for the purpose of ascertaining legislative intent. [See: Rosenbloom v. Hutchins (1944), 222 Ind. 590, 595, 55 N. E. (2d) 315.]

As further indication that it was the intent of the Legislature that “now” in Acts of 1957, Ch. 319, Sec. 17, supra, should mean the effective date of the Act rather than time of enactment, it is noted that by such construction only may full effect be given to the express language of all four statutes herein considered.

Furthermore, it has been ascertained that the effect of excluding the fees eliminated by amendment and the per diems which expire by limitation would not leave the reference to “fees” and “per diems” in Acts of 1957, Ch. 319, Sec. 17, supra, meaningless, as there are other fees provided by law which would be payable to certain county officials in classes one [1] and two [2] on January 1, 1958, if the said Ch. 319 were inoperative, just as there are other per diems prescribed by law for county officials of classes from three [3] to thirteen [13], which would be payable to them but for Ch. 319.

In addition to previous statements that the answers to all three of the propounded questions are negative by virtue of strict literal interpretation of the language of Acts of 1957, Ch. 319, it is my opinion that the legislative intention was to so construe it with the effect that no actions detailed in any of your questions will be permitted on and after January 1, 1958.

OFFICIAL OPINION NO. 25

July 9, 1957

Mr. Robert L. McMahan
Commissioner,
Bureau of Motor Vehicles
126 State House
Indianapolis, Indiana

Dear Mr. McMahan:

Your recent letter requesting an Official Opinion has been received and reads as follows:
“The Bureau of Motor Vehicles has one hundred eighty-seven (187) branch offices scattered throughout the State of Indiana. Each of these branches has a branch manager and from one (1) to ten (10) persons employed therein, varying from a peak employment in January and February of each year to a minimum of employment the rest of the year. The branch managers are direct appointees of the Commissioner of Motor Vehicles and employ whatever assistants are necessary in order to conduct the business of each branch. This branch organization is this department’s contact with the citizens of Indiana in every connection with reference to motor vehicle registration and licensing of drivers. They issue among other things registration plates for all vehicles and temporary driving permits for all drivers, collect the State fee therefor, deposit to the State of Indiana accounts in designated banks and report to this office all media upon which we then complete all transactions.

“These branch managers and their employees are covered by a blanket surety bond and all their operations are subject to control by this office.

“It is my understanding that in 1952 or thereabouts it was determined that these employees were ‘state employees.’ In the 1957 Legislature a law was enacted stating that these employees ‘were not to be considered employees of the State for the purposes of the Public Employees Retirement Fund Account.’ The Social Security Administration of the Federal Government has been accepting social security returns of some branch managers and refusing them in the case of others. A question is raised as to whether the enactment of this law referred to exempts the employees of the branch managers from participation in the Public Employees Retirement Fund and Social Security. Every one of the one hundred eighty-seven (187) branches desires clarification.

“I would appreciate an opinion from your office as to whether these employees are employees of the State under present law.”
The Bureau of Motor Vehicles is a separate department of state government administered by a Commissioner of Motor Vehicles appointed by the Governor. Provisions regarding the Bureau are found in the Acts of 1945, Ch. 304, as found in Burns' (1952 Repl.), Section 47-2401 et seq.

The Commissioner is given the authority to organize the department, to appoint deputies and employees. Burns' Section 47-2406, supra, provides as follows:

"* * * In order to facilitate and expedite the operation of the provisions of this act, the commissioner is hereby authorized and empowered to designate and establish, within this state, as many branch offices as he may deem necessary, and to appoint a manager of each of such offices. Each branch manager so appointed shall be bonded in an amount fixed by the commissioner. The commissioner shall promulgate such rules and regulations, as may be necessary, for the proper conduct of the business of such branch offices."

By custom, the Commissioner and each branch manager enter into a standardized contract agreement which sets out the duties and obligations of the branch manager. Among other duties set out in the contract, the branch manager is required to appoint all employees necessary for the efficient operation of his branch and to pay said employees salaries and wages from the fees collected and retained by the branch manager. The contract also provides that:

"Said Branch Manager further agrees that the Department shall have direct supervision over any and all matters for which the Department is responsible and which are covered by the agreements and stipulations embraced herein."

