

Inasmuch as Chapter 144 of the Acts of 1917 specifically authorizes the issuance of bonds for an addition such as the one contemplated, it is my opinion that a County may, in conformity with the provisions of the 1917 Act, issue bonds to finance the cost of construction of an addition at a new site.

OFFICIAL OPINION NO. 60

August 20, 1952.

Mr. John W. Crise, Director,
Indiana Employment Security Division,
141 South Meridian Street,
Indianapolis 9, Indiana.

Dear Sir:

I have your request for an Official Opinion with which you sent a copy of a uniform agreement between the Commissioner of Motor Vehicles and Branch Managers appointed by the Commission and the copy of an Opinion by the Acting Deputy Commissioner of Internal Revenue in which you ask the following questions:

"1. What is the status or relationship of a branch manager, appointed by the Commissioner of Motor Vehicles under the provisions of Chapter 304 of the Act of 1945, to the State of Indiana?

"2. What is the status or relationship of a branch manager's agents and assistants to the State of Indiana?

"3. Is a branch office of the 'Bureau of Motor Vehicles' an 'Instrumentality of the State of Indiana'?"

The question of status of automobile license branch managers was considered in the case of *Wetzel v. McNutt et al.* (1933), 4 Fed. Supp. 233 by the United States District Court for the southern district of Indiana. In that case it was said:

"2. Public offices are mere agencies or trusts and not property as such. The nature of the relation of a

public officer to the public is inconsistent with either property or contract rights. The establishment of a contrary principle would arrest everything like progress or improvement in government, and the latter would become one great pension establishment on which to quarter a 'host of sinecures'. *Butler v. Pennsylvania, supra*; *Taylor & Marshall v. Beckham*, 178 U. S. 548, 20 S. Ct. 1009, 44 L. Ed. 1187. Indiana has adopted this conception of public office in the case of *Hord v. State*, 167 Ind. 622, 79 N. E. 916.

"3, 4. But it is insisted by plaintiff that he is not an officer of the state but merely an employee, holding a private contract of employment. An officer is distinguished from an employee by determining whether his position or employment involves the exercise of any part of the sovereign power of the state. In other words, an office is a public station to which a portion of the sovereign power is attached for the time being and which is exercised for the benefit of the public. It implies a delegation of a portion of governmental power. Apparently, from the facts stated in the bill, plaintiff did hold an office of the state of Indiana, exercising a part of the administrative authority of the state by examining applicants, determining their qualifications, and making allowance or rejection of their applications. He became, then, an administrative officer exercising discretion and administrative power, and to such extent at least the nature of his duties were those of an officer of the state within the meaning of the word as commonly recognized.

"However, in addition to performing this administrative work, the plaintiff was obliged, under his contract, to furnish an office and certain service, including notary service, for the benefit of the public in presenting applications to him as deputy secretary of state, and had the right to keep the notary fees as his own. He was to furnish the quarters and pay the rent. These duties and rights partake of the nature of the duties of an employee; they are no part of the sovereign part of the state. They are additional matters involving labor without the exercise of sovereign power."

Since this decision there has been legislation which strengthens the position taken in this case.

Generally, any person who receives a delegation of the sovereign powers of the state is a public officer of the state, *e.g.* *Shelmadine v. City of Elkhart et al.* (1921), 75 Ind. App. 493, 129 N. E. 878. For a somewhat closely analogous situation see *State ex rel. Black v. Burch* (1948), 226 Ind. 445, 80 N. E. (2d) 294, 81 N. E. (2d) 850. Under these authorities it is clear that a Branch Manager appointed by the Commissioner of Motor Vehicles is a public officer of the State of Indiana.

In the case of *State ex rel. Black v. Burch, supra*, it was specifically held that an employee of an officer, even though his duties do not constitute an exercise of the sovereignty of the state, is performing one of the functions of government. He is therefore to be considered as a person performing the functions of one of the branches of state government. For the purposes of this opinion, the holding in the case of *State ex rel. Black v. Burch, supra*, sufficiently answers your second question.

Inasmuch as automobile license branch officers have been held to be performing a portion of the sovereignty of the state, as previously pointed out, it necessarily follows that they are instrumentalities of the state. Thus, your third question must be answered in the affirmative.

OFFICIAL OPINION NO. 61

August 28, 1952.

Mr. Otto K. Jensen, Chief Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I have your letter of April 23, 1952, which reads as follows:

“The salary of the Clerk of the Circuit Court of Lake and St. Joseph Counties is governed by the provisions of Burns’ 49-1022 *et seq.*”