The Indiana Port Commission, and the Indiana Department of Administration were created by the Legislature granting to each specific powers, duties, and authority to carry out the purposes the Legislature intended. State agencies, such as the Department may act, only within the limits of the authority conferred on them. *Thomas v. Lauer*, 227 Ind. 432, 437, 86 N.E.2d 71 (1949).

Also, it would reasonably follow, separate public corporate entities, such as the Commission, may act only within the limits of the authority conferred on them. The courts of this state have held that such commissions created as separate corporate entities are agencies of the state to carry out public purposes. *Orbison v. Welsh* (1962), *supra*, p. 397.

I find no provision in either the Indiana Port Commission Act, *supra*, or the Administrative Act of 1961, *supra*, that would allow the Commission to use the facilities and services of the Department, nor do I find any provision allowing the Department to grant the use of its tax supported facilities and services to a public corporate entity separate from the state in its corporate sovereign capacity.

In view of the above, the Legislature intended that the Indiana Port Commission perform all the powers, duties, and authority specifically granted and necessarily implied to accomplish the purposes for which the Commission was created and did not intend that the Indiana Department of Administration perform services for or grant the use of its facilities to separate public corporate entity not a part of the state.

OFFICIAL OPINION NO. 39

September 17, 1965

Dr. A. C. Offutt
State Health Commissioner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis 7, Indiana

Dear Dr. Offutt:

I am in receipt of your letter of July 16th in which you advised me that the State Board of Health was considering
creating the position of hearing officer on the staff of the State Board of Health, said hearing officer to conduct hearings in accordance with the provisions of the Administrative Adjudication and Court Review Act, which is the Ind. Acts of 1947, ch. 365, the same being Burns IND. STAT. ANN., §§ 63-3001—63-3030.

In that letter you enumerated fourteen separate legislative enactments, thirteen by the State of Indiana, and one by the Federal Government, with which the Board of Health has some connection. You requested me to examine each separate enactment and render my Official Opinion as to whether that enactment would permit the Board of Health, in enforcing the provisions of that enactment, to conduct hearings through a hearing officer who is a member of the staff of the Board of Health. You further requested that I render my Official Opinion as to whether such a hearing officer could conduct hearings for the revocation of licenses.

Before any fruitful examination of the individual enactments can be undertaken it is necessary to examine the provisions of the Administrative Adjudication and Court Review Act and determine the application of that Act to the Board of Health in general terms.

The second section of that Act, the same being Burns IND. STAT. ANN., (1961 Repl.), § 63-3002, contains this definition:

"The word 'agency' whenever used in this act shall mean and include any officer, board, commission, department, division, bureau or committee of the state of Indiana, other than courts, the governor, military officers or military boards of the state, state colleges or universities supported in whole or part by state funds, benevolent, reformatory or penal institutions, the industrial board, alcoholic beverage commission, state board of tax commissioners and the public service commission of Indiana. . . ."

That the Board of Health as established by Acts of 1945, ch. 352, § 1, and expanded by Acts of 1949, ch. 352, both Acts being combined in Burns IND. STAT. ANN., (1961 Repl.), §§ 35-101, 35-103—35-110, is a board of the State of Indiana is too obvious a point to require development.
Acts of 1947, ch. 365, further provides, in § 3, the same being Burns IND. STAT. ANN., (1961 Repl.), § 63-3003, that:

“In every administrative adjudication in which the rights, duties, obligations, privileges or other legal relations of any person are required or authorized by statute to be determined by any agency the same shall be made in accordance with this act and not otherwise.”

The above statute establishes two criteria which must be met before any hearing comes under the terms of the Act.

1. The hearing must be adjudicative in nature.
2. The agency must have the authority to make an adjudication in that matter.

If the criteria are met the hearing must be conducted in accordance with the Administrative Adjudication and Court Review Act. This means that in any instance where the Board of Health has the authority to determine the legal rights of a specific person, as “person” is defined in the Act, it must have a hearing as provided by the Act.

Ind. Acts of 1947, ch. 365, § 12, the same being Burns IND. STAT. ANN., (1961 Repl.), § 63-3012, provides:

“. . . Where any statute authorizes an agency to conduct hearings by an agent or representative such agent or representative may conduct the hearing. . . .”

