In answer to your first question, you are informed that an oil company which negotiates its own leases on real estate, is not within the purview of the law and does not have to have a broker's license.

In answer to your second question, you are advised that if an operator employs agents to secure oil leases for him and pays them either a commission or salary, the operator is not required to have a license; but the agent who secures the leases is required to have the necessary license.

Section 21 of Chapter 44 of the Acts of 1949 specifically exempts the owner of real estate or a lessor from the operation of the law. You are also advised that what has been said with respect to oil leases, applies, also, to mineral rights so that you should require a person who secures mineral rights or oil leases for compensation or commission, to comply with the law and have the necessary license, either a broker's or salesman's license, whichever is pertinent. The operators or owners who secure these oil or mineral rights are not required to have a license.

OFFICIAL OPINION NO. 111

November 16, 1949.

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

Dear Sir:

Your request of October 17, 1949, for an official opinion is as follows:

“As stated in Chapter 274, 1949 Acts it is my duty to receive certifications of convictions concerning operation of motor vehicles with regard to operation, regulation, or licensing of motor vehicles or of any city ordinances relating to moving traffic violations and to collect a permanent operator's record fee for each such conviction.
"It has recently come to my attention that the Traffic Violations Bureau of the city of Indianapolis apparently is not assessing the fee as part of the costs against the defendant or the person willing to admit such violation.

"The question upon which I would like to receive an opinion from you is this: Is a payment of penalty in the Traffic Violations Bureau to be considered a conviction as understood in Chapter 274, 1949 Acts?"

The question submitted necessarily requires some consideration of the provisions of Chapter 274 of the Acts of 1949.

Section 4 of the Act reads in part as follows:

"Duty of courts to report convictions and judgments and recommend suspension of licenses.

"(a) Every court having the jurisdiction of offenses under this act or other acts concerning the operation of motor vehicles, including any offense committed under any act of this state regulating the operation of motor vehicles on public highways, and including any offenses, either a misdemeanor or a felony, with regard to the operation, regulation or licensing of motor vehicles or of operators, or of any city ordinance relating to moving traffic violation, shall forward or cause to be forwarded to the department as hereinafter provided, an abstract of the record of the conviction of any person in such court for a violation of any such law, * * *

"* * *

"(c) The clerk of a court or the judge of a court which has no clerk, in which any person is convicted of any offense under the motor vehicle laws of this state or has been convicted of any offense, either a misdemeanor or a felony, with regards to the operation, regulation or licensing of motor vehicles or of operators, or of any city ordinance relating to moving traffic violation shall when such conviction has occurred, or in such other event as stated in section 5, sub-paragraph (a) thereof, forthwith forward to the
Commissioner a certified abstract of the record of such conviction.

"(d) Upon the conviction of any person for any offense which authorizes or requires the clerk of a court or the judge of a court which has no clerk, to certify an abstract of the record of such conviction to the Commissioner or the department, a certification fee of twenty-five cents shall be taxed by the court as a part of the costs against the defendant and in favor of the party authorized or required to make such certification and a permanent operator's record fee of one dollar and fifty cents shall be so taxed by the court as a part of the costs against the defendant and in favor of the Commissioner. The certification fee of twenty-five cents shall become the property of the officer making the certification and the permanent operator's record fee of one dollar and fifty cents taxed in favor of the Commissioner shall be paid over to the Commissioner upon due demand and receipt therefor.

* * *." (Emphasis mine.)

Section 3, sub-division (e) reads as follows:

"For the purpose of this act the term 'conviction' shall mean, conviction upon a plea of guilty or the determination of guilt by a jury or by a court though no sentence has been imposed or if imposed has been suspended and it includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant unless the forfeiture has been vacated."

We therefore should consider the status of the Traffic Violations Bureau, sometimes referred to as the "Cafeteria Court", as defined and established by ordinance of the City of Indianapolis-General Ordinance No. 40, 1941, as amended by General Ordinance No. 55, 1946, and General Ordinance No. 71, 1946, reads in part as follows:

"An Ordinance concerning the violation of certain traffic ordinances, providing for the creation of a Traffic Violation Bureau, repealing certain sections of General Ordinance No. 96, 1928, as amended; and fixing a time when the same shall take effect.
"Be It Ordained by the Common Council of the City of Indianapolis, Indiana:

"Section 1. Whenever a police officer of the City of Indianapolis shall find that the owner or operator of any vehicle has committed any of the following acts, viz: (Here follows a list of traffic violations.)

