Since the Department of Public Welfare of the State of Indiana is willing to perform this service, it is my opinion that the Governor’s Commission on Unemployment Relief may grant the amount set forth in the resolution to such department for such purpose.

PURCHASING DEPARTMENT: Competitive bidding—Necessity of competitive bidding in purchases made.

October 14, 1938.

Hon. L. L. Needler,
State Purchasing Agent,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that purchases of coal, groceries and some other commodities are being made on a quarterly basis upon requisition received from the various institutions and departments. You state further that other items, such as drugs and meats, are purchased monthly; that a few items are purchased annually, but that a great variety of items are purchased immediately upon requisition from the institutions and departments.

It is my further understanding from your letter that the purchases which are made immediately upon requisition from the institutions include such items as office supplies, equipment, such as boilers, stokers, laundry equipment, plumbing supplies, hardware and automobiles.

You request an official opinion in answer to the following questions:

(1) On what basis, if any, is the Central Purchasing Bureau required to give public notice to bidders.

(2) If public notice is required, what should be the form and character of such notice.

(3) If public notice is required, should the notice be given in the county in which the Central Purchasing Bureau is located, or should the notice or notices be given in the county in which is located the institution or department for which the purchase is made.

The authority of the state purchasing agent is contained in
the provision of section 60-606, Burns’ Indiana Statutes Annotated (1933), which provides as follows:

“The state purchasing agent shall have power and it shall be his duty to act as purchasing agent for all state offices, departments, commissions, boards, bureaus, and state institutions in the purchase of supplies, material, furniture, furnishings and office equipment. He shall secure information as to market prices, reasonable values and cost of supplies and material to be purchased. He shall advise and give such other aid and assistance as may be required in the making of all other purchases. He shall have such power as is now provided by law governing the boards of trustees or the various institutions in the purchase of supplies, material, furniture, furnishings and office equipment and when bidding and the publication of notice are required by law, such state purchasing agent shall act as the agent of such state offices, departments, commissions, boards, bureaus and state institutions in informing prospective bidders and in doing all things necessary for the securing of advantageous bids. The state purchasing agent shall have such other powers and perform such other duties as may be authorized by the governor. This Act shall not apply to the purchases for the state highway commission, for Purdue University, for Indiana University, for Ball State Teachers’ College, for the Indiana State Teachers’ College, for the Supreme and Appellate Courts, and to the purchases which are provided for by the state printing law.” (Our italics.)

Referring now to the authority of the Boards of Trustees of the various institutions in the purchase of supplies, furniture and office equipment, I desire to call your attention to section 22-105 of Burns’ Indiana Statutes Annotated (1933), which provides as follows:

“In the purchase of supplies, commodities or services that enter into the maintenance or operation of any of the institutions covered by this Act, it shall be the duty of the board to invite competitive bids through sealed proposals to the president of the board of each
institution, and the lowest and best responsible bidder shall be awarded the contract, and the same provision shall apply to the construction and equipment for all buildings for any such institution. Public notice of such bids shall be given by publication in the two (2) leading newspapers in the county where such institution is located, and otherwise, if considered beneficial. If such board deems it advisable and in the interest of economy, it may, in its discretion, buy certain articles in quantity, or may contract for the purchase of particular commodities or services to be delivered or furnished to the institution over such period of time, and to be paid for at such rate or price, as it may determine. Such fact, however, shall be particularly stated in the notices. Blank forms for bids shall be furnished to all applicants but bids shall not be rejected because not contained on such form. Any or all bids may be rejected.”

This latter provision was originally enacted as chapter 98 of the Acts of 1907. Acts of 1907, page 138. It was amended in 1929, but the provision requiring competitive bids has been in the law in substantially its present form from the original passage of the Act in 1907. The institutions covered by this Act are the several hospitals for the insane, the Indiana Village for Epileptics, the Indiana Soldiers’ and Sailors’ Orphans’ Home, the Indiana State Soldiers’ Home, the Indiana Institution for the Education of the Deaf and Dumb, the Indiana Institution for the Education of the Blind, the Indiana School for Feeble-minded Youth, the Indiana Boys’ School, the Indiana Industrial School for Girls, the Indiana State Prison, the Indiana Women’s Prison and the Indiana Reformatory.

During the same year in which the last above Act was passed, the General Appropriation Act contained the provision that:

“In the purchase of all supplies that enter into the maintenance of any of the institutions covered by this appropriation bill, it shall be the duty to invite competitive bids through sealed proposals to the president of the board of each institution affected by this proviso, and the lowest and best bidder shall be awarded the
contract, and the same provision shall apply to the structure and equipment of all buildings provided for in this Act."