The State Board of Health is basically regulated by the provisions found in Ind. Acts of 1949, ch. 157, as amended. Section 220 of that chapter, the same being Burns IND. STAT. ANN., (1949 Repl.), § 35-221 provides:

“Whenever a hearing is provided for or authorized to be held by the state board, the said state board may designate a person as its agent or representative to conduct such hearings. Such agent or representative shall conduct such hearings in the manner provided by law.”
Thus it would appear that as an abstract general proposition the State Board of Health is empowered to conduct hearings through a hearing officer who is a member of the staff of the State Board of Health. However, there are two limitations to this power. Both limitations are contained in section 11 of the Administrative Adjudication and Court Review Act, the same being Burns IND. STAT. ANN., (1961 Repl.), § 63-3011. That section provides:

"The final order or determination made by the agency shall be made by the ultimate authority of such agency and where the agency consists of more than one [1] person it shall be made by at least a majority thereof. Proceedings for revocation of licenses shall be heard and determined by not less than a majority of the members comprising such agency."

The first limitation, that a hearing officer cannot make a final determination, is specified and procedurally explained in the next section of the Act (Acts of 1947, ch. 365, § 12, the same being Burns IND. STAT. ANN., (1961 Repl.), § 63-3012):

"Where an agency consists of more than one [1] member or person, any member thereof may conduct the hearing on behalf of the agency. Where any statute authorizes an agency to conduct hearings by an agent or representative such agent or representative may conduct the hearing. In the event of such hearing before a member, agent or representative it shall be conducted in the same manner provided for a hearing before the agency except that instead of making an order or determination the said member, agent or representative shall make a recommendation as to the order or determination. After said recommendation is made said member, agent or representative shall present to and file with the agency the complete record of the proceedings before him, other than the transcript of the oral testimony, together with his recommended order or determination and notice of such filing shall be given all persons who were parties to the hearing. Any interested and affected person
may, within ten [10] days thereafter, or within such additional time as may be granted by the agency, file with said agency his objections to the entry of such order. If any such objections are filed the agency shall set the same for hearing. Such hearing shall be on the record so filed with it. The agency may hear additional evidence or refer it back to the hearing member or agent to hear additional evidence. Upon said hearing the agency may adopt the recommendations of its member, agent or representative conducting the hearing, amend or modify the same, or may make such order or determination as is proper on the record. If no objections are so filed the agency may adopt the order or determination recommended by its member, agent or representative without further hearing. If such agency does not so adopt such recommendation, order or determination where no objections are filed it shall set said matter for hearing and notify the parties present at said original hearing and proceed as though objections had been filed to the recommended order or determination. Notice of all final orders and determinations shall be given promptly to all parties to the hearing by the agency.”

The second limitation is encompassed by your second question and thus will be examined later.

The above discussion can be summarized as follows: Whenever the State Board of Health, in the proper exercise of its authority, conducts an adjudicative hearing, it must follow the procedure established by the Administrative Adjudication and Court Review Act. The hearing can be held through a hearing officer who is a member of the staff of the State Board of Health, but such officer may not make a final determination in the matter. The final determination in all instances must be made by a majority of the members of the State Board of Health. Hearings for the revocation of a license require a special procedure which will be developed in the answer to the second question.

It is now apparent that the examination of the individual enactments need only be to determine whether the authority
to conduct adjudicative hearings required to enforce the provisions of those enactments is vested in the State Board of Health, and to negate the possibility that the power to conduct hearings through a hearing officer is specifically prohibited by any of those Acts. Such a search for the vesting of authority answers the question of whether a hearing officer can conduct said hearings as follows:


YES. Section 9 (f) of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 35-4509 (f) provides:

"(f) In any proceeding under this act for granting, denying, suspending, revoking, or amending any license; or for determining compliance with rules and regulations of the State Board, the State Board shall afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. In the event any person is aggrieved by the denial, suspension, revocation or amendment of any license, upon his request, a formal hearing shall be held in accordance with the procedure outlined in Chapter 365, Acts of 1947, as amended." (Chapter 365, Acts of 1947, is the Administrative Adjudication and Court Review Act.)

"State Board" is defined in Section 3 (1) of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 35-4503 (1):

"State Board means the state board of health of Indiana."


