February 9, 1951.

Honorable Frank T. Millis,
Auditor of State,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have a request from your predecessor for an official opinion which reads as follows:

"We request an official opinion on the following question which has been raised by S. Morris Wilson, Judge of the Third Judicial Circuit Court of Corydon, Indiana. We quote from Mr. Wilson's letter, the following: 'I have been informed that the Congress has passed an amendment to the Social Security Law that makes it possible for certain County and State officers to participate in the Social Security and Retirement Benefit Program.

"'As I understand it, the County Commissioners of each County in Indiana have the authority to determine whether or not county officials may participate in the program, but inasmuch as a judge is a state official, I would appreciate hearing from you as to what, if anything, has been done in regard to permitting Circuit Judges to benefit from this new law.'"

Section 106 of the Social Security Act amendments of 1950 found at 19 L. W. 19, makes provision for a voluntary agreement for coverage of state and local employees. In defining the groups which may be covered that Section provides in part as follows:

"(d) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group."
This would exclude a large portion of the employees of the State of Indiana and its political sub-divisions. Furthermore, the Act provides that certain provisions must be included in such an agreement as follows:

"(e) Each agreement under this section shall provide—

"(1) that the State will pay to the Secretary of the Treasury, at such time or times as the Administrator may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Internal Revenue Code if the services of employees covered by the agreement constituted employment as defined in section 1426 of such code; and

"(2) that the State will comply with such regulations relating to payments and reports as the Administrator may prescribe to carry out the purposes of this section."

I find no legislative authority in the State of Indiana for any person to act on behalf of the State in negotiating such an agreement. Nor do I find authority for the payment of funds which would be required to be paid pursuant to such an agreement. For these reasons, it is my opinion that legislation would be required before any arrangement could be made for any officer or employee of the State of Indiana as such to come under the Social Security Act of the United States.

OFFICIAL OPINION NO. 11

February 9, 1951.

Mr. F. W. Quackenbush,
State Chemist,
Purdue University,
Agricultural Experiment Station,
Lafayette, Indiana.

Dear Sir:

This will acknowledge receipt of your request of December 21, 1950, for an official opinion which reads as follows: