> "Under Section 4 of the last-referred to State statute, as found in Burns' Indiana Statutes (1951 Repl.), Section 61-1304, emergency contingent appropriations are made."

Section 2 of the last-referred to statute, being Acts 1947, Ch. 178, Sec. 2, Burns' (1951 Repl.), Section 61-1302, requires any such acceptance of such program by any state officer or agency shall be "with the consent of the Governor."

Therefore, it is my conclusion that such a program is under Section 2 of the above-quoted state statute, dependent upon the acceptance of such program by your State Board with the consent of the Governor.

OFFICIAL OPINION NO. 21

June 17, 1957

Hon. Robert H. Berning
State Representative
506 Dime Bank Building
Fort Wayne 2, Indiana

Dear Mr. Berning:

Your letter of June 4, 1957, has been received and reads as follows:

> "The undersigned has been requested to obtain a formal opinion from your office concerning House Bill 299 adopted by the 1957 Indiana General Assembly and effective March 14, 1957. This bill authorizes public employees to obtain group, health, hospitalization, medical and surgical insurance plans and provides for fiscal officer to deduct premiums from employees' pay checks when authorized in writing by the individual and provides that the employer may appropriate and pay part of the cost.
>
> "The opinion desired from your office should include the following points:
>
> "1. Do elected officials qualify under House Bill 299.

"2. To what degree may the governmental unit participate in a financial manner in paying for the cost of the insurance plan selected.

"3. Any other interpretation which your office may have had occasion to render in the past."

House Bill 299, which is Acts of 1957, Ch. 296, provides that for purposes of that Act, the term "employee" shall mean a full-time employee whose services have continued without interruption for a period of at least thirty [30] days. Your letter asks whether or not elected officials are included within this definition in order to qualify under the terms of the Act.

The general rule is stated in 67 C. J. S. Officers § 5 that statutes applicable to employees under an appointment or contract of hire ordinarily do not embrace public officers unless they are specifically included. The Supreme Court of Indiana has recognized on numerous occasions that there is a distinction between the status of an officer and that of an employee. In County of St. Joseph v. Claeys *et al.* (1936), 103 Ind. App. 192, 5 N. E. (2d) 1008, the Court said:

> "Generally speaking, one of the requisites of an office is that it must be created by a constitutional provision, or it must be authorized by some statute, and an important distinction between the status of an officer and that of an employee rests on the fact that an office is based on some provision of law, and does not arise out of contract, whereas an employment usually arises out of a contract between the government and the employee. And although an employment may be created by law, where authority is conferred by contract, it is regarded as an employment, and not as a public office, notwithstanding provisions for the employment is made by statute, and notwithstanding the position is referred to as an office.' 46 C. J., Sec. 22, p. 930."

The Supreme Court of Indiana has held on several occasions that an officer of a municipality or of a municipal subdivision or of the state, is not included within the definition of the term "employee" as used in a particular act.

> State of Indiana, Conservation Dept. v. Nattkemper (1927), 86 Ind. App. 85, 156 N. E. 168;

Shelmadine v. City of Elkhart (1920), 75 Ind. App. 493, 129 N. E. 878;

1947 O. A. G., page 61, No. 14.

By the 1955 amendment to the Workmen's Compensation Act of 1929, Ch. 172, Sec. 73, as amended, as found in Burns' (1955 Supp.), Section 40-1701 *et seq.*, officers of municipal corporations and other governmental subdivisions were expressly included within the definition of employees in order that they might be qualified to participate in the program of workmen's compensation insurance.

The Act extending social security coverage to employees of the state and political subdivisions, which is the Acts of 1951, Ch. 313, as amended, as found in Burns' (1955 Supp.), Section 60-1901 *et seq.*, defines "employment" and in Sec. 2, subsection (c) further states, "The term 'employee' includes an officer of the state and of a political subdivision of the state."