In the case of Wetzel v. McNutt (1933), 4 F. Supp. 233, 93 A. L. R. 334, it was determined that a branch manager holds an office of the State of Indiana, exercising a part of the administrative authority of the State by examining applicants, determining their qualifications and granting or rejecting their applications for licenses. He is an administrative officer exercising discretion and administrative power. The McNutt case, supra, which very much parallels the present situation in Indiana concerning the Bureau of Motor Vehicles, stated
that a branch manager appointed by the Secretary of State "became, then, an administrative officer exercising discretion and administrative power, and to such extent at least the nature of his duties were those of an officer of the State within the meaning of the word as commonly recognized." The court further determined in that case that the branch manager had additional duties involving labor without the exercise of sovereign power, and those duties and rights partook of the nature of the duties of an employee of the State.

The question of the relationship of branch managers and branch employees of the State of Indiana was discussed in 1952 O. A. G., page 235, No. 60. It was reiterated there that a branch manager appointed by the Commissioner of Motor Vehicles was a public officer of the State of Indiana. The opinion followed the ruling in State ex rel. Black v. Burch (1948), 226 Ind. 445, 80 N. E. (2d) 294, 80 N. E. (2d) 560, 81 N. E. (2d) 850, that an employee of an officer, even though he is performing a duty not involving the exercise of sovereignty, is performing one of the functions of government. Therefore, the manager's assistants and agents perform functions of one of the branches of State government and are State employees.

Another Official Opinion of this office, 1953 O. A. G., page 37, No. 9, affirms the earlier decisions and further states that a branch manager holds a lucrative office within the meaning of the Indiana Constitution, Art. 2, Sec. 9.

The recent General Assembly by Acts of 1957, Ch. 232, amended the definition section of the Public Employees' Retirement Act, which is Acts of 1945, Ch. 340, as amended, as found in Burns' (1955 Supp.), Section 60-1604 et seq., to read as follows:

"The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meanings:

* * *

"'Employee' shall mean any person in the employ of the state * * * but shall not include the following:

* * *
“(f) Managers of any license branch of the Bureau of Motor Vehicles, or any employees of such branches, shall not be considered as employees of the State of Indiana.”

Your letter raises the question whether or not this enactment exempts the branch managers and employees from participation in the Public Employees' Retirement Fund and Social Security coverage.

It is a well established rule of statutory construction that where a Legislature defines the language it uses, its definition is binding upon the courts and this is so even though the definition does not coincide with the ordinary meaning of the words used and otherwise the language would have been held to mean a different thing.

Smith v. The State (1867), 28 Ind. 321;
State ex rel. Baker v. Grange (1929), 200 Ind. 506, 165 N. E. 239;
Department of State Revenue v. Crown Develop. Co. (1952), 231 Ind. 449, 109 N. E. (2d) 426;
Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4814, p. 358.

The amendment states that branch managers and employees of such branches “shall not be considered as employees of the State of Indiana.” The Legislature had authority to make such a definition excluding this class of persons and the board administering the fund is bound by this limitation. Therefore, such persons are not eligible for membership in the Public Employees' Retirement Fund. [Branch managers have always been excluded from membership in the fund under Burns' (1955 Supp.), Section 60-1604 (d) which provides that independent contractors or officers and employees paid wholly on a fee basis are not “employees” under the Act.]

The matter of social security coverage for these branch managers and employees of such branches as employees of the State presents an additional problem.

Employees of the State of Indiana were extended social security coverage by the provisions of the Acts of 1951, Ch.
313, as amended, as found in Burns' (1951 Repl.), Section 60-1901 et seq. This Act extended social security coverage to all State employees except: (1) those whose service would already constitute "employment" as defined in the Social Security Act; or (2) those whose service could not be included in an agreement under the Social Security Act; or (3) members of certain retirement systems who must first have a Governor's certification. Due to a faulty title, State employees were not eligible for social security coverage until the Act was amended in 1955. On October 1, 1955, a modification of the federal-state agreement was entered into to extend social security coverage to all eligible employees of the State. The question for determination is whether or not branch managers and employees are included within the definition of "employee" as used in the Enabling Act and modification.

The Enabling Act provides in Burns' (1955 Supp.), Section 60-1902(c) that "the term 'employee' includes an officer of the state and of a political subdivision or local unit of the state." No further definition of the term is made in that Act. The federal-state agreement and the modification refer to "employee" as the term is defined in the Social Security Act. Section 210 (k) of that Act, supra, as found in 42 U. S. C. A. § 410 (k) provides:

"The term 'employee' means * * * (2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."

The question as to who is an employee is to be determined by the Social Security Administration in accordance with the provisions of the Social Security Act, and the applicable regulations, unless the recent legislative enactment of Acts of 1957, Ch. 232 applies and itself excludes such persons from coverage.

