Applying said authorities to the foregoing, I am of the opinion the Legislature would be considered as having knowledge of the manner in which the expenses of the enforcement of the 1947 cigarette tax law was being handled by your commission at the time it enacted Chapter 51 of the Acts of 1949. In fact such intent is reasonably clear from the above quoted portion of Section 13 of said Act.

I am therefore of the opinion the Indiana Alcoholic Beverage Commission is authorized to employ and with the approval of the Governor and the Budget Committee to fix, the compensation of such employees as may be necessary to administer and enforce the provisions of Chapter 51 of the Acts of 1949, and to pay all salaries, costs and expenses incurred in this enforcement. This would include the right to increase or change the charge of 10% of certain disbursements from your Alcoholic Beverage Administration and Enforcement Fund to such necessary per cent, governed by practical requirement and as may be agreed upon and approved by the Governor and the Budget Committee.

TLW:mf

OFFICIAL OPINION NO. 57
June 23, 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:

"Resolutions have been filed with the officials of Columbus Township, Bartholomew County and the school city of Columbus favoring a consolidation of these units under the provisions of Chapter 268 of the Acts of 1949 and election has been tentatively fixed for July 12th."
"A question has arisen since both resolutions make provisions that the township trustee is to be a member of the new consolidated school board. Some doubt has existed in our mind as to whether or not the township trustee can serve as township trustee of Columbus Township and at the same time serve as a member of the new consolidated school board because of the prohibition regarding the holding of two lucrative offices. I am sure that it has been held that a township trustee is a lucrative office and that a membership of a school board has also been considered a lucrative office. We appreciate the fact that the act does provide that the township trustee if he serves shall receive no remuneration for his service on the school board. We would like your official opinion on the following question:

"May a township trustee serve as a member of a consolidated school board organized under the provisions of Chapter 268, Acts of 1949 without violating the constitutional prohibition regarding one individual holding two lucrative offices?"

Article 2, Section 9 of the Constitution of Indiana provides among other things: "* * * nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: * * *." The exceptions stated in this section do not include the offices stated in your question.

We are confronted at once with, "What is contemplated by the Constitution by the term, 'lucrative office'?"

The Attorney General by his opinion of April 20, 1936, pages 155 to 159, said:

"* * * The constitutional provision against the holding of more than one lucrative office at the same time goes to the character of the office rather than to whether the officer draws two salaries."

There is a distinction between a public office and a mere employment. The Appellate Court of Indiana at Shelmadine v. City of Elkhart et al. (1921), 75 Ind. App. 493, at page 495 said:
"A public officer may be defined as a position to which a portion of the sovereignty of the state 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 employment is, that the duties of the incumbent of an office must involve an exercise of some portion of the sovereign power. * * *


It appears that a lucrative office as contemplated by the constitutional provisions means an office of the State of Indiana as distinguished from an office purely of some other division of government. That is to say, to be a lucrative office, the holder thereof must be charged with duties of State government. Thus in Chambers v. State, ex rel. Barnard (1890), 127 Ind. 365, 367, the Supreme Court observed that:

"It must, therefore, be regarded as the settled law of this State that if an office is purely municipal, the officer not being charged with any duties under the laws of the State, he is not an officer within the meaning of the Constitution, but if the officer be charged with any duties under the laws of the State, and for which he is entitled to compensation, the office is a lucrative office within the meaning of the Constitution. * * *"

See also: Wells v. State, ex rel. (1910), 175 Ind. 380, 383.

There is no doubt that a township trustee is a lucrative office within the meaning of the Constitution, and a member of a school board charged with duties under the State's educational system is a lucrative office.

Wells v. State ex rel. Peden, and cases cited, 175 Ind. 380.

You make reference to a provision of Section 6, Chapter 268 of the Acts of 1949, which is as follows:
"* * * Any township trustee serving as a member of said board shall serve without additional compensation."

Therefore, insofar as a township trustee is concerned, there is no compensation to be had from serving as trustee of a "school corporation" as defined by the Act. Since no compensation is provided by the Act for township trustees who are serving also as trustees of "school corporations," as to such township trustees, the office in question is not a lucrative office.

The Legislature has said, in effect, as to township trustees, the office of trustee of school corporations as defined by the Act, is not a lucrative office. It amounts to additional duties imposed upon township trustees when they serve as trustees of school corporations.

To be a lucrative office it must provide compensation, we refer again to the language of the Supreme Court in the case of Chambers v. State ex rel. Barnard, to-wit: "* * * if the officer be charged with any duties under the laws of the State, and for which he is entitled to compensation, the office is a lucrative office within the meaning of the Constitution. * * *" (Our emphasis.)

Upon the foregoing and the authority of the opinion of the Attorney General rendered April 1, 1935, page 103, it is my opinion that your question should be answered in the affirmative.

WOL:vb

OFFICIAL OPINION NO. 58

June 28, 1949.

Hon. Charles F. Fleming,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

Your request of recent date for an official opinion asks the following questions: