> or division receives revenue independently of or in addition to funds obtained from taxation."

It has been held that prosecuting attorneys are not state, county or township officers; State of Indiana v. Patterson (1914), 181 Ind. 660, 663, 105 N. E. 228. A prosecuting attorney is a constitutional judicial officer; State *ex rel.* Stanton v. Murray, Judge (Stanton v. State of Indiana) (1952), 231 Ind. 223, 234, 108 N. E. (2d) 251. The prosecuting attorney is elected in each judicial circuit by the voters thereof; Indiana Constitution, Art. 7, Sec. 11, and is commissioned by the Governor; 1 R. S. 1852, Ch. 19, Sec. 1, Burns' Indiana Statutes (1951 Repl.), Section 49-201. A prosecuting attorney is an officer of the judicial circuit; The State *ex rel.* Howard v. Johnston (1884), 101 Ind. 223, 229. If a prosecuting attorney is eligible for coverage by Social Security he, obviously, must be an employee of the State, or of a political subdivision that comes within the foregoing definition.

You will note that the definition of a "political subdivision" as set out above in Burns' 60-1902, *supra,* does not include a judicial circuit. Therefore, it is my opinion that a prosecuting attorney is not an officer or employee of a "political subdivision" as used in said Act and is, therefore, not subject to Social Security thereunder.

This answer disposes of the other contingent questions in your letter and I trust, fully answers your inquiry.

OFFICIAL OPINION NO. 21

May 24, 1956

Mr. Wm. C. Stalnaker, Director
Indiana Employment Security Division
141 South Meridian Street
Indianapolis 9, Indiana

Dear Mr. Stalnaker:

This is in reply to your request for an Official Opinion, which reads as follows:

> "The 'Supplemental Unemployment Benefit Plan,' commonly referred to as the 'Ford Plan,' established

pursuant to a contract entered into between the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO and the Ford Motor Company, as well as other plans designed to accomplish the same or similar purpose, has raised the following questions in connection with the administration of the Indiana Employment Security Act, hereinafter referred to as the Act:

> "1. Do supplemental benefits paid from trust funds created by the Ford Plan to an unemployed worker constitute deductible income as defined in the Act, so as to effect a disqualification for benefits, in whole or in part, under said Act?
>
> "2. Are employer contributions due to the Indiana Employment Security Division upon the funds provided by the employer for the payment of supplemental unemployment compensation pursuant to the Ford Plan? If such contributions are due to the Indiana Employment Security Division, do they become payable at the time of payment to the trust fund or at the time of payment of supplemental benefits to unemployed workers?
>
> "3. If contributions are due to the Indiana Employment Security Division at the time of payment from the trust fund, is the 'Fund,' as defined in the Ford Plan, or Ford the employer within the meaning of the Act for the purpose of paying such contributions?"

The "Supplemental Unemployment Benefit Plan" which has heretofore been agreed to between the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO and the Ford Motor Company and other plans designed for the same purposes will be referred to, for the purpose of this opinion, as the Plan.

The Plan provides that the employer shall establish two separate and distinct trust funds, a General Fund and a Defense Fund. The employer is the sole contributor to each of

said funds and the rate of contribution is five cents ($.05) for each hour for which the employee shall have received pay from the employer. Contributions on behalf of non-defense employees will be made to the General Fund and in case of defense employees, contributions will be made to the Defense Fund. June 1, 1956, is the earliest date that a laid-off employee will be eligible to make application for benefits under the Plan. There are eligibility conditions set forth in the Plan which are not pertinent except the condition that the employee has to have been paid a state benefit for the week claimed for supplemental benefit purposes. In the event the state does not approve such Plan, no benefit will become payable to an employee prior to June 1, 1957, in that particular state.

