You request an official opinion as to whether the justices of the peace in said Warren Township come under the salary provisions of the above quoted section of the statutes. The answer is that they do not come under such salary provisions. The modifying clause "wherein there is located a city or any part of a city having a population of three hundred thousand (300,000)" etc., which clearly modifies "township" is joined with the other modifying clause "wherein are permanently located and sitting three or more municipal courts" by the conjunctive "and". This means that both requirements must be present in order that justice of the peace may come within the terms of the statute. Only one requirement is present as to Warren Township and a justice of the peace within said township is, therefore, not within the provisions of the above section of the statutes.

UNEMPLOYMENT COMPENSATION, DIVISION OF: Vested right in benefits payable; escheat to State of benefit payment.

December 27, 1938.

Hon. Fred C. McClurg,
General Counsel,
Unemployment Compensation Division,
Department of Treasury of Indiana,
Indianapolis, Indiana.

Dear Sir:

In your letter of recent date, you requested an official opinion on two questions submitted therewith concerning the Indiana Unemployment Compensation Law.

Your letter outlines a situation in which a claimant for benefits under the law dies pending either delivery of a check or a favorable decision by an appeal tribunal. Your first question is as follows:

"Does the claimant have a vested right in such unpaid or uncashed amount that survives his death?"

In order to arrive at an answer to this question, it is essential to first determine the nature of the benefits paid under the authority of the Act, and this, in turn, requires an in-
quiry into the purposes sought to be served, and the ends sought to be accomplished by the passage of the Act. Section 1 of the act (Burns’ Indiana Statutes, Annotated, 1933, Supplement 52-1501) under the heading “Declaration of Public Policy,” provides:

“Economic insecurity due to unemployment is declared hereby to be a serious menace to the health, morale and welfare of the people of this state and to the maintenance of public order within this state. Protection against this great hazard of our economic life can be provided in some measure by the required and systematic accumulation of funds during periods of employment to provide benefits to the unemployed during periods of unemployment and by encouragement of desirable stable employment. The enactment of this measure to provide for payment of benefits to persons unemployed through no fault of their own, to encourage stabilization in employment, and to provide for a state employment service is, therefore, essential to public welfare; and the same is declared to be a proper exercise of the police powers of the state.”

The Act is obviously intended to be broad in its scope and to serve a great public purpose. It seeks not only to combat economic insecurity due to unemployment, which it declares to be a “serious menace” but to “encourage stabilization in employment.” It is universally accepted that an Act should be interpreted to carry out the obvious intent and meaning of the Legislature, and that, where a broad public purpose is sought to be served it should be liberally construed to that end.

It is not amiss at this point to inquire into the meanings of the terms with which we are dealing. A vested right has been defined as follows:

“An immediate fixed right to present or future enjoyment, or where the interest does not depend on a period or event that is uncertain.”

8 Words and Phrases 7307 and cases cited.

A further amplification of the meaning of “vested right” is contained in Ruling Case Law:
"The words are used as implying interests which it is proper for the state to recognize and protect, and of which the individual could not be deprived arbitrarily without injustice."

6 R. C. L. 308.

Compensation is defined in Webster's International Dictionary as "that which constitutes, or is regarded as, equivalent or recompense" and "that which compensates for loss or privation". It has been judicially defined as follows:

"The primary significance of the word 'compensation' is equivalence, and the second or more common meaning is something given or obtained as an equivalent."

St. Paul R. R. v. Denman, 10 Minn. 267, 280.

The word "compensation" connotes more than merely a bounty or pension granted for charitable purposes only. A pension is regarded in the law as an unvested grant which may, unless due and payable, be divested by the granting authority at any time. Analysing the Unemployment Compensation Law in the light of the definitions of a vested right as one "where the interest does not depend on a period or event that is uncertain" and one "which it is proper for the state to recognize and protect," we are led to the conclusion that the Legislature intended to compensate for a loss, and this is highly persuasive that a property right exists in the recompense which is provided.

A close analogy may be drawn between workmen's compensation laws and those providing for unemployment compensation. Each seeks to combat hazards in the general field of employment, each provides a scaled rate of compensation upon the cessation of the employment and each provides a special machinery for the awarding of claims presented. It is true that under the Workmen's Compensation Law in Indiana, the employer exclusively provides the funds through which payments are made, usually through private insurance, while under the Unemployment Compensation Law, a fund administered by the board is the source of benefit payments, but this does not remove the essential similarity between the two.

