its possession relating to any matter before the commission, it is my opinion that the commission may gain such information through its powers to require the production of records and papers, to subpoena persons as witnesses and to take their testimony, subject, of course, to the restrictive provisions of any statute respecting such division of government which statute makes records or information confidential by law.

OFFICIAL OPINION NO. 39

June 6, 1962

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

Dear Doctor Offutt:

This is in response to your letter of May 14, 1962, wherein you state:

"It is respectfully requested that we have your official opinion relating to the authority of the Indiana State Board of Health and for the Indiana Nursing Home Council to order the cessation of an unlicensed nursing home operation."

Administrative agencies, such as the Indiana Nursing Home Council, have no common law or inherent powers, but only such authority as is conferred upon them by valid statutory enactment. This rule was clearly announced in an industrial board case of Smith v. Thompson Construction Company et al. (1946), 224 Ind. 565, 69 N. E. (2d) 16, which held:

"* * * Since the Board derives its authority from the statutes, it can do the things authorized by the Legislature and beyond that it cannot legally go. Its authority is not expanded by the 'common law.' "

See also: 1 I. L. E. Administrative Law and Procedure, § 21.

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The statutory power of the Nursing Home Council to issue a license to any person to lawfully establish, conduct, operate or maintain a nursing home in this state is set out in the Acts of 1957, Ch. 136, Sec. 10, as found in Burns' (1961 Supp.), Section 42-1457. This same section states that a license must be obtained from the Nursing Home Council in order to lawfully establish, conduct, operate or maintain a nursing home in this state.

Other unlawful acts in connection with the operation of a nursing home are described by Acts of 1957, Ch. 136, Sec. 13, as amended, and found in Burns' (1961 Supp.), Section 42-1460, and reads as follows:

"It shall be unlawful for any person, as defined in this act, acting jointly or severally with any other person:

(a) To conduct, maintain or operate, or permit to be maintained or operated, or to participate in the conducting, maintenance or operation, or to advertise in or by any newspaper announcement, hand bill, journal, telephone directory, periodical or advertising media of any kind, the conduct, maintenance or operation of a nursing home in this state, as the same is defined in this act, except upon license first had and obtained in accordance with the terms and conditions of this act and rules and regulations promulgated pursuant hereto.

(b) To keep any patient in an attic, cellar or tent; to keep any patient in any building or detached building, or on any floor of any building or in any area not approved by rules and regulations adopted and promulgated under this act; to abuse, neglect or treat any patient in a cruel manner; or to use portable kerosene heaters or lamps for the purpose of heating or lighting except in an emergency caused by failure of electrical or heating apparatus during which necessary safeguards shall be maintained.

Any person violating any of the above provisions shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $100.00 for the
first offense, and not less than $50.00 nor more than $100.00 for each subsequent offense, and each day of continuing violation after conviction shall be considered a separate offense."

It must be kept in mind, however, that the provisions of Burns' 42-1460, supra, are of a criminal nature and, furthermore, that the Acts of 1957, Ch. 136, Sec. 14, as found in Burns' (1961 Supp.), Section 42-1461, places the burden of enforcing such a criminal provision upon the several prosecutors of this state. Therefore, the several prosecutors of the state, not the Nursing Home Council, have the power to enforce Acts of 1957, Ch. 136, Sec. 13, supra.

Notwithstanding the above, the Nursing Home Council may seek injunctive relief pursuant to the provisions of Acts of 1957, Ch. 136, Sec. 15, as amended, as found in Burns' (1961 Supp.), Section 42-1462, which reads as follows:

"The board or council may, in accordance with the laws of the state of Indiana, governing injunctions, maintain an action in the name of the state of Indiana, to enjoin any person as herein defined, from establishing, conducting, managing or operating any nursing home, or advertising or announcing by any means or through any media, the conduct, establishment or operation of a nursing home, as defined in this act, without having a license therefor, as herein provided. In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that said defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a nursing home without having a license to do so, without averring any further or more particular facts concerning the same. Provided: that any person as herein defined, who advertises, announces or publishes in any newspaper, periodical, journal, hand-bill, announcement, telephone directory or any media of any kind, the operation, maintenance or conduct of a nursing home as herein defined, shall be considered to be operating a nursing home, and the showing to the court of satisfactory evidence of such advertising and nonlicensure shall be sufficient for the court to enjoin such person from oper-
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ating a nursing home. Provided, further: that no per-
manent injunction shall issue from the court unless and
until a hearing on petition or complaint therefor shall
have been had."

Any such injunction must be based upon Acts of 1957, Ch.
136, Sec. 10, supra.

In summary, it is my opinion that there is no statutory
authority for the Indiana Nursing Home Council to hold an
administrative hearing against an operator of an unlicensed
nursing home whereby a cease and desist order could be issued
by the council.

It is my further opinion that by virtue of Acts of 1957, Ch.
136, Sec. 15, as amended, supra, the council may seek injunc-
tive relief in the courts against an unlicensed nursing home
operation to enjoin any person, as defined by said act, from
establishing, conducting, managing or operating any nursing
home defined by the act, without first obtaining a license.

OFFICIAL OPINION NO. 40

June 7, 1962

Hon. Rex S. Minnick
State Representative
P. O. Box 122
Brazil, Indiana

Dear Representative Minnick:

This is in response to your request for my Official Opinion
concerning the effect of the Acts of 1961, Ch. 300, Sec. 1(b),
your inquiry reading as follows:

"I am writing to request an opinion concerning Chap-
ter 300, Section 1 (b) of the 1961 Acts of the General
Assembly.

"This section provides in part, that all non-highway
motor fuel refund claims shall be filed within six
months after the date of the purchase.

"I specifically want to know if refunds should be
paid for fuel purchased for the period beginning six