In conclusion, with the last above noted exceptions, the board of trustees of Indiana University is empowered to fix a tuition for students enrolled in the school, either residents or non-residents. The board of trustees, as a body politic and corporate, is empowered under the laws of this State to contract and to do all acts necessary and proper for the operation of such university, subject only to their obligation to protect the financial integrity of the institution.

It is my opinion that the Board of trustees of Indiana University may contract with the Veterans' Administration, and as a basis for contracting for tuition, the trustees may contract for the payment of non-resident tuition, to be charged the Veterans' Administration for all veterans enrolled in the school who are under Public Laws 16 and 346, as amended, in lieu of but not in addition to customary tuition, and such contract will not conflict with existing laws or legal requirements of the State of Indiana.

OFFICIAL OPINION NO. 36

April 14, 1948.

Hon. John D. Pearson,
Insurance Commissioner,
240 State House,
Indianapolis, Indiana.

Dear Sir:

You have asked my opinion concerning the applicability of Chapter 50 of the Acts of the General Assembly for 1947 to the State Automobile Insurance Association.

Chapter 50 is an amendment of the basic insurance code, which, by inserting a new section, is to be known as Section 75 1/2. Its purpose is to permit domestic insurers to write both casualty and fire insurance instead of limiting a company to one of the two classes. The sole question is whether the State Automobile Insurance Association is within the terms of Chapter 50.

In speaking of the Indiana insurance law hereinafter, I am speaking of the Indiana Insurance Code, which is Chapter 162 of the Acts of 1935 with subsequent amendments. In
speaking of multiple line coverage, the writing of both fire and casualty insurance by one company is meant.

The State Automobile Insurance Association was organized under Chapter 102 of the Acts of 1919 (Sec. 39-2801, Burns' 1933 R. S.). It should be noted in passing that Chapter 102, supra, does not create a corporate entity and those who exchange reciprocal or interinsurance contracts under its provisions are authorized to write only fire and automobile insurance. The State Automobile Insurance Association, through its attorney in fact, now requests permission to write the kinds of insurance set out in Class 2 or Class 3 of Section 59 (Sec. 39-3501, Burns' 1933 R. S.) of the Indiana insurance law.

Chapter 50 of the Acts of 1947 is not limited to corporations but provides that "all domestic insurers who now comply with Chapter 162" of the Acts of 1935 "shall have all the rights, powers and privileges conferred by this section." (Our emphasis.) The principal question is whether or not a reciprocal or interinsurance exchange does comply with Chapter 162 of the Acts of 1935. Section 272 of Chapter 162 (which is the Indiana insurance law) (Sec. 39-5025, Burns' 1933 R. S.) does not prevent the formation in the future of reciprocal or interinsurance exchanges but does impose certain surplus requirements which were not in the original 1919 act. It further provides in substance that, with the exception of parts 1 and 2 of the Indiana insurance law, those exchanges shall "have and exercise the powers, rights and privileges conferred upon them by Chapter 102 * * * (Acts 1919) and Chapter 172 * * * (Acts 1929)." The definitions in the Indiana insurance law (Sec. 39-3205, Burns' 1933 R. S.) define the term "company" broadly enough to include interinsurance exchanges. Section 60, which is in part 3 (Sec. 39-3501, Burns' 1933 R. S.), applies the classifications of insurance to "a company." Section 170 defines the scope and powers of the casualty, fire and marine insurance companies (Sec. 39-4301). There has been no case determining the extent to which other parts of the Indiana insurance law apply to interinsurance exchanges. We do know, for one thing, that they must comply with the investment provisions in Part 3. See Conrad v. Olds (1941), 110 Ind. App. 208, 214. Without an exhaustive analysis of parts 3, 4 and 5 of the insurance law, with the 1919 Act, I believe the 1919 Act is essentially an enabling act and further-
more we are not justified in drawing a conclusion, that the petitioner need not comply with some provisions of parts 3, 4 and 5 of the 1935 law. "Comply" is defined in Dragma v. Federal Labor Union (1945), 41 Atl. 2nd, 32 as follows: "* * * the complainant thus stipulated to "comply", that is "to yield to, accommodate or adapt oneself to, to act in accordance with" the applicable rules and regulations * * *." Webster's New International Dictionary defines it as "to yield, accord, agree or acquiesce; to accommodate or adapt oneself; to consent or conform; to act in accordance;". While the petitioner does not comply with all provisions of the Indiana insurance law, it acts in accordance with all sections which are applicable to it. It seems to me that is compliance.