Under the provisions of the workmen's compensation laws
in many states, the benefits payable are drawn from a state fund which is derived from contributions from employers throughout the state. Such plans are so like the unemployment compensation plan here under consideration in fundamental purposes and principles that differences as to isolated provisions may be regarded as superficial.

Section 4 of the Unemployment Compensation Law (Burns' Supp., 52-1504) provides that contributions are payable from the employers on a percentage basis of payrolls, in which respect the Act is very similar to the above mentioned workmen's compensation schemes. These contributions have been regarded in many courts as being in the nature of insurance premiums. Considered in this light, the vested character of the benefits provided can hardly be denied.

The courts have uniformly held, in regard to workmen's compensation, that there is such an interest in a benefit payable to a beneficiary as may be enforced by the personal representative.

State ex rel Munding v. Industrial Commission, 92 Ohio State 434, 111 N. E. 299.
Bartoni's Case, 114 N. E. 663 (Mass.)

The Workmen's Compensation Law in Ohio provides for a state fund to which employers contribute and from which benefits are payable to injured employees. The supreme court of Ohio had occasion, soon after the Act was passed, to rule on the question of whether payments were vested, in the case of State ex rel Munding v. Ind. Comm., supra. There the court used the following language:

"The only fair inference to be drawn is that the Legislature intended that compensation * * * should vest in the dependent when awarded. Again, this law was passed, not in a spirit of 'charity' but only simple justice. The fund it provides is called, and is, in fact, an 'insurance' fund, from which payments are to be made, and is in no sense a pension fund, and never, so far as we are aware, has it been contended that injured employees and their dependents were not en-
titled to compensation as a matter of right.” (Our italics.)

In the same case the court establishes elements of a vested right and comes to the conclusion that the benefits payable under the Workmen’s Compensation Act are vested:

"Thus, the payments being fixed in amount, ordered paid from a certain fund, and awarded to a definite person, every element of a vested right is present, and no element or suggestion of a pension that is to cease at the death of the pensioner."

The provisions of the Unemployment Compensation Law contain no direct indication that benefits payable thereunder are to be considered as vested in the beneficiary to the extent that such benefits are payable to the personal representative upon decease, but various provisions tend to show that such was intended.

Section 5 (Burns’ 1933 Supplement, 52-1505) provides for the payment of benefits as follows:

"Twenty-four months after the date when contributions first accrue under this Act from an employer, benefits shall become payable from the fund to any individual who thereafter is or becomes unemployed and eligible for benefits.” (Our italics.)

Use of the words “benefits shall become payable” indicates a legislative intent that the fund shall be available to those whom it seeks to aid without necessity for extended and exhaustive efforts at collection. Had the phraseology been “claims for benefits shall be entertained” or similar language, a contrary intention might be presumed. Only two conditions are necessary to be established in order to receive benefits under this section; first, that the individual is unemployed, and second, that he is eligible. Eligibility conditions are provided in section 6 (Burns’ 1933 Supplement, 52-1506). The beneficiary is to receive benefits after a stated period when he is without a means of support from regular employment, since one of the conditions of eligibility is a waiting period. Thus the compensation is for past loss or deprivation, from which we may conclude that the rights to benefits provided have accrued.
The entire purpose of the law is to provide a means of subsistence during a period of unemployment, a stop-gap during times of economic slack, and this is declared to be a proper exercise of the police power because of the interest of the government in the security, welfare, and health of the people. It is assumed that much of the load will be removed from direct relief by this means. The ends sought to be accomplished might be defeated if it is not assumed that the benefits payable under the Act vest with the beneficiaries, and cannot be removed at the will or behest of the officers charged with its administration.

In view of the above consideration, your first question, in our opinion, should be answered in the affirmative.

Your second question is as follows:

"In the event that the claimant has no survivors and the checks are returned to this division, do such amounts revert to the fund from which it was paid, or do such amounts escheat to the State of Indiana?"

I assume that by "survivors" you mean "heirs at law" or those capable of inheriting from the deceased beneficiary.

Burns’ Indiana Statutes, Annotated, 1938, 6-2349 provides as follows:

"The estate of person dying intestate without kindred capable of inheriting, shall escheat to the state * * * ."

Since we have already concluded, in answer to your first question, that there is a vested right in benefits payable under the Act, it follows that such benefits would be a part of the estate of a deceased beneficiary, and would, of course, escheat to the state.