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.*

"Section 49-1023 provides that compensation provided in Section 49-1022 shall be in lieu of all salaries, fees, etc.

"We request your official opinion upon the following:

"1. Are such clerks lawfully entitled to retain as their personal property the fees allowed by Burns' 11-1404, 11-1404a and 11-1404b for issuing fish and game licenses?

"2. If your answer is in the negative, can clerks refuse to issue licenses as agents for the department?"

In order to answer properly the problem raised by your first question it is necessary to consider the statutory history of the clerk's fee system and of the fish and game license fee system.

In 1927, the General Assembly enacted Chapter 131, Acts of 1927 (BISA 49-1301 *et seq.*) providing for and establishing a fee system for county officers.

In 1933, by Chapter 21, Acts of 1933 the General Assembly abolished the fee system for county clerks and provided that the salaries paid under the act were to be full compensation for their services. Said act specifically provided as follows: "Fees of clerks in the issuance of fish and game licenses * * * shall be the property of the clerk."

In 1934, the Attorney General in an Official Opinion to William P. Cosgrove, Chief Examiner, State Board of Accounts, stated that in his opinion the legislature in providing that the clerks' fees were to be the property of the county had in mind the fees received for "the ordinary services as clerks of the various courts of the respective counties." (O. A. G. 1934, p. 234.)

Chapter 212 of the Acts of 1943, referred to in your letter provided salaries for officers in counties having a population of not less than 200,000 nor more than 400,000 persons. Section 2 of that act provides as follows:

"The compensation provided in section 1 (49-1022) of this act shall be in lieu of all salaries, fees, and *per diem* now provided by statute for the officials therein designated. All fees, penalties, interest, costs, fines, forfeitures, commissions and/or remuneration of what-

soever kind or character, for official services or involving official authority, now provided by statute or otherwise, shall be charged and collected by such officers and shall be the property of the county and shall be paid into the general fund of the county. Provided, However, that this act shall not be construed to prevent the sheriff from retaining any damages and/or mileage otherwise payable by the terms of the Indiana Gross Income Tax Act of 1933, as amended (64-2601 *et seq.*). This act (49-1022—49-1026) shall be deemed supplemental to and shall not be construed to repeal or affect the interpretation of any other act of the eighty-fourth general assembly. (Acts 1943, ch. 212, § 2, p. 612; 1945, ch. 247, § 1, p. 1119.)"

The significant language in this section is the following: "for official services or involving official capacity."

In 1937 the legislature recodified the fish and game laws and provided new license fees and clerks' and agents' fees (Acts 1937, Ch. 21). Sec. 13 of that Act reads as follows:

"Clerk — Fees retained — Reports — Contents — Agent's bond—Disposition of fees.—(a) Each and every clerk and agent duly authorized to issue licenses under the provisions of this act shall retain out of the license monies collected for the sale of each license issued by him the following fees:

"For each nonresident yearly fishing license issued, the sum of twenty-five cents (25c).

"For each resident yearly hunting, trapping, and fishing license issued, the sum of ten cents (10c).

"For each nonresident ten consecutive days fishing license issued, ten cents (10c).

"(b) Each clerk or agent issuing licenses under provisions of this act shall report to the director on the first day of each month the number of each respective kind of licenses issued by him during the preceding month, the serial numbers thereof, the names of the respective licensees, and the number of blank licenses of each kind remaining in his possession, and

each clerk and agent at that time shall remit all monies collected for such licenses, except that duly authorized clerks and agents in each county may retain from such monies the fees due him for licenses issued and sold by him as provided in this section.

"(c) Each agent authorized to issue licenses hereunder shall execute a bond payable to the State of Indiana in such amount and with such surety as shall be approved by the director, conditioned for the proper issuance of such licenses and proper accounting for all monies due to the state therefor.

"(d) All monies received into the hands of the director from the sale of licenses shall be deposited in the state treasury as a part of the fish and game protection and propagation fund." (BISA 11-1404.)

In 1939 the General Assembly provided by Ch. 118, Acts of 1939 for the issuance of a female fishing license but did not provide for the retention of a fee by the clerks or issuing agents. Various county clerks did retain a 10c fee for the issuance of this license and in 1941 the legislature regularized this procedure by Ch. 99 of the Acts of that year. This act specifically provided that after Jan. 1, 1941, the clerks of the respective circuit courts should retain 10c as their personal property of said clerk for the issuance of each resident female fishing license.

Applying the test used by the Attorney General in 1934 we must examine the fish and game statute quoted above in order to determine whether the clerk of the court is performing an official service or acting in an official capacity.

You will note by reference to that act that reference is made to "clerks and agents duly authorized to issue" in part (a); and to "duly authorized clerks and agents in each county" in part (b).

Section 11 of Chapter 21, Acts of 1937 also provides that the licenses shall be in a form prescribed by the director and if issued by a clerk or agent shall be countersigned by such clerk or agent.

In light of the above I am of the opinion that the clerks of the circuit courts are not acting in their official capacity

when issuing hunting, trapping and fishing licenses but as duly authorized representatives of the Director of the Division of Fish and Game.

Therefore, the answer to your first question is in the affirmative; and, such being the case, it is unnecessary to answer your second question.

OFFICIAL OPINION NO. 62

August 28, 1952.

Mr. Sam J. Bushemi,
State Representative,
Court House,
Crown Point, Indiana.

Dear Sir:

I have your request for an official opinion in which you asked the following questions:

> "1. If the policemen and firemen are granted a cost of living increase in salary, are the pensioners entitled to an increase in their pensions?
>
> "2. Do pension payments of retired policemen and firemen increase or decrease with the increase or decrease of salaries, of active policemen and firemen?"

An examination of the laws pertaining to pensions of policemen and firemen shows that minimum salaries were raised by Chapter 93 of the Acts of 1951, same being Burns' 1951 Supp., Section 48-6151a. There is no statutory authority for the payment of any allowance to be known as the cost of living allowance which could not be considered part of the salary of the policemen or firemen receiving such compensation. Throughout the Acts affecting payment of the pension the sole term used is the term "salary." The total salary is not subdivided on the basis of reason for which it is to be paid.

For these reasons in answer to your first question it is my opinion that "cost of living increase in salary" is to be treated as any other salary increase. Salary increases are discussed in answer to your second question.