"* * *

"* * * which acts have been declared unlawful or are hereafter declared unlawful by any ordinance of the Common Council of said city, such officer shall notify such owner or operator of such vehicle or his representative of the violation by presenting any such person found in possession or in charge of such vehicle with a written notice. If such officer shall not find any such person in possession or in charge of such a vehicle, then such officer shall notify such owner or operator by posting a written notice in a conspicuous place upon such vehicle. All notices of traffic violations as herein required to be served shall be executed by the police officer in triplicate. One copy shall be served upon the violator as herein required, one copy shall be filed by the officer with the Traffic Violation Bureau herein created, and one copy shall be filed in the office of the city prosecutor. The latter two copies shall be filed in the said respective offices by the officer before he goes off duty for the particular day on which such notice was served on the violator. All notices herein provided shall be serially numbered and shall contain the following information: (1) specific violation with which violator is charged; (2) license plate number of vehicle; (3) name and address of owner of vehicle, if possible to obtain same; (4) location of violation; (5) signature of officer; (6) badge number of officer; (7) date of violation. The copy of the notice served upon the violator or his representative shall also state that the violator shall appear in person, or by attorney or agent, with his license, or permit, issued by the State, at the office of the traffic bureau within forty-eight (48) hours of 5:30 o'clock P.M. of the date appearing upon such notice, and the violator so appearing shall have the privileges provided in Section 2 of
this ordinance; provided, however, if said period of time shall expire upon a Sunday or a legal holiday, said period of time in which such violator must report shall be extended twenty-four (24) hours. No notice of traffic violation shall be served upon a violator if such violation shall contribute to the occurrence of personal injuries or property damages, but in such event the officer shall proceed to make an arrest for the violation as now provided by law.

"Section 2. It shall be the duty of any person who receives notice of a traffic violation pursuant to section 1 of this ordinance to appear in person, or by attorney or agent, at the office of The Traffic Violation Bureau, as hereinafter created. Any person who has received such a notice and who has not been found guilty by a court, or who has not admitted the violation pursuant to this section of more than two previous traffic violations during the current calendar year, may appear in person, or by attorney or agent, at the office of the said Traffic Violation Bureau during the period of time in which he is required to appear pursuant to section 1 of this ordinance and admit liability for the payment of a penalty provided by ordinance for the violation charged in said notice and offer to compromise the claim of said city for the payment of a penalty for said violation by signing a form prescribed by said Bureau and tendering a sum of money in cash according to the following schedule;

"First violation in current calendar year, Two Dollars ($2.00); second violation in current calendar year, three dollars ($3.00); third violation in current calendar year, five dollars ($5.00).

"Any person proposing to make such a compromise must also present to the Traffic Violation Bureau such person's license or permit issued by the State of Indiana to operate a vehicle upon the public highways. Any duly appointed officer or employee of said Traffic Violation Bureau is hereby authorized and empowered to accept on behalf of the City of Indianapolis any such offer of compromise of any violator properly tendered pursuant to this ordinance. Such acceptance on
behalf of said city shall be effected by issuing to such violator a receipt for the payment of the proper sum as herein provided and by punching said violator's said license or permit issued by the State of Indiana. Said punch upon such license or permit shall be effected upon the lower margin of such license or permit and shall be so executed as not to obscure any printed or written matter appearing thereon. Any violator presenting a duplicate license or permit shall be required to execute an affidavit stating therein the number of violations admitted, or findings of guilty by a court, during the current calendar year. Provided, however, that if the traffic violation is a non-moving traffic violation, the violator or his agent or his attorney shall have the privilege of paying the sum of Two Dollars ($2.00) irrespective of the number of prior traffic violations and shall not be required to present a license or permit to operate a motor vehicle as issued by the State of Indiana.

"That the penalty provisions of Section 2, General Ordinance No. 40-1941 be and the same are hereby amended and enlarged as to the following items so as to provide for the violations of same a minimum fine of Five ($5.00) Dollars on the first offense, Ten ($10.00) Dollars on the Second offense, and Fifteen ($15.00) Dollars for the third and each subsequent offense, per current calendar year—such items reading as follows, to-wit:" (Here follows a list of moving traffic violations.)

"Sec. 3. Any person receiving a notice of a traffic violation pursuant to section 1 of this ordinance, and who has admitted, pursuant to this ordinance, or has been found guilty by a court of three or more moving traffic violations, as provided by ordinance, or who does not wish to avail himself of the opportunity afforded him to compromise the claim of the city for the payment of a penalty, as provided in section 2 of this ordinance, may appear in person, or by attorney or agent, at the office of said Traffic Violation Bureau during the period of time provided in section 1 of this ordinance and waive arrest and arrange with said
Traffic Violation Bureau to be slated and have a date set at which time he shall appear in court. It shall be the duty of said Traffic Violation Bureau to arrange said appearance in court upon the date which the police officer who signed the notice of the violation is assigned to court duty. It shall also be the duty of the Traffic Violation Bureau to notify the City Prosecutor of such cases, so that proper affidavits or complaints may be prepared, and to furnish the said City Prosecutor with any additional information required.

