ment he may make, or attempt to make, in relation to such property, when he is not so authorized, is void as against the state. * * *"

Burns', Section 45-312, *supra*, provides:

"The State Armory Board is hereby authorized to sell, convey or otherwise dispose of any real property belonging to the State of Indiana * * *."

It is my opinion, taking into consideration the excerpts of various cases dealing with this question as set out above, that the State Armory Board has no authority to pay a commission to an individual for the negotiation of the sale of land from Stout Field.

OFFICIAL OPINION NO. 22

April 20, 1953.

John A. Cartwright, Director
Division of Public Works and Supply,
404 State House,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

"The Division of Labor of the State of Indiana is charging State Institutions a fee for inspection of elevators, under an Act enacted in 1951 (see Burns' Indiana Statutes, 1950 Replacement, Volume 5, Section 20-1201 to and including 20-1217). Therefore, will you please render an official opinion as to whether or not one State agency can charge another State agency for said inspection fee."

Section 11, Chapter 232 of the Acts of 1951, same being Burns' Indiana Statutes 1951 Pocket Supplement, Section 20-1211 provides in part as follows:

"For each inspection and report made at the direction of the division or its authorized representative re-

> quired by section 6 (7) (b), (c), (e) [Sec. 20-1207 (b), (c), (e)], of this act, made at the direction of the division or its authorized representative the owner or lessee of such elevator or moving stairway shall pay to the division or its authorized representative an inspection fee of five dollars ($5.00). Such fees shall be paid directly to the division or its authorized representative and shall not be paid to the inspector and shall be the only fee for which such owner or lessee shall be liable under this act for the inspections required by paragraphs (b) and (c) of section 6 (7) [Sec. 20-1207] of this act."

No place in Chapter 232 of the Acts of 1951 is there any definition of "owner" nor is there any specific indication as to who is to be included within the scope of that term.

In 49 Am. Jur. 236 "States, Territories and Dependencies," Section 14, "Operation of Statutes as to States" it is said:

> "* * * Moreover, independently of any doctrine founded on the notion of prerogative, the same construction ought to prevail founded upon legislative intent. The presumption of a legislative intent to exclude the state from the operation of a statute is based on the fact that laws are ordinarily made for the government of citizens and not of the state, and the probability that if the legislative power intended to divest the sovereign power of any right, privilege, title, or interest, it would say so in express words. Where an act contains no words to express such an intent, it will be presumed that the intent does not exist. Any doubt as to whether the state is intended to be included is to be resolved in favor of the state. If, however, a statute is enacted for the public good, the state is included therein, although not expressly named, and the fact that the subject matter of a statute is one in which the state is the chief party in interest may indicate an intention to bind the state."

I find three not dissimilar situations in which the Attorney General of Indiana has given his opinion. First of these is 1949 O. A. G. 286 which specifically holds that the assignment

of wages statute does not apply to the state since the state is not included by specific terms of the act. Second, in 1946 O. A. G. 100 which deals with the question of whether the state in operating flour mills at certain penal and benevolent institutions is subject to police power regulations as to the manufacture and milling of flour. In that opinion it was concluded that the state was not bound by these regulations as the statute involved did not specifically state that the State should be included. The third of these found in 1945 O. A. G. 233 and holds that the state is not responsible for a filing fee on the recording of certain documents.

I find no specific judicial decision on this question in Indiana. However, the courts of other states have been consistent in holding that the state is not bound by police power regulations unless the statute involved specifically includes the state within the scope of the regulations, e. g.

> Commonwealth v. Wilcox (Pa. 1942), 46 D. & C. 435, 56 Dauph. 1;
>
> Bayshore Sanitary District v. San Mateo County (1942), 48 Cal. App. (2d) 337, 119 P. (2d) 752;
>
> Miller v. Board of Road Commissioners of Manistee County (1941), 297 Mich. 487, 298 N. W. 105.

In the case of State *ex rel.* Williams v. Glander (1946), 80 Ohio App. 527, 69 N. E. (2d) 226, 227 it was said in this regard:

> "The State of Ohio is not a firm, a company, an association or a corporation. It is a sovereignty. The doctrine seems to be that a sovereign state, which can make and unmake laws, in prescribing general laws, generally intends thereby to regulate, not its own conduct, but that of its subjects. State *ex rel.* Parrott v. Board of Public Works, 36 Ohio St. 409; State *ex rel.* Attorney General v. Cincinnati Cent. Ry. Co., 37 Ohio St. 157."

On the basis of these authorities it is my opinion that the Division of Labor of the State of Indiana has no authority to charge state institutions a fee for inspecting elevators.