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.

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?"
“3. The undersigned was appointed a commissioner by the Governor of the State of Indiana, under a certificate of a commission calling for four years duration. Am I, under such commission of the governor, a qualified commissioner?

“4. The above act appropriated $10,000 for the purpose of carrying out the purpose of the act. After June 30, 1957, will such appropriation, or any balance thereof, be available to the commission for its lawful purpose, or will such appropriation revert to the general fund, after such date?”

_First_. For the sake of brevity and to avoid duplication, I wish to refer you to 1956 O. A. G., page 39, No. 10, and particularly to pages 40 and 41 thereof, wherein is contained the legislative history of the Wilbur Wright Memorial project, commencing with the Acts of 1929, Ch. 40, as found in Burns' (1951 Repl.), Section 60-825 et seq. The legislative history as contained in said opinion is current in that the 1957 session of the General Assembly enacted no further provision or amendment to the laws respecting this project. As disclosed by a study of 1956 O. A. G., No. 10, supra, there have been several enactments concerning this project indicating legislative intent to proceed in carrying out the original purpose for which Wilbur Wright's Birthplace was purchased. I concur in your conclusion respecting Acts of 1955, Ch. 138, the current statute under which the Wilbur Wright Birthplace Commission is governed, that said act is silent as to the duration of time for the existence of said commission. This conclusion, together with the legislative history of this project, and in the absence of any applicable constitutional or statutory provision or rule of statutory construction, compels the inference that there is nothing upon which to base a determination that the life of such commission has ceased. Therefore, in answer to your first question, it is my opinion that such commission is a continuing one and has the power to act for the purpose of its creation, subject, however, to the conclusions hereafter stated in answer to the balance of your questions presented herein.

_Second_. In answer to your second question, please refer to the provisions contained in the Acts of 1955, Ch. 138, Sec. 1, which state, in part, as follows:
"* * * Two of the members shall be members of the Senate of the General Assembly to be appointed by the president of the Senate, two of the members shall be members of the House of Representatives of the General Assembly to be appointed by the Speaker of the House of Representatives, and three members shall be appointed by the governor. * * *" (Our emphasis)

It seems to me that the above language is clear and unambiguous in requiring that two of the members of the commission, as a matter of eligibility to membership on the commission, shall be members of the Senate and two of the members, as a matter of eligibility to membership on such commission, shall be members of the House of Representatives. The language does not indicate that the Legislature intended merely that such members should be selected and appointed from the membership of the Eighty-Ninth Regular Session of the General Assembly. In answer to your second question, it is therefore, my opinion that said individuals who are no longer members of the General Assembly are not qualified to continue as commissioners on the Wilbur Wright Birthplace Commission. In connection therewith, it is my further opinion that successors should be appointed by the President of the Senate and the Speaker of the House of Representatives, as provided in said act; those appointments will be subject to the conditions as hereinafter set out in answer to your third question.

Third. In answer to your third question, please refer to the following provisions of the Indiana Constitution, Art. 15, Sec. 2:

"When the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years." (Our emphasis)

From a reading of the provisions of the Acts of 1955, Ch. 138, which governs the activities of your commission and the appointments of the members thereof, it is noted that the law does not prescribe the duration of your office. The above-
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quoted provision of the Indiana Constitution states that if the duration of your office is not provided "by law," your office shall be held during the pleasure of the appointing authority. It follows therefore, that the Governor of Indiana, from whom your appointment was received under a certificate "calling for four years duration," was without authority to place a time limitation upon the duration of your office. Pursuant to said constitutional provision, the duration of your appointment was subject to the pleasure of the Governor, from whom your appointment was received and is further subject to the pleasure of the present Governor of this State. It should be noted also that those members of your commission who are appointed by the President of the Senate and the Speaker of the House of Representatives likewise serve subject to the pleasure of their said appointing authorities. See 1948 O. A. G., page 442, No. 71; also, State ex rel. Manlove v. Curtis (1913), 180 Ind. 191, 192, 102 N. E. 827, wherein the Court said:

"The general rule is conceded to be that 'where the term of office is not fixed by law, the officer or officers, by whom a person was appointed to a particular office, may remove him at pleasure, and without notice, charges, or reasons assigned.' Throop, Public Officers Section 354. See, also, Mechem, Public Officers Sections 445, 454."