YES. The first section of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 35-2841, provides:

". . . The state board of health of Indiana is authorized to require reasonable standards of health, sanitation
and safety in using these dwelling units, and to re-
quire persons dwelling in mobile homes and mobile
home park operators to comply with these standards,
and to authorize suitable local agencies where they
are qualified to enforce the standards adopted.”

3. Motels, Acts of 1959, ch. 302, the same being Burns

YES. The third section of the Act, being Burns IND. STAT.
ANN., (1965 Supp.), § 35-2803, provides:

“The state board shall have general supervision of
the health and sanitary conditions of all motels, motor
courts, or motor hotels in the state and shall have the
power to make, promulgate, and enforce rules and
regulations necessary or desirable for the preservation
of health and sanitary conditions.”

“State Board” is defined in the second section of the Act,
being Burns IND. STAT. ANN., (1965 Supp.), § 35-2802:

“. . . ‘State Board’ as used in this act means the state
board of health of Indiana.”

4. Septic Tank Cleaners, Acts of 1959, ch. 251, the same
being Burns IND. STAT. ANN., (1965 Supp.), §§ 42-
2101—42-2108.

YES. The State Board of Health is responsible for the
enforcement of this Act. Section 7 of the Act, being Burns
IND. STAT. ANN., (1965 Supp.), § 42-2107, provides:

“All fees collected under the provisions of this act
shall be deposited with the state treasurer. All fees
so deposited prior to June 30, 1961, are appropriated to
the state board of health of Indiana for allotment by
the state budget committee for the administration and
enforcement of the provisions of this act.”

Licenses to engage in business subject to this Act, and for
vehicles used in such business, are under the control of the
executive officer of the Board of Health.
1965 O. A. G.

"... The application to engage in the business as herein defined shall be accompanied by a license fee of forty dollars [$40.00], payable to the state board of health. If the commissioner, after such investigation as he deems necessary, is satisfied that the applicant has the qualifications, experience, reputation and equipment to perform the services in a satisfactory manner and not detrimental to public health, he shall issue or cause to be issued a license for the said business. . . ." (§ 3; Burns § 42-2103).

"... Each application shall be accompanied by a license fee of fifteen dollars [$15.00] for each vehicle sought to be licensed, payable to the state board of health. If the commissioner, after such investigation as he deems necessary, is satisfied that such truck or vehicle and equipment is proper and hygienic for said purpose, he shall issue or cause to be issued a license for the use of said vehicle for said purpose. . . ." (§ 4; Burns § 42-2104).

"(a) The word 'commissioner' as used in this act shall mean the state health commissioner of the State of Indiana. . . ." (§ 1; Burns § 42-2101).

The office of secretary of the board of health was created by ch. 157 of the Acts of 1949. Section 102 of that Act, being Burns IND. STAT. ANN., (1949 Repl.), § 35-104, provides:

"The secretary of the state board shall by virtue of his office be state health commissioner and the executive officer of the board."


NO. The fourth section of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 42-1451, creates the Indiana Health Facilities Council which consists of thirteen members appointed by the Governor.
The power to hold hearings is later vested in the council.

"Should the council, after investigation, deem it a possibility that any person is operating a facility as defined in said act and, said facility is being operated without a license to do so, or that a licensed or unlicensed facility is operating in violation of this act or rules or regulations duly promulgated hereunder, the council shall have the power to summon such person to a hearing . . . ." (§ 7; Burns § 42-1454).

"(b) The council may recommend and approve the issuance of a license upon an application, without further evidence; or, at its discretion, it may have a hearing on the application . . ." (§ 11; Burns § 42-1458).

"(c) . . . The procedure governing the suspension or revocation of any license shall be as follows:

"1. A complaint shall be filed with the council by the board or by any other interested person, . . .

"2. The licensee shall be given notice of not less than 15 days of the time and place for hearing before the council. . . ." (§ 12; Burns § 42-1459).

Subsection 1 of the last section quoted indicates that even in those cases where the Board of Health is the moving party, the hearing is to be conducted by the Health Facilities Council.


