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expiration of the maximum term of his sentence, or until such time as he may be otherwise discharged by law.

In my opinion an inmate of the Indiana Reformatory, who is under lawful quarantine restriction to the institution by an order of the Madison County Health Officer or the State Board of Health, who is granted a parole by the Board of Parole of such institution, cannot leave the institution until the quarantine is released. Said period of quarantine may not exceed his maximum sentence.

OFFICIAL OPINION NO. 69

August 21, 1953.

Mr. George M. Davidson, Member,
House of Representatives,
5304 Graceland Avenue,
Indianapolis, Indiana.

Dear Mr. Davidson:

This is in reply to your letter of August 7, 1953 which is as follows:

“I have received, this date, a letter from R. T. Stevens, Secretary of the Army, that is quoted, in full, in order that I might obtain your opinion concerning the possibility of accepting the appointment. The letter follows:

“During the past years the successive Secretaries of the Army have been using a system of Civilian Aides as a means of liaison with the American public. The primary purpose of this system has been to provide the Secretary of the Army with a ready means of determining public opinion with regard to Army programs. In addition, the Aides have acted as civilian representatives of the Secretary in the field, interpreting when necessary the reasons for Army policies which have an impact upon the life of the civilian population. In general, the activities of Civilian Aides have provided a constructive

civilian interest in many of the Army's major activities, such as public information, education, recruitment of personnel and reserve affairs.

“At this time, I am asking certain prominent civilians to fill the Civilian Aide vacancies that exist in several states. I feel that your background and the esteem in which you are held in your community ideally suit you for the type of activity I have outlined. I am, therefore, extending the opportunity for you to serve as Civilian Aide to the Secretary of the Army for the State of Indiana.

“The position of a Civilian Aide is, of course, an honorary one in the sense that its only reward is the personal satisfaction to the individual in knowing that his assistance is contributing to greater understanding between the Army and the public, to the continuing improvement of the Army, and thus to the national security.

“However, I should like to emphasize that no heavy demand upon the time and energies of any Civilian Aide is expected. In general, the requirements will be for advice or reaction as to matters of general policy, with only occasional requests for specific assistance on local matters.

“I realize that you may desire additional information about this appointment before you make a decision concerning acceptance. Lt. Colonel Thomas J. Cleary, Jr., of my office, assists me in the administration of the Civilian Aide program. I have asked him to supply you with any supplemental information you may desire. If you wish to avail yourself of his assistance, please feel free to address him directly in this regard. Also, if you would like to discuss the program with a Civilian Aide of wide experience in this field, I suggest you contact Mr. Thomas R. Gowenlock of 1550 North State Parkway, Chicago, Illinois, who is my senior Aide in the Fifth Army area.

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“Trusting that I may hear from you, and with highest regards, I am,

Yours sincerely,

Robert T. Stevens,
Secretary of the Army.’

“I would respect an early reply, in order that I may forward my answer to Stevens.”

There are two sections of the Indiana Constitution which would affect your eligibility to accept the aforementioned position. They are as follows:

Article IV, Section 30 of the Constitution of Indiana provides:

“No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the People.”

Article II, Section 9 of the Constitution of Indiana provides:

“No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: Provided, that offices in the militia to which there is attached no annual salary, and the office of Deputy Postmaster where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: And provided, also, that counties containing less than one thousand polls, may confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person.”

Article IV, Section 30, *supra*, is plainly not applicable because the position of Civilian Aide to the Secretary of the

Army for the State of Indiana is not an office, the election to which is vested in the General Assembly, nor is the office one which has been created or the emoluments of which have been increased during your term of office holding as a member of the House of Representatives of the General Assembly of the State of Indiana.

Article II, Section 9 was construed by the Supreme Court of Indiana in 1897 in the case of *Bishop v. State ex rel. Griner*, Prosecuting Attorney (1898), 149 Ind. 223, 48 N. E. 1038. The court said:

“The test to be applied is not whether the two offices held * * * are incompatible with each other, but are they lucrative ones within the meaning of the constitution.”