It is my opinion that in the absence of an expressed indication to so include officers within the definition of the term "employee" as was done in the two Acts cited above, that such officers are excluded from the definition and are not entitled to coverage under the terms of Acts of 1957, Ch. 296. Section 2 of the Acts of 1957, Ch. 296, *supra*, provides as follows:

> "A public employer shall have the right and power to contract for group insurance in relation to its employees and, in the case of life insurance, it shall, and in the case of other kinds of insurance, it may, appropriate and pay a part of the cost of such insurance out of its funds available for the payment of salaries and wages of employees, and any such insurance contract shall not be cancelled by said public employer during the policy term of such contract."

One of the most common rules of statutory interpretation is that a statute clear and unambiguous on its face need not and cannot be interpreted by a court, and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory interpretation.

1945 O. A. G., page 178, No. 38;

Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4502, pp. 316, 317;

Hord v. State (1907), 167 Ind. 622, 641, 79 N. E. 916.

The language of this statute is clear and unambiguous and requires no construction. The Act states that in the case of life insurance, it shall, and in the case of other kinds of insurance, it may appropriate and pay a *part of the cost* of such insurance. (For a discussion of the effect to be given to the terms "shall" and "may" when used in the same sentence in a statute, see 1950 O. A. G., page 177, No. 45.) The statute places no specific limitation upon the proportionate share of the premium which the public employer may pay as a cost of the insurance in question. Therefore the public employer could pay any amount *less* than the total cost of the insurance. The determination of the part of the cost to be appropriated and paid by the employer would be up to the local unit, limited only by the funds which are available by appropriation for the payment of salaries and wages of employees. The local unit would be required to follow the usual regulations regarding making such appropriations. The matter of the appropriation of funds by various units of government is included in an earlier Official Opinion of this office: See 1954 O. A. G., page 180, No. 49. Once such insurance contracts are entered into, a continued making of appropriations seems to be required by the statute in question in that it is provided such insurance contracts shall not be cancelled by said public employer during the policy term of such contract.

Therefore, I would answer your second question by stating that the public employer, as defined in Acts of 1957, Ch. 296, *supra*, shall, in the case of life insurance, and in the case of other kinds of insurance, may participate financially to any degree it desires, short of full payment for the cost of the insurance plan selected, so long as the employer has sufficient funds available for the payment of wages and salaries from which it can appropriate the money for the payment.

In your letter, at point 3, you ask the general question as to whether this office has rendered "any other interpretation" on this statute. Our records show that this is the first Official Opinion I have issued relative to the above statute.

In summarizing, I would answer your two specific questions by stating first, that elected officials do not qualify under the terms of the Acts of 1957, Ch. 296, *supra*, and second, that governmental units may participate in paying for the insurance in question to any extent short of full payment so long as requirements regarding the appropriations of funds are met.

OFFICIAL OPINION NO. 22

June 19, 1957

Mr. Norval Martin
Executive Secretary, Indiana State Teachers'
Retirement Fund
145 West Washington Street
Indianapolis 4, Indiana

Dear Mr. Martin:

Your letter of May 27, 1957, requesting an Official Opinion, has been received and reads, in part, as follows:

> "'* * * The pension supported by the employer's contributions shall be computed upon the average of the annual compensation of the employee not in excess of $7200 during any consecutive five of the ten (10) years of service immediately preceding his retirement date or during his entire period of service subsequent to the date of this act if higher than his average for such period. * * *'
>
> "We will appreciate your Official Opinion regarding the effective date of the above reference to Chapter 311, Section 8 of the Acts of 1957. Mrs. Ellen Anne Lloyd, Deputy Attorney General, rendered an unofficial opinion on this question under date of March 21, 1957.
>
> "In reference to Chapter 219 of the Acts of the General Assembly of 1957, we will appreciate your Official Opinion as to whether or not we are to pay the increase in benefit to co-survivors. Mrs. Lloyd rendered an unofficial opinion on this question under date of April 4, 1957.
>
> "In reference to Chapter 219 of the Acts of 1957, we