In several states the Attorneys General have rendered opinions approving the Plan. In the states where there has been approval, it is my understanding that such approval has been based on the fact that the supplemental benefit payments are not remuneration for personal service or wages. However, the statutes of each of these states may be distinguished from the Indiana Employment Security Law insofar as the concept of "deductible income" as contained therein is concerned; see Acts of 1947, Ch. 208, Sec. 501, as last amended by Acts of 1953, Ch. 177, Sec. 10, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 52-1529, which provides as follows:

> " 'Deductible income,' wherever used in this act means income deductible from the weekly benefit amount of an individual in any week, and shall include, but shall not be limited to remuneration for services from employing units, whether or not such remuneration is subject to contribution under this act, dismissal pay; vacation pay; pay for idle time; holiday pay; sick pay; traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual; earnings from self-employment; bonuses, gifts or prizes awarded to an employee by an employing unit; payments in lieu of compensation for services; awards by the national labor relations board of additional pay, back pay or for loss of employment; or any such payments made under an agreement entered into by an employer, a union and the national labor relations

board; payments made to an individual by an employing unit pursuant to the terms of the fair labor standards act (federal wage and hour law); Provided, That deductible income shall not include the first three (3) dollars of remuneration paid or payable to an individual with respect to any week by other than his regular employer."

Acts of 1947, Ch. 208, Sec. 402, as amended, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 52-1529a also provides as follows:

"Bonuses, gifts or prizes awarded to an employee by an employing unit shall be considered as deductible income in and with respect to the week in which the same is actually paid. Dismissal pay; vacation pay; pay for idle time; holiday pay; sick pay; traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual; remuneration and/or earnings from self-employment; payments made pursuant to the terms and provisions of the national labor relations act (Wagner labor act) [F. C. A., tit. 29, § 141 *et seq.*]; awards by the national labor relations board of additional pay, back pay, or for loss of employment; or any such payments made under an agreement entered into by an employer, a union and the national labor relations board; and payments to an employee by an employing unit made pursuant to the terms and provisions of the fair labor standards act (federal wage and hour law) [F. C. A., tit. 29, § 201 *et seq.*] shall be deemed to constitute deductible income with respect to the week or weeks for which such payments are made; Provided, however, That if such payments made pursuant to the provisions of the national labor relations act or of the fair labor standards act are not, by the terms of the order or agreement under which said payments are made, allocated to any designated week or weeks, then and in such cases such payments shall be considered as deductible income in and with respect to the week in which the same is actually paid."

The Acts of 1947, Ch. 208, Sec. 1505, as last amended by Acts of 1953, Ch. 177, Sec. 17, as found in Burns' Indiana

Statutes (1951 Repl., 1955 Supp.), Section 52-1539d, provides as follows:

> "An individual shall be ineligible for waiting period or benefit rights: For any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding his weekly benefit amount in the form of: (a) deductible income as defined and applied in sections 501 and 502 hereof; (b) a pension under the plan of an employer whereby the employer contributes a portion or all of the money; Provided, however, That this disqualification shall apply only if some or all of the benefits otherwise payable are chargeable to the experience account of such employer.
>
> "Provided, That if such payments are less than his weekly benefit amount an otherwise eligible individual shall not be deemed ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments."

Therefore, a claimant's state benefits under Indiana law must be reduced by the amount of supplemental benefits he receives for a particular week if such benefits constitute deductible income.

In the case of Hill v. Review Board of Indiana Employment Security Division *et al.* (1953), 124 Ind. App. 83, 87, 112 N. E. (2d) 218, the Court in determining whether or not "holiday pay" (which was not specified as a deductible item in Burns' 52-1529a, *supra,* prior to 1953 amendment) was deductible income under the provisions of said section said:

> "* * * Appellant cites the fact that 'holiday pay' is not specifically mentioned in either of the above sections of the Act and urges that under the circumstances of payment, the payment was deductible income for and during the week when it was actually paid, as is true of bonuses, gifts and prizes. However, this section of the Act is not restrictive but serves to classify types of income, such as bonuses, gifts and prizes, which are in payment of past services actually performed, and termination of pay, vacation pay, idle time pay, etc.,

> which are paid for and with respect to services not to be performed. The latter are described as deductible income not for the week when they are actually paid but 'with respect to the week, or weeks, for which such payments are made.' It seems clear that 'holiday pay' although not specifically mentioned, falls in this latter category. Therefore, we find no error in the findings and conclusions of the board with respect to the classification of holiday pay as deductible income for the date of the holiday for and with respect to which it was paid."