NO. The Act vests almost all authority in the State Department of Public Welfare. That department has the power to issue licenses (§ 6; Burns § 42-1310), to revoke licenses (§ 10; Burns § 42-1314), and to make rules and regulations (§ 12; Burns § 42-1316). The finality of the authority of the Department of Public Welfare is best evidenced by § 13 of the Act, the same being Burns IND. STAT. ANN., (1965 Supp), § 42-1317, which provides:
"Any person, firm, corporation or association whose license has been refused or revoked may appeal from the action of the state department of public welfare to the circuit or superior court of the county in which the residence or principle office is located. . . ."

The Department of Public Welfare makes the final administrative determination.

The Board of Health is involved with homes established under this Act, but only to a slight degree:

"No such license shall be issued unless the premises of the boarding-home, day nursery or children's home is in a fit sanitary condition and the application for license has been approved by the state board of health." (§ 8; Burns § 42-1312).

"The state department of public welfare and state board of health shall annually and may at any time, visit and inspect or designate a person to visit and inspect the premises so licensed. . . . The state board of health shall visit or designate a person to visit any licensee to advise on matters affecting the health of children, such as diet and medical care, and to inspect the sanitation of the buildings used for their care." (§ 11; Burns § 42-1315).

The Board of Health's participation appears to be limited to investigation and approval of those aspects of the type of operation regulated by the Act which would come within the general authority of the Board were the Act not in existence.


NO. The first section of the Act, being Burns IND. STAT. ANN., (1952 Repl.), § 42-1601, provides:

"From and after the passage of this act the state board of health shall be empowered to license and regulate hospitals. Such licensing and regulations shall be accomplished through a council to be created in the
manner hereinafter provided, and such other employees as are hereinafter provided for."

The council so created consists of eight members appointed by the Governor (§ 3; Burns § 42-1603), and is vested with the authority to conduct hearings:

"(b) The council may recommend and approve the issuance of a license upon the application without further evidence; or, in its discretion, it may have a hearing on the application and conduct its own investigation, to determine whether or not a license ought to be granted." (§ 9; Burns § 42-1609).

"The board may suspend or revoke a license issued hereunder on the recommendation of the council on any of the following grounds:

* * *

"The procedure governing the suspension or revocation of any license shall be as follows:

"(1) A complaint shall be filed by the board stating facts constituting a ground or grounds for revocation or suspension.

"(2) The licensee shall be given notice of not less than thirty [30] days of the time and place for a hearing before the council on said complaint, . . .

* * *

"(5) If the council recommends either suspension or revocation the board shall, pursuant thereto, enter an order in accordance therewith. . . ." (§ 10; Burns § 42-1610).

It is apparent that the council conducts hearings at the instigation of the Board of Health and that the Board is bound by the decisions reached at the hearings.


NO. This Act neither requires nor specifically authorizes adjudicative hearings. The second section of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 35-290, provides:
The state board shall be authorized to do the following: (a) Make a survey of the location, size and character of all existing public and private, proprietary as well as non-profit, medical facilities in the state;

“(b) Evaluate the sufficiency of such medical facilities to supply the necessary physical facilities for furnishing medical facilities and similar services to all the people of the state; and

“(c) Compile such data and conclusions together with a statement of the additional facilities necessary, in conjunction with existing facilities, to supply such services. The state board shall utilize, so far as practicable, any appropriate reports, surveys and plans prepared by other state agencies.”

The activities specifically authorized by the above section illustrate and are in accord with the underlying purposes of the Act. The Act is intended to provide for evaluating existing medical facilities, listing those facilities needed, and cooperating with the Federal Government in obtaining money to construct the needed facilities. Full compliance with the intent of this Act would never affect the legal rights of persons as contemplated in the Administrative Adjudication and Court Review Act.


YES. The sixteenth section of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 35-4316, provides:

“. . . After notice and hearing, the state board may revoke the license for a frozen food processing plant for failure to comply with any of the provisions of this act or any lawful rule or regulation of the state board concerning it. Procedure for revoking the license shall be in accordance with the provisions of existing law.”

“State Board” is defined in the second section of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 35-4306:
OPINION 39

“'State board' means the state board of health of Indiana.”