"Section 4. Upon the failure of any person receiving a notice of a violation to report to the Traffic Violation Bureau, as required by this ordinance, it shall be the duty of said Traffic Violation Bureau to report the matter to the City Prosecutor and the police officer signing the notice. The Traffic Violation Bureau shall furnish the City Prosecutor with all the necessary information to prepare a proper affidavit and complaint, together with the correct address of the violator. Proceedings against such a violator shall be brought in the manner now or as may hereafter be provided by law.

"Section 5. A Traffic Violation Bureau is hereby created and established within the Department of Public Safety of the City of Indianapolis. Said bureau shall be under the supervision of the Chief of Police, subject to the orders and directions of the Board of Public Safety of said city. Any person now employed and under the supervision of the Board of Public Safety may be assigned by said board to said Traffic Violation Bureau. Suitable quarters for said bureau shall be provided and paid for by said board. Upon the payment of any sum of money into said Traffic Violation Bureau, as provided in this ordinance, said Traffic Violation Bureau shall issue a receipt to the person so paying, which receipts shall be serially numbered, and it is hereby made the duty of said Bureau to keep a correct record in a permanently bound book for that purpose only, showing the amount of such fee so paid, the number of the traffic violation notice, the date thereof, the number of the state license plate and the
name of the violator. It is further made the duty of said Traffic Violation Bureau to account for all such sums of money paid in under the provisions of this ordinance and to pay the same into the city treasury. It is hereby made the duty of the Chief of Police to furnish a detailed report to the City Controller on Tuesday of each week for the week preceding, showing the number of notices issued, together with the number transferred to court, and the disposition of the remainder not otherwise accounted for, and the serial number thereof. The Chief of Police shall also furnish the Board of Public Safety and the City Prosecutor with a copy of said report."

I have set out the ordinance at length in order to show what the City of Indianapolis intended.

It does not appear that it was intended to create a court of law either independently or as an adjunct of any other court, even though the city had the power to create such court. The ordinance merely created a "bureau" known as a Traffic Violations Bureau, and within the Department of Public Safety, an administrative body of the city. The working process by which the Bureau operates appears to be somewhat as follows:

Assume that a police officer sees what he believes to be a moving traffic violation, such as driving through a red traffic light; that the officer stops the driver and makes out a citation, notice or "sticker" as commonly spoken of, indicating the character of violation, and notifying the driver to appear within a certain time at the office of the Traffic Violation Bureau; the driver is informed that in case he fails to appear, a charge will be filed in court, a warrant of arrest will be issued and the driver arrested; the driver is further advised that he may offer by way of compromise and settlement to the city, the penalty provided by the ordinance for the particular violation in question. The driver may pay the penalty and the City, by its officers or employees may accept the offer of compromise and issue a receipt to the driver as evidence of acceptance of the offer. So far, no court of law has been involved and no court has acted in the matter.
There has been no arrest by the officer and no charge filed in any court. The driver need not even admit any charge against him, but to avoid any litigation, and in compromise and settlement of any claim against him by the city, he offers a sum of money which the city accepts and the matter is settled out of court.

Now if the driver so elects, he may have an adjudication by a court of law. He can refuse to appear at the Traffic Violations Bureau, thereby causing a charge to be filed in court and a warrant for arrest to be issued out of said court, and have either an acquittal or a conviction. He may also file a bond for his appearance in court and cause a forfeiture of such bond by his failure to appear for trial. Or, he may appear at the Traffic Violations Bureau and agree to a trial in court upon a date determined, without any arrest being made, and in which case he can have an acquittal or a conviction upon the charge filed against him.

But before a charge has been filed in a court of law, it does not appear that there can be any "conviction" as defined by the statute and therefore no transcript of the "conviction" can be forthcoming or required. It could not be construed as a forfeiture of money posted for the driver's appearance in court because he deposits no money for his appearance to answer to any charge in court.

Therefore, in my opinion, the answer to your question is, that a payment of penalty in the Traffic Violations Bureau should not be considered a conviction as understood in Chapter 274, Acts of 1949.

Any question as to the power of the city to create, establish and operate the system enacted by the ordinance referred to, is not included in this opinion and as to the validity of such ordinance, I have expressed no opinion.

WOL:vb