Under the above cited authority, the concept of "deductible income" as used and applied in the Indiana Unemployment Security Law would not appear to be restricted to the specific items enumerated therein. You will note that remuneration for services (whether or not subject to contribution under the Act), dismissal pay, vacation pay, pay for idle time, holiday pay, sick pay, bonuses, gifts, prizes and payments in lieu of compensation for services, all represent income incident to and arising out of an employer-employee relationship. "Deductible income," as defined in the statute, includes but is not restricted to these matters. Therefore, I believe that the purpose of Burns' 52-1529 and 52-1529a, *supra,* was to classify generally, as "deductible income" such benefits, payments, and other types of income as are directly attributable to and arising out of an employer-employee relationship. Any such "deductible income" must be deducted from any unemployment benefits to be paid by the State, however, the State will supplement any such "deductible income" in order to bring the total income received by an unemployed person up to the maximum amount to which he is entitled under the Indiana Act.

This, I think, is a manifestation of the State's interest in the total amount of unemployment benefits to be received by unemployed persons, and the share thereof which the State should pay. It is also an expression of intent on the part of the Legislature that the Indiana Employment Security Law and the benefits payable thereunder be considered as supplementary in nature to income or benefits arising out of and incident to the employer-employee relationship. In the case before me now, the income payable to the employee under the

Plan by way of unemployment benefits, is payable under and pursuant to an agreement by and between the employer and the Union, acting as agent for the employee. In my opinion, the benefits payable under such an agreement cannot be supplementary to the benefits provided for by the Indiana law since the former are included within the general class of benefits which it is the purpose of the State Act to supplement. Therefore, I am of the opinion that the benefits provided for under the Plan are included within the concept of "deductible income" as used in the Indiana Employment Security Act, and that additional legislation will be required before income of this character may be considered as supplementary to the benefits provided for under the Indiana law.

An example of this is found in Acts of 1947, Ch. 208, Sec. 1506, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 52-1539e, which provides as follows:

> "Except as provided in section 2303 of this act an individual shall be ineligible for waiting period or benefit rights: For any week with respect to which or a part of which he receives, is receiving, has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States: Provided, That this disqualification shall not apply if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such employment benefits, or if benefits under Title IV of the Veterans' Readjustment Assistance Act of 1952 [F. C. A., tit. 38, §§ 695-695f] or Title XV of the Social Security Act [F. C. A., tit. 42, §§ 1361-1370] are payable."

This Section deals with supplemental benefits payable under the Veterans' Readjustment Act of 1952. The Federal statute provided for supplementing the benefits payable under State law so that the veteran would receive supplementary Federal unemployment compensation; see 38 U. S. C. A. § 991. As can be seen from the above quoted Section of the statute, the Legislature apparently felt that specific legislative authority was needed before the benefits provided for in the Federal Act could be considered as supplementary to the benefits provided by the Indiana statute.

Under the Plan, the benefits payable to the unemployed persons are payable from the corpus of a trust established by the employer who does not himself make these payments directly to the unemployed person. However, I do not believe that the use of a trust mechanism is sufficient to change or alter the fundamental character of the benefits provided by the Plan, or the underlying source thereof, since it is not a question of how these benefits are payable but why they are to be paid.

> Stella Conon *et al.* v. Administrator, Unemployment Compensation Act (1955), 142 Conn. 236, 113 A. (2d) 354;
>
> Taley *et al.* v. Review Board of Indiana Employment Security Division *et al.* (1949), 119 Ind. App. 680, 88 N. E. (2d) 157.

