It is my opinion that such an affidavit should be required from all applicants who make application to pay less than the annual fee, which affidavit should set out either that the motor vehicle has not been operated prior to the time of making application, or it has not been owned by them prior to such time.

WELFARE, DEPARTMENT OF PUBLIC: Power of County Director Public Welfare to pass upon awards of assistance, if delegated by county board.

February 2, 1938.

Hon. T. A. Gottschalk,
Administrator, Staté Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Gottschalk:

I have before me your request for an official opinion with regard to the adoption of the following resolution:

1-306 The decision on the case of any applicant for or recipient of old age assistance shall be determined by the county board, or by the county director where the county board, in accordance with the provisions of section 27 of the Welfare Act of 1936 as amended, has delegated such authority. This delegation of authority by the county board shall be recorded in the official minute book of the county board.

DPW Form 17. “Recommendations of County Director and Action of County Board of Public Welfare as to Rejections, Awards, Revocations, etc.”, shall be used in recording the action taken upon any case. DPW Form 17 provides for the numbering of each listed case serially. If the cases listed fill up more than one page, the recommendations may be entered on subsequent sheets. Proper notations must be made on the sheet and each sheet numbered as indicated on the form. When DPW Form 17 consists of several sheets, each separate sheet must be signed. DPW Form 17 shall be prepared in duplicate.
Where authority to reject, award, change, or withdraw assistance has not been delegated by the county board to the county director, the director shall prepare and submit his recommendation for action to the county board on DPW Form 17. The original copy, properly signed, must be filed numerically as a part of the official records of the county board. In the minute book of the county board the action taken on each case shall be listed separately or a minute entry similar to the following made:

"Recommendation No. ...... as submitted by the county director of public welfare was considered and action taken in each case as indicated on the official copy DPW Form 17 as submitted, which was duly signed and sealed by the county board, and the secretary ordered to file it in the official proceedings of the board."

The duplicate copy, properly signed, shall be sent to the State Department of Public Welfare.

Where authority to reject, award, change, or withdraw assistance has been delegated by the county board to the county director, he may prepare and sign DPW Form 17 any time during the month. In such instances the director should sign DPW Form 17 in the space provided for the signature of the president of the county board, and immediately below his signature entry should be made as follows:

"In accordance with authority delegated by resolution of the ............. County Board of Public Welfare passed at meeting held on ........, 19...."

The original copy of DPW Form 17, properly signed, shall be filed numerically as a part of the official records of the county department. The duplicate copy, properly signed, shall be sent to the state department.

On May 7, 1936, this office gave an official opinion to your predecessor, Mr. Wayne Coy, with regard to the construction of section 57 of the Welfare Act and also section 27 of that Act. If there had been no change by the Legislature in 1937, the former opinion would still be binding, but section 27 of
the welfare Act was amended in 1937. (Sec. 7, ch. 41, Acts of 1937.) By this amendment the Legislature provided that whenever any duty was imposed on the county department of public welfare, the right, power or duty so imposed or so conferred should be possessed and exercised by the county director unless otherwise provided in the Act.

Section 37 of the Act is as follows:

"Granting of assistance. Upon the completion of such investigation, the county department shall decide whether the applicant is eligible for assistance under the provisions of this Act, and shall likewise determine the amount of such assistance and the date on which such assistance shall begin. In determining the amount of such assistance, due account shall be taken of any income or property of the applicant and of any support which he may receive from other sources. The county department shall make an award which, including any subsequent modification thereof, shall be binding upon the county, and shall be complied with by the county until such award or modified award is vacated. The county department shall notify the applicant and the state department of its decision in writing. Such assistance shall be paid monthly to the recipient upon warrant of the county auditor, from the county welfare fund, upon a verified schedule of the recipients and the amount payable to each such recipient, prepared and verified by the county director, in accordance with the awards made by the county board. All schedules shall be filed in the form prescribed by the state department." (Our italics.)

This apparent contradiction of power in the making of awards by the county department and the county board may be harmonized and the proposed regulation be valid under the provisions of section 27 of the Welfare Act as amended, which is as follows:

"Use of term 'department' and 'board.' Whenever, by any of the provisions of this Act, or of any other Act, any right, power or duty is imposed or conferred on the state department of public welfare or the county department of public welfare, the right, power or duties so imposed or conferred shall be possessed and exer-
cised by the administrator and directors of divisions, or the county director, as the case may be, unless otherwise provided in this Act; and whenever, by any of the provisions of this Act, or of any other Act, any right, power or duty is imposed or conferred on the state board of public welfare or the county board of public welfare, the right, power or duties so imposed or conferred shall be possessed and exercised by the state board of public welfare or the county board of public welfare, as the case may be, unless otherwise provided in this Act or unless any such right, power or duty is delegated to the duly appointed agents or employees of such department, or any of them, by an appropriate rule, regulation or order of the state board or the county board."

This section provides that the right, power or duty so imposed or so conferred on the county board of public welfare shall be possessed and exercised by that board unless such right, power or duty is delegated to the duly appointed agents or employees of such department or any of them, by an appropriate rule, regulation or order of the county board. The proposed regulation to be adopted by the state board specifically provides that where the county board has delegated the authority possessed by it to the county director in passing upon the granting of and making awards of assistance, such decision shall be made by the county director.

As section 27, supra, of this Act authorizes the "director" to exercise the powers given the "department" unless otherwise provided in the Act, and section 37 provides the county department shall determine the amount of assistance and make the award, the county director would thus be empowered to make such determination under such provisions of the law, and the delegation by the county board of its power would complete the powers of the county director to make such decisions and thus remove the apparent contradiction in section 37, supra, and place the complete power of making the award in the county director of public welfare where such power has been expressly delegated to such director by an appropriate regulation of the county board.

I am, therefore, of the opinion that the above proposed regulation is legal and may be adopted by the State Board of Public Welfare.