YES. Section 3 of the Act, the same being Burns IND. STAT. ANN., (1965 Supp.), § 35-4216, provides:

“B. The said secretary shall cause such application to be processed and if the application and the label of the product are in compliance with the provisions of this act, shall cause a certificate of registration to be issued to such applicant for each such hazardous household product so registered in accordance with the terms of this act. If it be determined that such application or the label of the product is not in compliance with the provisions of this act, the said secretary shall notify such applicant that such application has been denied, which notice shall be mailed by certified mail, return receipt requested, to the address of such applicant given upon the application. Within thirty [30] days after receipt of such notice of denial, the applicant may file a written request for a hearing thereon. Such hearing and further proceedings shall be in accordance with the provisions of chapter 365 of the Acts of 1947, as amended.

* * *

"F. Whenever the secretary has cause to believe that any person is violating any of the provisions of this act, he may notify such person of such charge or complaint under the provisions of chapter 365 of the Acts of 1947, and proceedings shall be had in accordance with said act. . . .” (Chapter 365 of the Acts of 1947 is the Administrative Adjudication and Court Review Act.)

The second section of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 35-4215, supplies these definitions:

“A. The term ‘state board' means the state board of health of Indiana.
1965 O. A. G.

"B. The term 'secretary' means the secretary of the state board or his legally authorized agent or representative."


YES. The general authority is established by the third section of the Act, the same being Burns IND. STAT. ANN., (1965 Supp.), § 35-3604, which provides:

"(a) In addition to all other duties prescribed by law the board shall have the duty to administer the provisions of this act, and in addition to all other powers conferred on the board it shall have the power to . . . make such investigations and take such other action as it may deem necessary or suitable for the proper administration of this act."

In addition, there are two instances in which hearings are specifically required:

"(d) Any person who after fair hearing or opportunity to be heard by the board on complaint that he is not complying with the sterilization or disinfecting provisions of this act. . . ." (§ 5; Burns § 35-3606).

* * *

"(c) Whenever any licensee fails to make such report and remittance, or the board is of the opinion that the report and remittance are not in accordance with the requirements of this act, the board shall conduct a hearing on said matter, with sufficient notice having been given to said licensee. . . ." (§ 7; Burns § 35-3608).

"Board" is defined in the second section of the Act, being Burns IND. STAT. ANN., (1965 Supp.), § 35-3603:

"(j) 'Board' shall mean the State Board of Health of Indiana."

NO. The authority to conduct hearings is vested in a special body created by the Act.

"There is hereby created an administrative board to be known as 'The Stream Pollution Control Board of the State of Indiana.'" (§ 1; Burns § 68-517)

"The stream pollution control board shall have jurisdiction to control and prevent pollution in waters of this state with any substance which is deleterious to the public health or to the prosecution of any industry or lawful occupation, or whereby any fish life or any beneficial animal or vegetable life may be destroyed, or the growth or propagation thereof prevented or injuriously affected." (§ 4; Burns § 68-520)

"Whenever the stream pollution control board shall determine that any . . . is violating, or is about to violate, the provisions of section 8 of this act, the stream pollution control board shall serve notice on the alleged offender by registered mail, of its determination of the fact of such violation, . . . Within fifteen [15] days from the receipt of notice of such determination and order, such offender may file with the stream pollution control board a full report . . . and request a hearing of the issue of fact thus presented: . . . If hearing is requested as herein provided, it shall be the duty of the stream pollution control board to set such matter for hearing. . . ." (§ 12; Burns § 68-525)


NO. The authority to conduct hearings is vested in a special body created by the Act.

"There is hereby created an administrative board to be known as the air pollution control board of the state of Indiana."

(§ 3; Burns § 35-4603)
The air pollution control board may hold a hearing with respect to any suspected violation of the provisions of this act.

“(1) upon its own motion,
“(2) upon complaint filed with the board by any person, and
“(3) upon complaint filed with the board by the appropriate officer of any town, city or county or of the state board of health.

Notice of hearing, the conduct of such hearing and appeal from any order or decision of the control board shall be in accordance with the provisions of the Indiana Administrative Adjudication and Court Review Act, as amended.” (§ 6; Burns § 35-4606)

14. Title VI of Public Law 88-352, the same being 42 USCA §§ 2000d to 2000d-4.

NO. This Act does not contain any provisions for hearings by a state agency, although it does contain detailed provisions for such hearings by Federal agencies.

