received for services rendered in providing the care of cemetery premises, even though such receipts are paid from the income from the investment of the perpetual care fund of such cemetery.

OFFICIAL OPINION NO. 4

April 16, 1959

A. C. Offutt, M. D.
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 concerning full-time county health departments; and I understand your questions to be substantially as follows:

1. Under Acts of 1949, Ch. 157, Sec. 611, as found in Burns' (1949 Repl.), Section 35-812, who may decide what sums of money may be necessary for the maintenance of a county full-time health department?

2. Under the above act, can the county council of a county be mandated to appropriate said funds for the full-time local health department?

3. Under Acts of 1949, Ch. 157, Sec. 628, as found in Burns’ (1949 Repl.), Section 35-829, may the boards of health of each full-time local health department fix the compensation of all officers or employees without regard to the action of the county commissioners, county council, county tax adjustment board, and other boards of review in the several counties?

The Supreme Court of Indiana has answered questions similar to those presented here. The Court has, in effect, set out two rules:

1. The Legislature has the power by statute to require county councils to make specific appropriations. If the county
council is under an obligation to appropriate specific amounts which have been determined as necessary by another governmental agency or board, and the county council refuses to appropriate such amounts, it may be mandated to do so.

State *ex rel.* Test v. Steinwedel (1932), 203 Ind. 457, 180 N. E. 865;

1937 O. A. G., page 175;


2. In all other cases, the procedure set out in the County Reform Act [Acts of 1899, Ch. 154, as amended, as found in Burns' (1948 Repl.), Section 26-501 et seq.] gives the county council discretion as to the amount to be appropriated.

Acts of 1899, Ch. 154, Sec. 15, as found in Burns' (1948 Repl.), Section 26-515;

Board of Commissioners of Allen County v. State *ex rel.* Lockhart (1939), 216 Ind. 125, 23 N. E. (2d) 494.

This method requires that an estimate of the money required for their offices be submitted by county officers to the county auditor. The annual budget of the board of the full-time local health department is submitted to the county commissioners, and they include it in their estimate to the auditor.

Acts of 1949, Ch. 157, Sec. 631, as found in Burns' (1949 Repl.), Section 35-832.

The auditor then prepares a taxing ordinance and an appropriation ordinance, which the county commissioners may adopt, either as it is, or in an amended form.

Acts of 1899, Ch. 154, Secs. 16 and 19, as found in Burns' (1948 Repl.), Sections 26-516 and 26-519.

The sections of the statute herein involved are as follows: Acts of 1949, Ch. 157, Sec. 611, as found in Burns' (1949 Repl.), Section 35-812:

"The county council of any county in which a full-time health department has been authorized or the
county council of any county which has become a part of a multiple-county full-time health department, either by resolution of the board of county commissioners or upon approval by referendum, shall levy annually therefor, even though it be in excess of any limitation on tax rates, a tax in addition to other health appropriations that may be made not to exceed one mill on each dollar [$1.00] of assessed valuation of taxable property, which tax shall be levied and collected in like manner as other taxes are collected. Such taxes shall be paid into the county treasury and placed in a special fund to be known as the county health fund which fund shall be used only for the purpose of this act and shall be drawn upon by the proper officers of the county upon the properly authenticated vouchers of the county health department or multiple-county health department, as the case may be. Each county council shall appropriate from the county health funds such sums of money as may be necessary for the maintenance of the county health department, or to pay its apportioned share for the maintenance of a multiple-county health department in proportion that the population of such county bears to the total population of all counties in the multiple-county health department as determined by the most recent general official United States census. However, no tax levy provided for in this article shall be made upon property within the corporate limits of any city maintaining its own full-time health department.” (Our emphasis)

The Acts of 1949, Ch. 157, Sec. 628, as found in Burns’ (1949 Repl.), Section 35-829, also provides as follows:

“The board of each full-time local health department shall prescribe the duties of all officers and employees. It shall fix compensation of all officers and employees.”

The General Assembly may decide that certain governmental functions are sufficiently important that the supplying of funds to carry on these activities must not be left to the discretion of the county council.

State ex rel. Test v. Steinwedel (1932), supra.
In construing Burns' 35-829, supra, it is my opinion that it was the intention of the Legislature to delegate to the board of each full-time local health department the power to fix compensation of its officers and employees, and it gave to this board the sole power to do so. It became an imperative duty of the county council to appropriate the amount which the board requested for such salaries.

As to the remainder of an estimate submitted by the board, it is my opinion that no such imperative duty exists. The system set up by the County Reform Act should not be set aside nor curtailed, except by a statutory provision which clearly shows such intention of the Legislature.

Board of Commissioners of Allen County v. State ex rel. Lockhart (1939), supra.

The only place in the statute concerning full-time local health departments where such an intention is clearly shown is that section concerning compensation of officers and employees of the department.

Since the budget prepared by each county official and by the board of county commissioners is strictly an estimate, and since the purpose of these estimates is to assist the county council in determining the amount of appropriation required, the county council is not compelled to appropriate the amount required, except as I have stated under Rule No. 1 above.

Blue et al. v. State ex rel. Powell et al. (1936), 210 Ind. 486, 1 N. E. (2d) 122;

Board of Commissioners of Allen County v. State ex rel. Lockhart (1939), supra.

It is discretionary with the county council to adopt the budget as it exists or to decrease it. Therefore, it is my opinion that, as to the expenses other than compensation, the county council may determine what is necessary for the full-time local health department, and it cannot be mandated to make appropriations for this amount.

In conclusion, it is my opinion that:

1. It is within the discretion of the county council to deter-
mine the amount to be appropriated for the maintenance of the county health department.

2. In determining the amount necessary to be appropriated for the maintenance of the full-time local health department, the county council is performing a discretionary act and could not be mandated to appropriate any specified amount.

3. The board of each full-time local health department has the sole power to fix compensation of its officers and employees, and the county council may be mandated to make sufficient appropriations therefor.

OFFICIAL OPINION NO. 5

April 17, 1959

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

Dear Mr. Wilson:

Your letter of April 8, 1959, has been received and reads as follows:

"I am in need of an Official Opinion on questions that have arisen concerning Section 5 of Senate Enrolled Act Number 6:

"Question 1: Section 5 of the bill provides that 'within three months after the approval of this act' there is created a County Committee consisting of eight members appointed by the Judge of the Circuit Court. However, the bill does not declare an emergency.

Can a County Committee or a State Committee be legally set up when the bill carries no emergency clause?

"Question 2: Suppose committees are set up before the laws are promulgated, might there