A. C. Offutt, M. D.
State Health Commissioner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, Indiana 46204

Dear Doctor Offutt:

This is in response to your request for my Official Opinion concerning the following questions:

1. Can the Air Pollution Control Board legally require installation of air pollution control devices on pre-1967 automobiles?

2. Can the inspection of such devices be legally included in the annual vehicle inspection?

ANALYSIS

The General Assembly provided by Acts of 1961, Ch. 171, Section 4B, (as amended and found in Burns' [1970 Supp.], Section 35-4610), authority for the Air Pollution Control Board by rules and regulations to prescribe requirements for the installation and use of equipment to reduce or eliminate emissions and for the proper maintenance of such equipment and vehicles.

Neither the section requiring the Air Pollution Control Board to issue rules and regulations for the installation of devices, nor the section defining which vehicles may be subject to such regulations, restrict the class of affected vehicles to those manufactured subsequent to any specific date.

Federal law on this subject has specifically pre-empted state regulation of pollution control devices on vehicles prior to the initial sale of the vehicle; however, the federal law has specifically granted the states the right to control such devices on vehicles after they have been sold to the ultimate user. Therefore, neither the state nor federal law estops the Pollution Control Board from promulgating rules and regulations requiring air pollution control devices on pre-1967 automobiles,
assuming such vehicles have been sold from the manufacturer or dealer to the ultimate user.

Burns' Section 35-4610(a), *supra*, states that the Control Board cannot require, as a condition precedent to the initial sale of a vehicle, inspection or other approval of any feature of equipment designed for the control of emissions from motor vehicles if such feature or equipment has already been certified or approved pursuant to federal law. The federal law, however, does not prohibit regulatory activity by this state as it may apply to the installation, maintenance, or inspection of control devices on vehicles after they have been sold to the ultimate user.

Furthermore, vehicles subject to regulation by this Board, according to Burns' Section 35-4610(d), *supra*, and Section 47-3402(e), *supra*, are only those titled and registered to an ultimate purchaser registered in Indiana. This likewise precludes the Board from assuming jurisdiction to regulate control device installation or inspection on vehicles before they are titled and registered in the ultimate user, or if they are subject to inspection in another state.

The answer to your second question depends upon whether the cooperative application of vehicle inspection and a contemplated pollution control rule of the Air Pollution Board are possible without a denial to the affected persons of due process of law.

The rule-making powers delegated to an agency must only be exercised within the framework of the authority granted in the enabling legislation, and if that legislation itself places limitations upon that authority, those specific limitations must be heeded, or the rules exceeding them will be void. Employment Security Division v. Ponder (1951), 121 Ind. App. 51, 92 N. E. (2d) 224.

Burns' Section 35-4601, *supra*, grants rule-making powers to the Air Pollution Control Board; and in general terms the Air Pollution Control Act declares the objective toward which any rules or regulations should work:

"* * * to maintain the purity of the air resource of the state * * * [to] safeguard the air resource"
through the prevention, abatement, and control of air pollution by all practical and economically feasible methods."

Clearly, for the control of vehicle emissions, the Board may issue reasonable rules and regulations which have the force and effect of law.

The statutes further provide that any failure to maintain in good working order, or removal, dismantling, or causing of inoperability of such a pollution control device shall subject the owner or the operator to suspension or cancellation of the registration of the vehicle by the Commissioner of Motor Vehicles.

Since the Indiana General Assembly has specifically provided the penalty for violation of a rule adopted pursuant to the authority of this section, no other penalty may be imposed by the Board through the exercise of its rule-making or adjudicated powers deriving from this or any other section defining the Board’s powers. McCreery v. Ijams (1945), 115 Ind. App. 631, 59 N. E. (2d) 133, and Indiana Employment Security Division v. Ponder, supra.

While the Air Pollution Control Board cannot promulgate a regulation requiring the inspection of an emission control device as part of the annual inspection conducted by the Vehicle Inspection Board, there is no law which keeps government agencies from cooperating informally. The Air Pollution Control Board can be informed of any vehicle which does not have such device and then it would be up to the Air Pollution Control Board to act.

CONCLUSION

1. My conclusion in regard to your first question is that the Air Pollution Control Board may legally require the installation of air pollution control devices on pre-1967 automobiles.

2. In answer to your second question, it is my opinion that the inspection for your Board of air pollution control devices by the Vehicle Inspection Board cannot presently be
a reason for depriving a vehicle inspection sticker; however, the Vehicle Inspection Board may note any such defects and so inform the Air Pollution Control Board for such sanctions as the latter agency may be authorized to impose.