The term “lucrative office” was defined by the Supreme Court of Indiana in the case of *The State ex rel. Platt v. Kirk* (1873), 44 Ind. 401, 15 Am. Rep. 239, as:

“An office to which there is attached a compensation for services rendered is a lucrative office. Webster defines the word lucrative to mean ‘yielding lucre; gainful; profitable; making increase of money or goods; as a lucrative trade; lucrative business or office.’ In *Daily v. The State*, 8 Blackf. 329, Perkins, J., in speaking of the offices of recorder and county commissioner, said: ‘We think, also, they are lucrative offices. Pay, supposed to be an adequate compensation, is affixed to the performance of their duties. We know of no other test for determining a “lucrative office” within the meaning of the constitution. The lucrateness of an office—its net profits—does not depend upon the amount of compensation affixed to it. The expenses incident to an office with a high salary may render it less lucrative, in this latter sense, than other offices having a much lower rate of compensation.’ In this sense, there is no doubt that the office of councilman in a city is a lucrative office. That the office of prison director is a lucrative office, was decided in the case of *Howard v. Shoemaker*, 35 Ind. 111. But this does not dispose of the question in controversy. The office of president of a bank or of

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a railroad company may be, and generally is, lucrative in the common sense. But it could not be held that a person holding such an office would thereby be rendered ineligible to the office of prison director, or any other civil office under the state government, nor would the acceptance of such an office work a forfeiture of a civil office held by the person accepting the same.

“It was held by this court, in *Howard v. Shoemaker, supra*, that the office of mayor of a city was a lucrative office within the meaning of the ninth section of article 2 of the constitution, not because he received a compensation for the discharge of such of his duties as were purely municipal in their character, *but for the reason that he had duties to perform, under the laws of the State, aside from those which are judicial and those of a purely municipal character, such as the taking and certifying of affidavits and depositions, the proof and acknowledgment of deeds and other instruments in writing, for which he is entitled to and may charge and receive fees.*”

The position of civilian aide to the Secretary of the Army for the State of Indiana is an honorary one. No compensation is paid and no provision is made for the reimbursement of expenditures incurred in travel. The only requirements will be for advice or your reaction as to matters of general policy with only an occasional request for specific assistance on local matters.

The generally accepted test of an office in this state is whether the person in question is vested with some of the functions pertinent to sovereignty or has some of the powers and duties which were within the legislative, judicial or executive departments of government.

Wells v. State (1911), 175 Ind. 380, 394, 94 N. E. 321;

Shelmadine v. City of Elkhart (1920), 75 Ind. App. 493, 495, 129 N. E. 878;

Tucker v. State (1941), 218 Ind. 614, 702, 35 N. E. (2d) 270;

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- Freyermuth v. State (1936), 210 Ind. 235, 244, 2 N. E. (2d) 399;
- State *ex rel.* Wickens v. Clark (1935), 208 Ind. 402, 405, 196 N. E. 234;
- Bishop v. State *ex rel.* Grimes (1897), 149 Ind. 223, 48 N. E. 1038;
- Foltz v. Kerlin (1885), 105 Ind. 221, 5 N. E. 672;
- Chambers v. State *ex rel.* Barnard (1891), 127 Ind. 365, 26 N. E. 893;
- Howard v. Shoemaker (1871), 35 Ind. 111;
- Kerr v. Jones (1862), 19 Ind. 351;
- Creighton v. Piper (1860), 14 Ind. 182;
- State v. Nattkemper (1927), 86 Ind. App. 85, 88, 156 N. E. 168.

It is therefore my opinion that the position of civilian aide to the Secretary of the Army for the State of Indiana is neither an "office" nor is it lucrative as the word is used in Article II, Section 9 of the Constitution of Indiana and therefore the fact that you are a member of the House of Representatives will not prohibit you from the taking of the position aforementioned.

OFFICIAL OPINION NO. 70

August 24, 1953.

Frank A. Jessup, Superintendent,
Indiana State Police,
Stout Field,
Indianapolis 21, Indiana.

Dear Sir:

This is in reply to your letter of July 9, 1953, in which you inquire as to the following:

"(1) Does the Indiana State Police Advisory Board have the authority to amend the trust agreement such