Subsection A 2, *supra*, refers to members of a trade, occupational or professional association, or of a labor union or like associations and does not include employees of these people as such. It is true that an employee might also be a member of such organization along with his employer, but his right to purchase such insurance on the franchise plan would be based on his membership rather than on his employee status, excepting, however, those instances in which he might qualify under Section A 1, *supra*.

Therefore, it is my opinion, that employees of members in such associations as are included in those set out in Section A 2, *supra*, are not qualified to purchase insurance on the franchise plan on the basis of the employer-employee relationship but must qualify as a member or as one of five employees of a single employer as set out in Section A 1, *supra*.

OFFICIAL OPINION NO. 58

December 3, 1963

Mr. Lewis F. Nicolini, Director
Indiana Employment Security Division
10 North Senate Avenue
Indianapolis, Indiana

Dear Mr. Nicolini:

This is in response to your letter concerning the Special Employment Security Fund, which was created by Section 2601, the same being Burns' (1963 Supp.), Section 52-1550, of the Employment Security Act, being the Acts of 1947, Ch. 208, as amended, and found in Burns' (1951 Repl., 1963 Supp.), Section 52-1525 *et seq.*

Your specific request is contained in the second paragraph of your letter which reads as follows:

> "Since there is some question regarding the manner in which these resolutions proposed the expenditure of certain funds, will you please furnish the Employment Security Board with a general Official Opinion regarding the manner in which funds can be spent from the

> Special Employment Security Fund, contained in Article XXVI, Section 2601, of the Employment Security Act (Burns' Indiana Statutes, 1959 Supplement, Section 52-1550)."

The Special Employment Security Fund is defined in Section 210 of the Act, *supra*, the same being Burns' (1951 Repl.), Section 52-1526i:

> "'Special Employment Security Fund' means the Special Administrative Fund created under the provisions of section 2601 of this act."

It is also referred to in Section 208, being Burns' (1951 Repl.), Section 52-1526g:

> "'Employment Security Administration Fund' means the fund established by section 2501 of this act, from which administrative expenses under this act shall be paid, other than those to be paid from the special employment security fund, as provided in section 2601 hereof."

It is important to note that both of the above sections indicate that some administrative expenses are to be paid from the special employment security fund.

The section which creates the special employment security fund, Burns' 52-1550, *supra*, in part, provides:

> "* * * The moneys in this fund [Special Employment Security Fund] shall be used by the board for the payment of refunds of interest on delinquent contributions and penalties so collected and for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants (or other funds) received for or in the employment security administration fund * * * Such moneys shall be available either to satisfy the obligations incurred by the board directly, or by transfer by the board of the required amount from the special employment security fund to the employment security administration fund * * *"

Therefore, I must conclude that the only expenditures properly authorized from the fund are for refunds and costs of administration.

The definition of administrative expenses given for the employment security administration fund would apply to the special employment security fund. These expenses have been defined in Acts of 1963, Ch. 35, (Spec. Sess.), Sec. 1, as:

> "* * * all payments made for 'personal service', 'services other than personal', 'services by contract', 'supplies, materials and parts', 'equipment', and 'grants, subsidies and awards'."

It must not go unnoticed, that Burns' 52-1550, *supra,* places two restraints on the use of the special employment security fund:

> "* * * Said moneys [Special Employment Security Fund] shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) federal funds which would in the absence of said moneys [Special Employment Security Fund] be available to finance expenditures for the administration of the Employment Security Act * * * No expenditure of this fund [Special Employment Security Fund] shall be made unless and until the board, [Indiana Employment Security Board] by resolution duly entered in its minutes, finds that no other funds are available or can properly be used to finance such expenditures. The board shall order the transfer of such funds or the payment of any such obligation or expenditure, and such funds shall be paid by the state treasurer on requisition drawn by the board directing the state auditor to issue his warrant therefor. Any such warrant shall be drawn by the state auditor based upon vouchers certified by the board or the director * * *"

The first restraint only permits expenditures from the special employment security fund for costs of administration disallowed or prohibited as expenditures from the employment security administration fund. The latter restraint is based on

the general policy of this state found in the Acts of 1858, Ch. 138, Sec. 7, as found in Burns' (1951 Repl.), Section 49-1809:

> "* * * the auditor shall examine, with care, every demand and claim presented for payment, and shall be satisfied that every claim is just, legal, and unpaid, before he shall allow, audit, or countersign it; and, for that purpose, may require the affidavit of the claimant, or other evidence, and he shall require every claim to specify the particular items of indebtedness * * *"

It is interesting to note that the Legislature recognized the possibility of conflict between Federal Government and the state in regard to authorized expenditures. Since the Federal Government reimburses the state 100% for all expenditures, aside from those from the special employment security fund over which the state has exclusive control, the Secretary of Labor for the United States audits and approves all such expenditures. Should the secretary disallow an expenditure, it is the policy of this state, found in Section 2901, *supra*, being Burns' (1963 Supp.), Section 52-1553:

> "* * * that upon receipt of notice of such a finding by the secretary of labor, the board shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the general assembly a request for the appropriation of such amount * * *"

Burns' 52-1550, *supra*, complements this policy of the state by providing:

> "* * * Nothing in this section shall be construed to limit, alter or amend the liability of the state of Indiana, assumed and created by Section 2901 hereof, or to change the procedure therein prescribed for the satisfaction of such liability, except to the extent that such liability may be satisfied by and out of the funds of such special employment security fund created by this section."

By way of summary and conclusion, it is my opinion that:

1. The only expenditures properly authorized from the special employment security fund are for refunds of interest

on delinquent contributions and penalties so collected and costs of administration; and

2. Expenditures from the fund are not permitted when they would effect a substitution or reduction in federal funds available for the financing of the Employment Security Act.

OFFICIAL OPINION NO. 59

December 4, 1963

Mr. B. B. McDonald, State Examiner
State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

You have requested an Official Opinion of this office concerning the following two specific questions:

> "1. Does the hospital board of trustees have authority to assign current accounts receivable to a firm for collection?
>
> "2. If your answer to the first question is in the affirmative, does the deposit of daily collections in the firm's bank account awaiting monthly turnover to the hospital treasurer conflict with the Public Depository Law, Chapter 3, Acts of 1937?"

Your covering letter makes specific reference to a county hospital operating pursuant to the Acts of 1917, Ch. 144, Sec. 1, as amended, as found in Burns' (1950 Repl.), Section 22-3215.

With regard to the duties imposed by the statute, the Acts of 1917, Ch. 144, Sec. 3, as amended, as found in Burns' (1963 Supp.), Section 22-3218, provides, in part, as follows:

> "* * * The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital