to withhold association dues from a teacher's salary if an indivisible part thereof is used to pay for a teacher's annuity and/or insurance program, including staff time and association publications on such insurance, and when the necessary provisions of the act are met.

OFFICIAL OPINION NO. 68

November 30, 1965

Hon. Roger D. Branigin
Governor of Indiana
206 State House
Indianapolis, Indiana

Dear Governor Branigin:

This is in response to your inquiry as to whether the State Personnel Board can appoint a hearing officer as its agent to hear appeals by state employees who are challenging their dismissals.

The Legislature has stated that public policy regarding the State Personnel Act, as amended, shall be to give such Act a liberal construction so as to effectuate its purpose. Acts 1965, ch. 369, § 1, Burns IND. STAT. ANN., § 60-1301.

The Act envisions the appointment of hearing examiners when the need arises. Acts 1949, ch. 235, § 2, Burns IND. STAT. ANN., § 60-1307 (a) (3), in setting forth the duties of the Director of State Personnel, who is appointed by the Indiana Personnel Board, states:

“(a) The director shall direct and supervise all administrative and technical activities. In addition to the duties imposed upon him elsewhere in this act, it shall be his duty:

* * *

“(3) To appoint, under the provisions of this act, such employees of the bureau and such experts and special assistants as may be necessary to carry out effectively the provisions of this act.”
1965 O. A. G.

Under this provision, the Director of State Personnel has the power to appoint hearing examiners for the Board. The Board, however, may also appoint any of its members to serve as a hearing examiner.

Acts 1941, ch. 131, § 38, Burns IND. STAT. ANN., § 60-1338, provides:

“For the purpose of enforcing the provisions of this act, each member of the board and the several officers and authorized employees thereof, shall have the power to administer oaths, conduct examinations, subpoena witnesses and require the attendance of witnesses and the production of books, records and papers. . . .”


As previously pointed out, the Legislature has anticipated an increased adjudicatory case load by this agency. The purpose of utilizing hearing examiners is to relieve the administrative agency of these additional burdens and expedite consideration. 2 Davis, Administrative Law 1-34. This does not mean that the hearing examiner may make a final determination of the cause. His determination is only interlocutory in nature. Final determination must be made by the agency—in this case, the State Personnel Board, in light of the prescriptions of the Administrative Adjudication Act. Acts 1947, ch. 365, § 12, Burns IND. STAT. ANN., § 63-3012.

Therefore, in response to your inquiry, it is my opinion that the State Personnel Board may appoint a hearing examiner as its agent to hear appeals by state employees who are challenging their dismissals, subject to final determination by the Board.