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
not conceivably be legal questions that might arise later as to whether or not the organization of the committees was premature?

"Question 3: Might this not affect a bond issue that might be floated by a new school corporation growing out of committee action?

"Question 4: Does this law take effect thirty days after the Governor proclaims the laws are in effect?"

Senate Enrolled Act No. 6 is Acts of 1959, Ch. 202, which was approved by the Governor on March 12, 1959.

Section 5 of said act makes provision that within three months after the approval of said act there shall be created a County Committee for the Reorganization of School Corporations. Prior to that time the Judge of the Circuit Court in each county is required to call a county convention of the township trustees of the county and the members of each local school board of school trustees and board of school commissioners in the county, for the purpose of advising him on the selection of a County Committee. It requires ten days newspaper publication of notice of such convention. It requires the appointment of such County Committee within ten days after the date of the county convention, appointment to be made by the Judge of the Circuit Court. Within thirty days after the date of the county convention, the County Committee shall meet and organize and the County Committee shall hold office not to exceed four years from the effective date of the act. The County Committee is required to take certain steps toward the formulation of plans for the reorganization of the school corporations of the county and to act in conjunction with a State Committee, to be appointed under Section 6 of the act within thirty days after the approval of said act.

This statute does not contain an emergency clause and will not be in full force and effect until it is published, distributed and promulgated by the Governor's Proclamation as provided in the Indiana Constitution, Art. 4, Sec. 28.
From the language used in the statute, it is shown that the County Committee shall be created within three months from the date said act is approved by the Governor. The appointment of the Committee and the preliminary steps thereto should not be taken before the statute is in full force and effect. It is equally true that the functions and duties of both the County Committee and the State Committee, being of a substantial and serious nature, should be abated until such time as the act is in full force and effect. The applicable rule is clearly stated in 59 C. J. Statutes, § 673, pp. 1137, 1138 as follows:

"* * * The general rule is that a statute speaks from the time it goes into effect and not otherwise, whether that time be the day of its enactment or some future day to which the power enacting the statute has postponed the time of its taking effect. * * * * While a statute may have a potential existence, although it will not go into operation until a future time, until the time arrives when it is to take effect and be enforced, a statute which has been passed by both houses of the legislature and approved by the executive has no force whatever for any purpose. Before that time no rights may be acquired under it and no one is bound to regulate his conduct according to its terms, and all acts purporting to have been done under it prior to that time are void." (Our emphasis)

However, I do not believe that the foregoing facts would interfere with the constitutionality of the statute as I do not believe time is of the essence of the requirements for the performance of duties, either of appointment or Committee action, but that the statute should be so construed as to give it a practical effect. This could be done by considering the statute, as requiring such actions above referred to, to begin to run from the effective date of the act rather than from the date of approval by the Governor.

A similar construction was given the Multiple Textbook Statute of 1945, in an Official Opinion of this office, being 1945 O. A. G., page 492, No. 115, where the act required a thirty day notice prior to adoption of textbooks on December 15; the act did not contain an emergency clause, and the stat-
utes were not promulgated until November. It was held that time was not of the essence and that the notice and meeting of adoption of textbooks could take place after the effective date of the statute, since the Legislature clearly intended the duties prescribed in the statute to be performed.

From the foregoing, I am of the opinion your questions should be answered as follows:

No official action toward the appointment of the County Committee or State Committee should be taken until said statute is in full force and effect. From that time on the act should be construed as though the requirements of Sections 5 and 6 have required action to be taken from the "effective date of this Act" rather than the "approval of this Act." The effective date of the act is the date the Governor makes his Proclamation thereon. This also answers your question number 4.

In answer to your second and third questions, I am of the opinion that should the Committee appointments be made before the act is in full force and effect, the courts would construe such Committees to be at least de facto if not de jure after the act becomes effective, and their acts performed after the effective date of the act to be valid. However, such premature appointments would unquestionably result in litigation on both the questions of the legality of the consolidations effected as well as the legality of any bond issues thereafter made by any such consolidation and even though such litigation might not be successful, it would affect the operation of the statute.