under the Indiana Workmen's Compensation Act it is deemed necessary to point out that all state and local municipal corporations are subject to the Workmen's Compensation Act (40-1217 Burns' 1940 Replacement). It also applies to all other employers "using the services of another for pay" (Section 40-1701 Burns' 1940 Replacement). The term "employee" as used in said Act is construed to mean:

> "to include every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer." (Section 40-1701 (b) Burns' 1940 Replacement.)

Therefore, the answer to your question number 5 would be answered in the affirmative if such cooks or cook's helpers are employed and their services are being used for pay. Otherwise the Workmen's Compensation Act would not be applicable.

TLW:mfl:man
Encl.

OFFICIAL OPINION NO. 62

July 13, 1949.

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

Dear Sir:

Your request for an official opinion reads as follows:

> "We have been asked to request an official opinion on a matter in controversy relative to Sec. 45, Chapter 174, Acts 1947, Burns' Supp. 53-745.
>
> "1. Does the phrase 'filed with the county recorder' mean that the ordinance is merely filed to remain as a

permanent record in the office, or is it implied that such ordinance be filed and recorded?

"2. In either event, is the recorder entitled to collect a fee from the city or county? If so, in what amount?"

Section 45, Chapter 174, Acts of 1947, Burns' Statutes, Supplement, Section 53-745 reads as follows:

"After a master plan and an ordinance, containing provisions for subdivision control and the approval of plats and replats, have been adopted and a certified copy of the ordinance has been filed with the county recorder, a plat of a subdivision shall not be filed with the auditor, and the recorder shall not record unless it has first been approved by the plan commission having jurisdiction over the area as provided in sections 34 and 52."

Chapter 174 of the Acts of 1947 empowered "each city council, each town board of trustees and each board of county commissioners in the State" by ordinance to "create a Plan Commission in order to promote the orderly development of its governmental units and its environs."

Section 32 of said Act further provided:

"So as to assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development, the plan commission shall prepare a master plan. It may also formulate policies for:

"1. The development of public ways, public places, public structures and public and private utilities.

"2. The issuance of improvement location permits on platted and unplatted lands.

"3. The laying out and development of public ways and services to platted and unplatted lands."

Section 37 of said Act, Burns' Section 53-737, provides for the giving of a public notice before an ordinance is adopted

for the plan and its enforcement. This provision is as follows:

> "Prior to the adoption of a master plan, the commission shall give notice and hold a public hearing on the plan and a proposed ordinance for its enforcement.
>
> "At least 10 days prior to the date set for hearing, the commission shall publish in a newspaper of general circulation in the city or county a notice of the time and place of the hearing."

After the Master Plan has been adopted by an ordinance, it is provided that a certified copy of the ordinance and Master Plan be filed with the County Recorder. Thus the Master Plan ordinance is a piece of legislation of which the public at large will have had due notice. There appears to be no further need to give added notice to the public by recording the ordinance in the Recorder's office. The Master Plan ordinance is a public record always available to the public for inspection.

After the Master Plan ordinance has been filed with the County Recorder, then no plat of a subdivision shall be filed with the Auditor, and the Recorder shall not *record* the subdivision until it first has been approved by the plan commission having jurisdiction. The only time the Legislature used the word "record" in this section was in connection with the recording of the plat of a subdivision. We may assume that the Legislature intended to use the word "file" when directing that the Master Plan ordinance be filed with the County Recorder. There appears to be no practical reason for the recording of the Master Plan ordinance. It can affect no transfer of real estate or the title thereto until it impresses its regulations upon some plat of a subdivision. Whenever real estate is conveyed thereafter, it must be recorded as impressed with the requirements of the Master Plan ordinance.

Therefor, it appears that the intent of the Legislature was to bind the County Recorder by having a certified copy of the Master Plan ordinance filed with him, to make certain that no transfers of real estate would be recorded and no plats of subdivisions would be recorded before they were subjected to and approved according to the Master Plan ordinance.

The Master Plan ordinance is subject to amendment and there seems to be no reason or legislative expression in the Act to require that the ordinance and its various amendments be recorded at length when the public already has notice of its purposes and provisions.

Neither is there any legislative expression providing for any fee to the Recorder for receiving and filing such ordinance as a part of his official records. The Recorder will collect the fees provided for recording plats of subdivisions and transfers of real estate.

Therefore, in my opinion the answer to your question number one (1) should be that "filed with the County Recorder" does not mean the *recording* of the ordinance.

In my opinion the Recorder is not entitled to any fee from the city or county for such "filing" until such time as the Legislature provides such fee.

WOL:vb

OFFICIAL OPINION NO. 63

July 12, 1949.

General Robinson Hitchcock,
Adjutant General,
The Adjutant General's Office,
Indianapolis, Indiana.

Dear Sir:

In response to your letter of June 16th, requesting an official opinion on the following questions:

> "Are officers and enlisted men of the *Indiana National Guard* exempt from the payment of poll tax?"

The Act in question as stated in Burns' Indiana Statute 45-1210 reads as follows:

> "Every officer and enlisted man of the active militia shall be exempt from service or any jury in any court of this state and from the payment of any poll and road-tax; and in case of an officer, his commission,