thereof by the hospital. I am fortified in this opinion by the fact that twenty years have passed since the completion of this plant and the fact that the administrative officers of both the City of Richmond and the State of Indiana have so interpreted the act. There has never been any attempt on the part of the city until now to charge the hospital for the use of said plant.

Zoercher v. Indiana Associated Telephone Corp. (1936), 211 Ind. 447, 7 N. E. (2) 232;
Zoercher v. Indianapolis Union Railway Co. (1937), 211 Ind. 703, 7 N. E. (2) 289.

wherein it was said:

"* * * the practical construction given to a statute by the public officers of the state, and acted upon by those interested, and by the people, is to be considered in cases of doubt."

It would, therefore, in my opinion in the absence of further legislation, be a gratuity and wholly unlawful for the State of Indiana or any agency thereof to pay the City of Richmond for the use and services of the plant in question. Furthermore, there is no appropriation to pay for same.

FEC:je

OFFICIAL OPINION NO. 6

February 23, 1949.

Hon. James M. Propst,
Auditor of State,
State House, Room 238,
Indianapolis, Indiana.

Dear Sir:

I have your letter of the 17th instant in which you request an opinion on "whether or not the office of city councilman is a lucrative office and whether or not one person could hold a state appointive position and at the same time hold the position of city councilman. Also, whether or not this person could draw salary as city councilman and state appointee?"
The answer to your questions involves a consideration of Article 2, Section 9 of the Constitution of the State of Indiana which so far as pertinent here says:

"No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: * * *

There seems to be very little doubt that one holding an appointive position for the State is a lucrative office within the meaning of the constitutional provision referred to above so the answer to your inquiry involves only the question as to whether the office of city councilman is likewise a lucrative office within the meaning and purview of the constitutional inhibition. This constitutional provision has been before the courts of Indiana many times and the question of whether or not a municipal office is a lucrative office under the Constitution was before the Supreme Court of Indiana as early as 1871. The question arose in the case of Howard et al v. Shoemaker, Auditor, 35 Ind. at page 111. That case involved the question of whether the mayor of the city as a municipal judicial office was within the meaning of the Constitution so as to preclude him from holding an office with the Southern Prison. Judge Downey speaking for the court in the decision in that case discusses the difference between a municipal officer and one holding an office under the State. Reference is made to the fact that the common council deals with merely local affairs as distinguished from executing the laws of the State. The court then discusses the differences between the office of mayor of a city and the common council, and holds that since the mayor of the city acting as city judge possesses judicial powers and is required to perform duties under the laws of the State such as passing upon the question of the guilt or innocence of persons charged with violation of State laws and that the office of mayor is a lucrative office within the meaning of the Constitution of Indiana. The court in that case does not, except by inference, hold that the common council is purely a local office.

In Mohan v. Jackson, 52 Ind. 599 the Supreme Court held
that the office of city clerk is not a lucrative office within the meaning of the Constitution, citing Howard v. Shoemaker, *supra*.

In the case of *State ex rel. Platt v. Kirk*, 44 Ind. 401, the question there before the court was whether or not the office of city councilman was a lucrative office within the meaning of the constitutional provision. The court discusses just what is a lucrative office and in the course of its opinion says:

"* * * Webster defines the word lucrative to mean 'yielding lucre; * * * as a lucrative trade; lucrative business or office.' * * *"

It also cites *Dailey v. The State*, 8 Blackf. 329 in which the court speaking of offices of recorder and county commissioner, said:

"* * * 'We think, also, they are lucrative offices. Pay, supposed to be an adequate compensation, is affixed to the performance of their duties. We know of no other test for determining a "lucrative office" within the meaning of the constitution. The lucrativeness of an office—its net profits—does not depend upon the amount of compensation affixed to it. * * * In this sense, there is no doubt but that the office of councilman in a city is a lucrative office. That the office of prison director is a lucrative office. * * * But this does not dispose of the question in controversy.'"

The court then says:

"The office of councilman is an office purely and wholly municipal in its character. He has no duties to perform under the general laws of the State. The State has enacted a law applicable to all cities which may organize under it. The inhabitants of the particular locality, after having taken the other necessary steps for an organization, elect the designated number of councilmen, who have the power to enact by-laws, and do such other acts and perform such other duties as pertain to their office in the municipality. These powers and duties of councilmen are beyond and in addition to any acts, powers, and duties performed by officers provided for under the state government. * * *"
And in conclusion the court said:

"In our opinion the office of councilman in a city, although a lucrative office in the ordinary sense of the word, is not a lucrative office within the ninth section of the second article of the constitution. * * *"

A more recent case is found in 127 Ind., page 365, Chambers v. The State ex rel. Barnard, which was an attempt of one person to hold the office of Trustee of the Institution for the Deaf and Dumb and the office of school trustee. In passing upon the question involved in that case the court said:

"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. This, although it may be a narrow construction of the Constitution, must be regarded as settled. * * *"

Distinction is then made between the office of school trustee and councilman, because a school trustee dispenses special school revenues apportioned by the State and performs other duties in connection with his office in executing State laws.

A consideration of this constitutional provision was before the Attorney General in 1934. On page 500, 1934 Ind. O. A. G., the Attorney General cites the case of Chambers v. State, 127 Ind. 365 and the other cases cited in this opinion and holds that if the office is purely municipal in its character that it does not come within the purview of the constitutional inhibition.

We have examined the statutes of Indiana since the rule of law was first announced that the holder of a municipal office is not a lucrative officer within the provisions of the Constitution as to whether any statutory changes have been made since the first decision was rendered by the Supreme Court on this question, and we find that no substantial changes have been made in that respect that would cause a municipal officer to be the holder of a lucrative office within the meaning of the
Constitution. Therefore, you are advised that a person could be a member of the city council and at the same time not be disqualified to hold a State appointive position without in any wise violating the Constitution of Indiana. What has just been said answers your second inquiry because it follows that if the person is entitled to hold both positions referred to in your letter he is, of course, entitled to the emoluments thereof.

CHJ :vb

OFFICIAL OPINION NO. 7

February 28, 1949.

Mr. Walter R. Mybeck, Director
Public Works and Supply
404 State House
Indianapolis, Indiana

Dear Sir:

I have before me your letter of February 25, 1949, in which you say:

"The State of Indiana has been offered a proposition concerning a long term lease for public purposes of the Lorraine Hotel in Indianapolis. A comparable building is badly needed by the Conservation Department and other agencies scattered about the city.

"To use this building for office purposes would require the expenditure of approximately $300,000. In the instant case the lessor would expend a substantial part or all of the money necessary to conform to our Engineer's specifications if the State would enter into a lease agreement for twenty (20) years or more.

"Reference is made to the "Financial Reorganization Act of 1947", Chapter 279, Section 5 (4), which reads:

"* * * (4) To rent land and other premises, with the approval of the Governor, when necessary for State purposes; provided, that no such land or premises shall be rented for a term exceeding four years at a time.'

"We would like to be advised by way of an official opinion from your office as to whether there is any