the 1935 Act:

"From and after the taking effect of this Act, no company shall be organized or incorporated under any
law of this state to make or do an insurance business on
the reciprocal plan as inter-insurers or individual un-
derwriters unless such inter-insurers or individual un-
derwriters shall have in the case of casualty insur-
ance over all policy liabilities a surplus of at least $100,-
000, and in the case of fire insurance a surplus over all
policy liabilities of at least $50,000, and in the case of
an exchange which limits its business to subscribers
engaged in one class of business and residents of one
county it shall have a surplus over all policy liabilities
of at least $25,000."


The above are limitations not contained in either of the
foregoing Acts, but there is no intention to repeal them and
so to make the matter doubly sure, the following language
immediately follows that already quoted:

"Except as provided in this section and in part I
and part II of this Act, all companies operating as
inter-insurers or individual underwriters, or making
insurance or doing an insurance business on the recip-
rocal plan shall have and exercise all the powers,
rights and privileges conferred upon them by chap-
ter 102 of the Acts of the Seventy-First General As-
sembly of the State of Indiana and chapter 172 of the
Acts of the Seventy-Sixth General Assembly of the
State of Indiana. * * *"

The Acts referred to in the above provision are the 1919
and 1929 Acts which we have had under consideration. A
question arises as to whether the intention was to authorize
associations organized under existing laws to do all of the
things authorized by either or both of the existing Acts. I
do not think the provision should be so construed but it really
makes no difference in the determination of the questions
submitted. In other words, if it be conceded that the inten-
tion was to provide that an association organized under the
1919 Act also was to possess the powers conferred by the
1929 Act, the exercise of such powers would yet be "subject
to such reasonable conditions and restrictions as may be fixed
by the Industrial Board." And, of course, the grant of addi-
tional powers as provided in the 1919 Act to an association
organized under the 1929 Act would not remove the limitation of the 1929 Act that so far as workmen’s compensation is concerned the powers granted are to be exercised “subject to such reasonable conditions and restrictions as may be fixed by the Industrial Board.” I think, however, that the exception above quoted should be construed simply as a restatement of the powers of reciprocal associations organized under the only laws, chapter 102 of the Acts of 1919 and chapter 172 of the Acts of 1929, under which such associations could be organized in Indiana, limiting such powers in accordance with the limitations already set out in section 272 and as provided in part I and part II of the 1935 Act. I do not find, however, that the provisions of part I and of Part II of the 1935 Act affect the questions under consideration.

In other words, if nothing more had been said reciprocal associations other than those organized under the Workmen’s Compensation Act would possess the powers as outlined in the 1919 Act, supra, with the added limitations as to amount of assets, but without the additional power to write workmen’s compensation insurance: and reciprocal associations organized under the Workmen’s Compensation Act would have the rights conferred upon them by that Act with the added provisions as to the requisite assets as set out in section 272 of the 1935 Act. Obviously, however, it was intended that these limitations should not apply to such associations as were organized under the Workmen’s Compensation Act and so section 272 (c) was inserted which provides as follows:

“The provisions of this Act shall not apply to any inter-insurance association or reciprocal or inter-insurance exchange organized under and by virtue of The Indiana Workmen’s Compensation Act of 1915 and all acts amendatory thereof or supplemental thereto, for the sole purpose of writing workmen’s compensation insurance.”

The situation is thus left as follows: associations organized under the Workmen’s Compensation Act are completely outside of the provisions of the 1935 code and are left just where the 1929 Workmen’s Compensation Act leaves them. Associations organized under chapter 102 of the Acts of 1919 possess simply the powers given by that Act and are subject to regulation and examination by the department of in-
urance and are limited as to their minimum assets. It seems to me that the only authority for the organization of a domestic association for the purpose of writing workmen's compensation insurance in Indiana on the reciprocal plan is the provision contained in the Workmen's Compensation Act.


The question next arises as to whether a foreign reciprocal association authorized under the laws of its creation to write workmen's compensation insurance can be admitted into the State of Indiana under the 1935 code and authorized to write workmen's compensation insurance without complying with the rules of the Industrial Board in that behalf in view of the fact that no domestic reciprocal association can do so. That question is answered by section 227 of the 1935 code

"Sec. 227. No foreign or alien company shall be admitted for the purpose of transacting any kind or kinds of insurance business in this state, the transaction of which by a domestic company is not permitted by the laws of this state: Provided, however, That where a foreign or alien company, whose charter provides for the transaction of the kind or kinds of insurance described in more than one class of section 59 of this act, has been transacting business in this state under a certificate of authority issued by the insurance department or insurance commissioner prior to the passage of this act, such company may be issued a certificate of authority under the provisions of this act to make the kind or kinds of insurance provided by its charter. A foreign or alien insurance company admitted to do an insurance business in this state shall have the same, but no greater rights and privileges than a domestic company." (Our italics.)

It follows from what has been said, in my opinion, that a foreign reciprocal association desiring to write workmen's compensation insurance in Indiana should comply with the reasonable rules and regulations of the Industrial Board the same as domestic reciprocal associations, and that would be true independent of whether such associations may also write other types of casualty insurance.
As to mutual companies, it is significant that the same legislature which enacted the Workmen's Compensation Act of 1915, on the next day following the approval of the Compensation Act enacted a statute authorizing the formation of mutual insurance companies with power to write workmen's compensation insurance. It follows, I think, from the foregoing that the authority of the Industrial Board over mutual companies has been limited to those organized pursuant to the provisions of the Workmen's Compensation Act except as to policy form approval as to which the Industrial Board has jurisdiction over all companies writing workmen's compensation insurance in the state.

Passing now to a consideration of your specific questions, upon the basis of what has already been said herein, I think that mutual companies organized under general laws are now not subject to the control of the Industrial Board except as to the approval of the policy form and the revocation of approval under the conditions set out in the statute.

As to reciprocal associations, answering specifically your first question, Indiana employers cannot comply with the insurance provisions of the Workmen's Compensation Act by becoming members of a foreign reciprocal association except under such reasonable conditions and restrictions as may be fixed by the Industrial Board.

The answer to your second question as applied solely to reciprocal associations is in the affirmative, assuming that the rules and regulations conform with the Workmen's Compensation Act. As applied to mutual insurance companies, the answer is in the negative except as to the approval and revocation of approval of the policy form under the conditions set out in the statute.

Your third question goes too far to admit of a categorical affirmative answer. The Industrial Board does have the power to revoke its approval of a policy form, however, under the conditions so clearly set out in the statute. See Burns' Indiana Statutes Annotated (1933) Section 40-1605.

Your fourth question likewise does not admit of a categorical answer. The Industrial Board has no power to refuse to approve a policy form which conforms with the statute. On the other hand, if it does not conform with the requirements of the statute, it may disapprove it.