From the foregoing, with respect to the duration of your appointment, it is my opinion that the four-year term as stated on your certificate of appointment is without binding effect upon the present Governor and that your continued activity as such commissioner is subject to the pleasure of said appointing authority.

Fourth. In answer to your fourth question, it should be noted that the Acts of 1955, Ch. 138, Sec. 3, by which the appropriation of $10,000 about which you inquire was made, fails to provide a time limitation within which said funds must be used, or to provide for their reverting into the general treasury. These funds were appropriated for the construction and establishment of a fitting memorial to the memory of Wilbur Wright, as provided by Acts of 1955, Ch. 138, Sec. 2, supra. Therefore, the general statutory provisions as contained in the Financial Reorganization Act of 1947 will pre-
vail. Reference is made to that Act, Acts of 1947, Ch. 279, Sec. 21, as found in Burns' (1951 Repl.), Section 60-1821, which provides as follows:

“(a) Except as specifically provided for in appropriation Acts, every appropriation or part thereof remaining unexpended and unencumbered at the close of any fiscal year, shall lapse and be returned to the general revenue fund; Provided, that an appropriation for purchase of real estate or for construction or other permanent improvement shall not lapse until the purposes for which the appropriation was made shall have been accomplished or abandoned, unless such appropriation has remained during an entire fiscal biennium without any expenditure therefrom or encumbrance thereon. (b) Except as otherwise expressly provided by law, the provisions of this section shall apply to every appropriation of a stated sum for a specified purpose or purposes heretofore or hereafter made from the general revenue fund, but shall not, unless expressly so provided by law, apply to any fund or balance of a fund derived wholly or partly from special taxes, fees, earnings, fines, federal grants, or other sources which are by law appropriated for special purposes by standing, continuing, rotary or revolving appropriations.”

(Our emphasis)

In the absence of any statutory provisions otherwise providing, it is apparent that the general provisions above contained and particularly those emphasized are applicable to your question. If there has been any expenditure therefrom, or encumbrance against said appropriation within the last preceding fiscal biennium, i.e. from July 1, 1955, to and including June 30, 1957, then the appropriation is still available for expenditure, unless the purposes for which the appropriation was made have either been accomplished or abandoned. Further, if the fund contains any special funds such as federal grants, it is subject to further expenditure unless otherwise expressly provided by the law by which such federal grants or other funds are derived. Your letter of inquiry does not contain information as to whether the project has been accomplished or as to whether there has been any expenditure from, or encumbrance against said appropriation during the last
preceeding fiscal biennium, nor does it state whether there are
special funds such as federal grants included in the funds
otherwise available to the commission. Therefore, I am unable
to give you a positive answer to your fourth question, except
to state that, in my opinion, the above-quoted provisions of the
Acts of 1947, Ch. 279, Sec. 21 are applicable and the ultimate
answer to said question may be determined by you by applying
said statutory provisions to the actual fact pattern involved.

OFFICIAL OPINION NO. 27
July 25, 1957

Mr. T. M. Hindman
State Examiner
State Board of Accounts
304 State House
Indianapolis, Indiana

Dear Mr. Hindman:

This is in reply to your recent letter requesting an Official
Opinion on the following questions:

"1. Does the provision in the last two paragraphs of
section 2e of Chapter 285, Acts 1957, create a new fund
in each of the local school corporations, or is it sufficient
to receipt such distribution into the Special School Fund
of each local school corporation and use for the purpose
designated?

"2. Can the amount received in each distribution by
the school corporation be used for 'debt service' and
'lease rental payments' or are these purposes included
in the exception along with 'gymnasiums'?

"3. If the distribution can be receipted directly into
the Special School Fund, could part of such money re-
ceived be receipted directly into the Bond Fund (for
debt service) and/or into the Cumulative Building
Fund (for school construction) ?

"4. What interpretation do you place on the phrase
'transferred as presently provided by law'? We would
appreciate your citing the present statutes that author-
ize such transfers.