Therefore, any overpayments created by the receipt of such benefits for weeks for which a claimant under the Indiana Employment Security Act has been paid an unemployment benefit must be recouped by the Director for the Employment Security Fund or have the amount of overpayment deducted from any benefits otherwise payable to the individual.

The Acts of 1947, Ch. 208, Sec. 1301, as amended by Acts of 1953, Ch. 177, Sec. 13, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 15-1537 (b) and (e), reads as follows:

> "(b) Any individual who, for reason other than misrepresentation or nondisclosure as specified in section 1301 (a), has received any amount as benefits to which he was not entitled under this act shall be liable to repay such amount to the director for the employment security fund or to have such amount deducted from any benefits otherwise payable to him under this act, within the three-year period following the date of payment to such individual of such amount, if the existence of such reason has become final by virtue of an unappealed determination of a deputy, or a decision of a referee, or the review board, or by a court of competent jurisdiction.
>
> * * *
>
> "(e) Where any individual is liable to repay any

amount to the director for the employment security fund for the restitution of benefits to which he was not entitled under this act, the amount due may be collectible without interest by civil action in the name of the state of Indiana, on relation of the board, which remedy by civil action shall be in addition to all other existing remedies and to the methods for collection provided in this section."

As heretofore mentioned, the employer is the sole contributor to the Fund (General or Defense) and the amount contributed is not deducted from the wages of the employee. The amount paid by the employer to the Fund for an employee's benefit is computed by multiplying five cents ($.05) by the total number of hours for which the employee has received pay from the employer. Therefore, the monies paid by the employer into the General or Defense Fund, as provided for by the Plan, are not subject to tax under the provisions of the Indiana Employment Security Act.

Further, the trustee of the Fund is not an employer and any payment made by the trustee is made under the direction of the employer or in some instances a board, which board consists of six (6) members, three (3) of whom shall be appointed by the employer and three (3) of whom shall be appointed by the Union. Therefore, there is no tax due the Indiana Employment Security Division from either the employer or the trustee of the Fund at the time of payment of supplemental benefits to an employee.

In view of the foregoing, my answers to your questions are as follows:

1. Supplemental benefits paid from trust funds created by the Ford Plan to an unemployed worker constitute deductible income as defined in the Indiana Employment Security Act so as to cause a disqualification for benefits in whole or in part.

2. Contributions are not due from an employer to the Indiana Employment Security Division upon the funds provided by the employer for the payment of supplemental benefits.

3. Contributions are not due from the employer or trustee of a fund at the time of payment of benefits by said trustee.

In arriving at this opinion, I am mindful of the fact that the Indiana Employment Security Act is social legislation which should be liberally construed in order to make effective the intent of the Legislature to alleviate economic insecurity due to unemployment. I am entirely in sympathy with such a program, however, I may not destroy the intent of the Legislature by an interpretation which would broaden the Act to include persons never intended to have been so included; see News Publishing Company v. Verweire (1943), 113 Ind. App. 451, 49 N. E. (2d) 163.

OFFICIAL OPINION NO. 22

May 24, 1956

Mr. Wilbur Young
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Young:

Your letter of May 14, 1956, in which you request an Official Opinion has been received and reads as follows:

> "Recently, as State Superintendent of Public Instruction, I have been asked several times a question concerning the Veterans' Memorial School Construction Fund. This fund was created by Chapter 312 of the 1955 Acts, and provides for the advancement of tuition support funds to school corporations who qualify in accordance with said Act.
>
> "May I have your official opinion on the following question: 'Does the advancement of funds made pursuant to this Act constitute a portion of the school corporation's indebtedness within the meaning of Article 13, Section 1, of the Indiana Constitution?' "

The pertinent part of the Indiana Constitution, Art. 13, Sec. 1 is as follows:

> "No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two