The foregoing discussion of the individual Acts does not exhaust the implications inherent in your first question. There remains the possibility that those Acts which vest the power to conduct hearings in some body other than the Board of Health would permit that body to conduct those hearings through a hearing officer, and if so, would permit that hearing officer to be a member of the staff of the Board of Health. The appropriate Acts must now be re-examined for that purpose.


NO, except under one set of restricted circumstances. The Act permits the council to conduct hearings through a hearing officer in instances of suspected violation of the Act (§ 7; Burns § 42-1454), and in instances of license suspension or revocation (§ 12 (2); Burns § 42-1459 (2)). However, the former section establishes a criterion for hearing officer
that the hearing officer who is a member of the staff of the Board of Health would be unable to meet:

"... The council may conduct a hearing or may appoint a member of the council as hearing officer." (§ 7; Burns § 42-1454)

Although the latter section contains no such criterion,

"2. The licensee shall be given notice of not less than 15 days of the time and place for hearing before the council, or a hearing officer designated by the council, ..." (§ 12; Burns § 42-1459)

"hearing officer" as used in that section must be interpreted in the manner it is defined in the earlier section. Any hearing officer appointed by the health facilities council must be a member of that council. Therefore, unless the hearing officer who is a member of the staff of the Board of Health is also a member of the health facilities council he cannot be designated as a hearing officer by the council.


YES. The Act places full authority in the Department of Public Welfare, but it makes no specific provisions for hearings. Therefore, hearings must be conducted in accordance with the Administrative Adjudication and Court Review Act. As noted earlier, that Act permits hearings to be conducted through a hearing officer if the legislation establishing the authority so permits. The Department of Public Welfare is basically regulated by Acts 1936 (Spec. Sess.), ch. 3, as amended. The fourth section of that Act, the same being Burns IND. STAT. ANN., (1964 Repl.), § 52-1103, provides:

"(b) The state board shall appoint such state investigators or boards of review as may be provided for by law which may be necessary to insure a fair hearing to any applicants or recipients. A fair hearing shall be granted at the request of any aggrieved person who desires a hearing. The state board shall
personally review cases upon the request of any applicant, recipient or any aggrieved person."

The authority granted by that provision appears to be broad enough to permit the Department of Public Welfare to conduct hearings in relation to the instant Act through a hearing officer, and to use, if it so desires, a hearing officer who is a member of the staff of the Board of Health.


NO. This Act contains no provision that directly or indirectly authorizes the council established by this Act to conduct hearings through a hearing officer.


NO. This Act contains no provision that directly or indirectly authorizes the stream pollution control board to conduct hearings through a hearing officer. There is even one passage in the Act that suggests that hearings must be held before the board:

"... A full record shall be kept of the proceedings had, and evidence introduced, at such hearing, and a transcript of such proceedings and evidence, duly authenticated by the chairman and secretary of such board, ..." (§ 9; Burns § 68-525)


NO. This Act contains no provision that directly or indirectly authorizes the air pollution control board to conduct hearings through a hearing officer.

As a result of the foregoing discussion it is possible to divide the fourteen Acts into four groups on the question of whether hearings can be conducted by a hearing officer who is a member of the State Board of Health.
OPINION 39

A. Those where hearings cannot be so conducted as such hearings are not authorized:

8. Hospital and Medical Facilities;
14. Public Law 88-352, Title VI.

B. Those where hearings cannot be so conducted as the power to conduct hearings is vested in a specific body other than the Board of Health and cannot be delegated to such a hearing officer:

7. Regulating and Licensing Hospitals;
12. Stream Pollution Control Law;
13. Air Pollution Control Law.

C. Those where the power to conduct hearings is vested in a body other than the Board of Health and that body can, within limits, conduct hearings through such a hearing officer:

5. Health Facilities Council;

D. Those where the power to conduct hearings is vested in the Board of Health and hearings can be conducted through such a hearing officer:

1. Radiation Control Act;
2. Mobile Home Parks;
3. Motels;
4. Septic Tank Cleaners;
9. Frozen Food Processing Plants;
10. Hazardous Household Products Act;
11. Indiana Bedding Law.