In discussing the interpretation to be given to statutes, 50 Am. Jur., Statutes, § 299, page 281, states as follows:

"* * * Accordingly, a purpose to effect a radical departure from a firmly established policy will not be implied, but must be expressed in clear and unequivocal language, and such policy is not to be regarded as
abandoned further than the terms and objects of the new legislation unmistakably require. * * *" (Cites numerous authorities)

The Public Employes' Retirement Act limits the application of the definitions to the words "as used in this act." Such definitions are controlling for the purposes of the particular act, but a court would not be justified in extending the provisions, and applying them to another or earlier act.

Beall v. Everson (1943), D. C., 34 Atl. (2d) 41;


In the case of State v. Schwartzmann Service, Inc. (1931), 225 Mo. App. 577, 40 S. W. (2d) 479, the Court held that a restricted definition of a term used in an earlier general act could not control the meaning of the term when used in a later special act.

It would seem that the legislative definition of the term in question here should be expressly limited to the statute in which it appears. [See: Darius v. Apostolos (1920), 68 Colo. 323, 190 Pac. 510, 10 A. L. R. 986.] This seems particularly true in view of the language chosen by the Legislature—"shall not be considered." The Legislature cannot by mere definition change the existing relationship itself. If the Legislature had intended that such branch managers and employees were not to be State employees any longer, it could have changed the relationship itself between the parties and the State so that there was, in fact, no employer-employee relationship. Instead, it defined the term "employee" in a particular act so that such persons would not come within the provisions of that act. The limiting definition does not extend beyond the act in which it was included, and therefore does not apply to the Social Security Enabling Act.

Branch license employees are "employees" within the provisions of the State law, but whether they are included in the Federal law is a question for Federal, and not State, determination. However, such persons are not members of the Public Employes' Retirement Fund because the latter Act uses
a different definition of “employee” which specifically excludes them from membership in the Fund.

Some of the considerations for the determination of the Federal authorities are certain exclusions stated in the Federal act: (a) all services of an emergency nature; (b) services in part-time positions; (c) positions the compensation for which is on a fee basis; (d) any agricultural labor if such work would be excluded if done for a private employer; (e) any service performed by a student if such work would be excluded if done for a private employer.

The contract between the branch manager and the Commissioner of the Bureau of Motor Vehicles states that the service charge fees and notary public fees paid by applicants are to become the exclusive property of the branch manager, received by him as compensation, which shall be in full for all his services. Article 4 of the contract states as follows:

“Said Branch Manager further agrees to appoint all employees necessary for the efficient operation of his Branch and under the terms of this contract further agrees to pay said employees salary and wages from the fees collected and retained by the License Branch Manager.” (Our emphasis)

It would appear therefore that the branch managers are in positions the compensation for which is on a fee basis and are therefore within the class of service specifically excluded from social security coverage, by the terms of the federal-state modification, whether they are considered as officers or as employees.

However, the question of whether or not the branch employees themselves are eligible for social security coverage as State employees is one for Federal determination. Such employees are paid specific amounts as salaries and wages which have been agreed upon in advance for the services they perform. The branch manager uses the fees he has collected as the source of their salaries, but such employees would not be considered as paid on a fee basis so as to exclude them from coverage. However, it is highly probable that some of the employees would come within the part-time employment exclusion of the federal-state agreement and would be ineligible for
social security coverage for that reason. This would be a matter for factual determination in individual cases.

By way of summary, I would state that branch managers and branch employees of the Bureau of Motor Vehicles are, by statutory definition, ineligible for membership in the Public Employees' Retirement Fund. The branch managers, who are officers of the State paid on a fee basis, are also excluded from social security coverage. The employees of such branch managers are State employees and whether or not they are eligible for social security coverage is a matter for Federal determination.

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OFFICIAL OPINION NO. 26
July 24, 1957

Hon. Donald M. Ream
Commissioner,
Wilbur Wright Birthplace Comm.
R. F. D. #14, Box 348
Indianapolis, Indiana

Dear Mr. Ream:

This is in reply to your request for my Official Opinion concerning the status of the Wilbur Wright Birthplace Commission, the answers here contained being directed to the following questions in the order presented:

"1. Chapter 138, page 282, of the Acts of 1955, created the above named commission and is silent as to how long such commission shall continue its existence. In your opinion is such commission a continuing one and has the power to act for the purposes of its creation?

"2. The above act provides that the composition of such commission shall have two members from each house of the General Assembly. The commissioners, Charles F. Rutledge and Roderick M. Wright, duly appointed by the presiding officers respectively of the Senate and House of Representatives are no longer members of the General Assembly, but were at the times of their appointment as such commissioners. Are such persons qualified to continue as such commissioners?"