The same provision appears in the General Appropriation Act of 1909 (Acts of 1909, page 498), but beginning with the General Appropriation Act of 1911, the provision corresponding with that last above quoted was changed so as to read as follows:

"The purchase of supplies that enter into the maintenance, repairs and equipment of any of the institutions covered by this appropriation bill shall be by competitive bids as far as is practicable, and to this end it shall be the duty to invite competitive bids through sealed proposals to the president of the board in each institution affected by this proviso, and the lowest and best responsible bidder shall be awarded the contract: Provided, That this requirement shall not apply to articles manufactured at the Indiana reformatory."


A provision similar to the one just quoted was contained in every appropriation Act following up to and including the Biennial Appropriation Act of 1937. The later appropriation Acts modified the provision somewhat so as to include departments of the state government as well as institutions. I need not, however, quote from any of these later appropriation Acts, except the Biennial Appropriation Act of 1937, section 6 of which provides as follows:

"The purchase of any of the items included under all other operating expenses, or equipment that may enter into maintenance, repairs, or equipment of any institution or department of the state government covered by this appropriation act, shall be by competitive bids as far as it is practicable, and to this end it shall be the duty of the proper authorities to invite competitive bids through sealed proposals, and the lowest and best responsible bidder shall be awarded the contract: Provided, That this requirement shall not apply to articles manufactured at the Indiana Re-
formatory, Indiana State Prison, Indiana State Farm and the Board of Industrial Aid for the Blind.” (Our italics.)


It will be observed from the foregoing quotations from the several statutes referred to that beginning with the year 1911 the General Biennial Appropriation Acts providing that competitive bids should be required invariably qualified the requirement by the language “as far as it is practicable.” These various provisions, the one requiring competitive bids and providing for notice as applied to purchases by institutions, the Act of 1933 creating the purchasing bureau and the provisions of the several appropriation Acts, should, in my opinion, be construed together for the purpose of determining the correct answer to your questions.

From a consideration of these provisions, it seems to me that the provision of section 22-105 of Burns' Indiana Statutes Annotated (1933) governing the purchase of supplies which enter into the maintenance of the institutions is modified by the provision of the later appropriation Acts, beginning in 1911, to permit a deviation from the exact language of that statute in cases where it is not practicable to ask for competitive bids and to give a public notice of the invitation for such bids. The inclusion of the language “as far as it is practicable” in the appropriation Acts undoubtedly was inserted for the purpose of permitting a greater degree of flexibility in the requirements for the purchase of such supplies and to give some discretion to the persons charged with the duty of making purchases. As to what are the exact limitations, however, of this discretion presents a problem of considerable difficulty. In my opinion there would be no discretion to omit the requirement for competitive bidding, and in the case of purchases for institutions the publication of the notice as to purchases made upon an annual basis, nor would it be proper to omit the same requirements in the case of quarterly or monthly purchases. At least there does not appear to be any reason which would make it impracticable to ask for competitive bids in such cases and to comply literally with the statute for the publication of notices where such notices were required, as applied to annual, quarterly and monthly purchases.

There may be, however, some small items, the need for
which might arise unexpectedly, and as to which the additional cost of advertising would be more than could reasonably be expected to be saved by issuing a notice. There may be other cases where replacements required are of such character as to practically eliminate the possibility of competition. There perhaps might be an emergency factor which would enter into the matter so as to make the publication of the notice required by the statute in the case of institutions impracticable. With these observations, I desire now to notice your specific questions. Answering your first question, I think that in the case of the institutions referred to above, public notice should be given in all cases unless the same is found to be impracticable. In giving a public notice, answering your second and third questions, you should follow the statute referred to earlier in the opinion, the same being section 22-105 of Burns' Indiana Statutes Annotated (1933), which requires that the notice should be given in two leading newspapers in the county in which the institution is located. The form of the notice should be sufficient to apprise the bidder of the materials or supplies to be furnished, the terms upon which they are to be furnished and should include such other descriptive matters as will place all bidders on a substantially equal basis. As to the departments of the state government, other than institutions, there does not seem to be any specific requirement for the publication in a newspaper of a notice to bidders, and I think your department would, therefore, in such cases have the right to exercise its discretion as to the best method to be used to obtain competition, but, unless impracticable to do so, competitive bidding should in all cases be provided for.

HEALTH, STATE BOARD OF: Salary of inspector of weights and measures in Knox County, whether duty of county to appropriate same.

October 15, 1938.

Dr. Verne K. Harvey, Director,
State Board of Health,
Indianapolis, Indiana.

Dear Doctor Harvey:

I have before me your letter, which, in part, is as follows:

"Knox County, which has a population of approxi-