The foregoing represents my Official Opinion on whether hearings conducted in enforcing the provisions of each of the individual Acts can be conducted through a hearing officer who is a member of the staff of the State Board of Health. In closing the discussion on this matter, however, I think it
1965 O. A. G.

would be appropriate to point out the provisions of Acts 1947, ch. 365, § 20, the same being Burns IND. STAT. ANN., (1961 Repl.), § 63-3020:

"Whenever a hearing is conducted by an agent or representative of an agency such agent or representative who presides at such hearing shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate. No agent or representative conducting a hearing shall perform any of the investigative or prosecuting functions of said agency in the case heard or to be heard by him or in a factually related case. This section shall not apply in initially determining applications for licenses or permits or to proceedings involving the validity or application of rates, facilities or practices of public utilities or carriers nor shall it be applicable in any manner to the agency or any member of the board or body comprising the agency."

Your second question is whether hearings for the revocation of a license can be conducted through a hearing officer.

There can be no doubt that those cases which involve the revocation of a license are to be treated differently from those which do not. Acts of 1947, ch. 365, § 11, the same being Burns IND. STAT. ANN., (1961 Repl.), § 63-3011, provides:

"The final order or determination made by the agency shall be made by the ultimate authority of such agency and where the agency consists of more than one [1] person it shall be made by at least a majority thereof. Proceedings for revocation of licenses shall be heard and determined by not less than a majority of the members comprising such agency."

The statute requires that in all instances the determination must be made by a majority of the members of the agency, with the further provision that in instances of license revocation the proceedings shall also be heard by a majority of the members of the agency. The crux of the meaning of the statute is obviously the interpretation that is to be given to the word "heard."
A similar question of interpretation was presented to the California Supreme Court in Cooper v. State Board of Medical Examiners, 35 Cal. 2d 242, 217 P.2d 630 (1950). The statute involved therein was Cal. Gov. Code § 11517, which provided, \textit{inter alia}:

"(a) . . . Where a contested case is heard before an agency itself, no member thereof who did not hear the evidence shall vote on the decision."

The specific question was whether a member of the agency who had not been present at the hearing but who had read the transcript of the hearing "heard" the evidence as required by the statute. The Court held that the statute did not require auditory perception of the evidence, but did require a thorough review of the record. The Court pointed out that the statute provided that if the hearing were conducted through a hearing officer the agency need not review the record to affirm the officer's decision, but must review the record to change the officer's decision. If the officer's decision is changed by the agency, the contested case is in effect heard before the agency and is "heard" through the record.

The same interpretation can be readily applied to the Indiana law. The procedure for the conducting of hearings through an agent and the review by the agency is contained in the twelfth section of the Administrative Adjudication Act, which section is set out earlier in this Opinion and is too lengthy to be reproduced here. That section requires a hearing on the record if objections are filed to the hearing officer's recommendation or if the agency does not accept that recommendation. If no objections are filed the agency may adopt the recommendation without reviewing the record.

Insofar as § 12 is concerned, the agency must make the final determination in all cases, but that determination may be made in many instances without any knowledge of the record on the part of the agency. The second sentence of § 11 prevents that lack of knowledge on the part of the agency where the revocation of a license is involved.

It is my opinion that hearings for the revocation of a license may be conducted through a hearing officer, but that a ma-
1965 O. A. G.

Majority of the members of the agency must make a complete review of the record, whether or not objections to the hearing officer's recommendation are filed, before making the final determination.

OFFICIAL OPINION NO. 40

September 22, 1965

Hon. William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

I have your letter requesting an opinion, "as to whether or not it would be legal for an Indiana Public School Corporation to own and operate an educational television transmitting station."

Indiana Acts of 1959, ch. 162, as found in Burns IND. STAT. ANN., (1965 Supp.), §§ 28-3436, 28-3438, authorizes educational television instruction by a school corporation singly or jointly with other school corporations. Under the 1959 Acts, such corporation or corporations are "authorized to contract with a commercial television station or stations for the use of the facilities and staff of such station or stations for such instruction." This Act also provides for the granting of credit in subjects studied by the television instruction.

Indiana Acts of 1899, ch. 192, § 1, as amended, and as found in Burns IND. STAT. ANN., (1948), § 28-2410, dealing with school corporations generally, provides, in part, as follows:

"The school trustees shall take charge of the educational affairs of their respective townships, towns and cities. They shall employ teachers, establish and locate conveniently a sufficient number of schools for the education of children therein, and build, or otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary