refer. Also there is no such requirement or directive in any rule or regulation of the Insurance Department.

Therefore, in answer to your request, it is my opinion that the letters, writings and files to which you refer are not "public records" and accordingly are not available, under the law, for inspection by the public.

OFFICIAL OPINION NO. 115

December 21, 1953.

Mr. F. W. Quackenbush,
Indiana State Chemist,
Department of Agricultural Chemistry,
Purdue University,
Lafayette, Indiana.

Dear Sir:

This is in reply to your letter of November 23, 1953 in which you inquire as to the following:

> "I request your opinion as to whether under the Indiana Feeding Stuffs Law the State Chemist can legally issue a tag and State Chemist stamp in denominations larger than 100 pounds (1 ton, 5 ton, etc.) for delivery to the consumer when feeding stuffs are sold in bulk."

Section 2 of Chapter 206 of the Acts of the General Assembly of 1907, as amended in 1909 and 1933, as found in Burns' Indiana Statutes Annotated (1950 Repl.), Section 16-1002, provides in part as follows:

> "* * * When concentrated commercial feeding stuff is sold in bulk, a tag, as hereinbefore described, and a state chemist stamp shall be delivered to the consumer *with each one hundred (100) pounds,* or fraction thereof, in excess of five (5) pounds; Provided, That state chemist's stamps shall be issued to cover twenty-five (25), fifty (50) and one hundred (100) pounds." (Our emphasis.)

1937 Official Opinions of the Attorney General, page 43 held that the State Chemist under authority of Section 9 of the 1907 Act, *supra,* could not make rules and regulations inconsistent with the provisions of the Act itself. The legislature has specifically specified in what denomination tags and state chemist's stamps may be issued, *supra.*

It is therefore my opinion that the State Chemist may not legally issue a tag and State Chemist's stamp in denominations larger than one hundred (100) pounds for delivery to the consumer when feeding stuffs are sold in bulk.

OFFICIAL OPINION NO. 116

December 22, 1953.

Mr. Don Clark,
Director of the Budget,
302 State House,
Indianapolis, Indiana.

Dear Mr. Clark:

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

> "Question: Would the State of Indiana be liable for payment of losses should an escaped inmate of a state institution break into and enter private property, and remove or destroy any personal property?"

It is fundamental that a suit may not be instituted against the State of Indiana unless it is with the State's consent. The act of an escapee inmate would be tortious in nature. The State of Indiana, not having given its consent to be sued for tort, could not therefore be held liable.

> City of Indianapolis v. Indianapolis Water Company (1916), 185 Ind. 277, 113 N. E. 369.

Further indication of non-liability is found in 41 Am. Jur. on "Prisons and Prisoners," Section 16, page 895 which says:

> "Since the conduct of a penal institution is a governmental function, to which the rule of *respondeat supe-*