September 10, 1951.

Mr. G. Remy Bierly,
State Representative,
Decatur, Indiana.

Dear Sir:

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

"I am in urgent need of an opinion of the Attorney-General as to whether a Member of The Adams County Council, duly elected, qualified and acting, could also legally qualify and serve as a Member of the Adams County Alcoholic Beverage Board.

"For a number of years the President of our Adams County Council has been selected by the Council to serve on the Adams County Beverage Board.

"The question has arisen whether this may not be holding TWO LUCRATIVE OFFICES and hence illegal.

"Since the Board (Alcoholic Beverage) is holding a meeting next Tuesday we shall appreciate an opinion in writing prior to that time."

Article 2, Section 9 of the Indiana Constitution reads in part as follows:

"* * * nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: * * * ."

The question of whether a particular position is a public office or mere employment is often difficult to resolve; however, the case of Schemaldine v. City of Elkhart (1921), 75 Ind. App. 493, 495, — N. E. — contains the following definition:

"A public officer may be defined as a position to which a portion of the sovereignty attaches for the time being, and which is exercised for the benefit of the public. The most important characteristic which may be said to distinguish an office from an employ-
ment is, that the duties of the incumbent of an office must involve an exercise of some portion of the sovereign power. * * *"

In order to ascertain whether any particular office meets the requirements of this definition, it is necessary to note the duties. Among other things, the County Council is required to affix and adopt tax rates for the various townships in the County and for the County. It also has the duty of appropriating moneys for expenditures within the County. These duties are clearly determined and the exercise thereof is, in my opinion, an exercise of the sovereignty of the state.

In the case of State v. Hart (1895), 144 Ind. 107 at page 108, the court held:

"Counties are involuntary political or civil divisions of the State created by general laws to aid in the administration of the State government. Their powers are created and defined by statute."

In the case of Applegate, County Auditor v. State ex rel. Pettijohn (1933), 205 Ind. 122 at page 125 of the opinion the court says:

"Counties are but sub-divisions of the state, and county officers, including county councils, are but agents of the state. * * *"

On page 123 of the last referred to case the court says:

"Deputy county officers are more than clerks or employees. They are public officers. * * *"

From the foregoing, I am of the opinion the office of county councilman is a lucrative office within the meaning of the foregoing constitutional provision.

Local Alcoholic Beverage Boards are provided for by Section 2, Chapter 237 of the Acts of 1941, same being Burns 12-402, which provides in part as follows:

"* * * Local alcoholic beverage boards are hereby created and shall be constituted as herein provided. A local alcoholic beverage board may be referred to herein as the 'local board.'
“Each member of said local board shall take an oath to support the constitution of this state and of the United States of America, and that he will honestly and faithfully discharge the duties of said office. It shall be the duty of the members of said local board to attend all meetings thereof respectively and to exercise the powers and discharge the duties herein granted to and imposed upon them.

“Said local board shall consist of four (4) members, one (1) of whom shall be appointed by the deputy council of the respective county wherein said local board is to perform its duties.

“Three (3) members of each said local board shall constitute a quorum for the transaction of business. A vote of at least three (3) members of such local board shall be necessary for any action of that local board.

“Each member of said local board who is appointed by a city mayor or by a county council or by a board of county commissioners shall receive as and for his compensation from the state of Indiana one hundred twenty (120) dollars per year, payable in twelve (12) equal monthly installments to which shall be added two dollars ($2.00) for each application in excess of forty (40) applications, which, as a member of the local board, he is required to and does investigate and report on, in any one (1) year.

“Each member of the local board shall be a freeholder, householder, and a legal voter of the county wherein he is appointed to serve and shall have been a bona fide resident of said county for a period of at least five (5) years previous to his appointment, shall never have been convicted of any offense against the laws of the state of Indiana or of the United States of America, and shall be of good repute, of temperate habits, and well known as a responsible and law-abiding person.”

From this section of the statute, I believe it is clear not only that the legislature considered the membership on the Local Alcoholic Beverage Board as the holding of an office
but also Local Board exercises a portion of the sovereignty of the state and is, therefore, a lucrative office. Inasmuch as membership on the County Council is a lucrative office and membership on the Local Alcoholic Beverage Board is a lucrative office, it is improper for one person to attempt to hold both offices. There is an additional problem involved which concerns the compatibility of the two offices and the propriety of the Council's appointing one of its members to another position. In this regard, see 1949 O. A. G. 373, holding that the Board of Trustees of the Northern Indiana Children's Hospital cannot appoint one of their members as a member of the active staff of that hospital. Official opinion 77 of 1951 discusses generally the problem of incompatibility. It is, therefore, my opinion that the two offices in question are lucrative offices and that it is improper for a member of the County Council to be appointed by the County Council as a member of the Local Alcoholic Beverage Board.

OFFICIAL OPINION NO. 79

September 18, 1951.

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

Dear Sir:

Your request for an official opinion is as follows:

"A question has been presented to this office by the City Clerk of Fort Wayne, Indiana, regarding the fixing of salaries of deputies in the City Clerk's office.

"Chapter 127 of the Acts of 1951 provides:

'Said clerk shall also fix salaries subject to approval of the common council.'

"Reference is also made to the provisions of Section 48-1226a which provides for compensation of certain cities of second class. This act was originally passed in 1924 and was amended in 1929, 1941 and 1943."