In the absence of clear legislative intent to exclude reciprocal and interinsurance exchanges, I am of the opinion that we are not justified in reading such an exception into Chapter 50. As stated in Eastman v. The State (1886), 109 Ind. 278 at page 283:

"* * * There are, perhaps, extreme cases where exceptions may be created by the courts, but these cases are very rare, and the authority to create exceptions is one to be exercised with great delicacy. It can never be exercised where the words of the statute are free from ambiguity and its purpose plain. It is only where the necessity is imperious, and where absurd or manifestly unjust consequences would otherwise certainly result, that the courts can create exceptions. This is not such a case. * * *" (Our emphasis.)

It must be conceded that there are some indications which make the application of Chapter 50 to the petitioner subject to question. I am noting some of them:

(1) The act as introduced (Senate Bill 155) originally provided that all domestic insurers to which Chapter 162 is applicable could take advantage of the act. That language was changed and the words "who now comply with" were inserted. By another amendment the same requirement was stated in the negative form in a later part of subsection (a). The purpose of these amendments is not clear. In either event, Chapter 162 is not completely applicable to reciprocal exchanges nor do they completely comply.
(2) The same act in subsection (b) seems to limit applicability of the act as to future insurance organizations to those which organize under the Indiana insurance law. This would mean that presently organized reciprocals could take advantage but those organized in the future could not. The consequence is a rather unusual application of the law, but I do not believe an unconstitutional application.

(3) Subsection (c) provides that the charter powers and licenses of domestic insurers may be broadened to write multiple lines. The petitioner in this case has no charter powers since it is not incorporated but it does have a license and since Chapter 50 is a grant of additional powers, I see no reason why it should not be construed to grant additional powers to reciprocals as well as other companies.

(4) It may be argued that this interpretation permits any insurer in the State to take advantage of Chapter 50. I do not believe that is true, since by Sections 272a, 272b and 272c of the Indiana insurance law (Sections 39-5026, 39-5027 and 39-5028, Burns’ 1933 R. S.) other companies, including one type of reciprocal, are excluded from the act entirely. Those companies clearly do not comply with Chapter 162 of the Acts of 1935.

(5) A reciprocal, according to the organic 1919 law, was not authorized to engage in casualty insurance, therefore, it may be argued that the legislature never intended to make that additional grant to reciprocals. By the same token, however, fire companies organized under the 1935 act were not authorized to engage in casualty insurance and could not amend corporate articles to so engage. If an additional grant to the latter is clear, it is difficult to see why it would not be equally applicable to the former.

(6) It may be argued that Section 14 of Chapter 102 of the Acts of 1919 (Sec. 39-2814, Burns’ 1933 R. S.) prevents interinsurance exchanges from taking advantage of Chapter 50 of the Acts of 1947. Section 14 reads as follows:

“Except as herein provided, no law of this state relating to insurance shall apply to the exchange of indemnity contracts described herein, unless they are specifically mentioned therein.”
However, Section 2 of Chapter 162 of the Acts of 1935 (Sec. 39-3202, Burns' 1933, R. S.) provides that the Indiana insurance law specifically includes interinsurers.

(7) Finally, it may be argued that the petitioning company is not an insurer within the terms of Chapter 50 of the Acts of 1947. However, in the Indiana insurance law (Sec. 3, Chapter 162, Acts of 1935; Sec. 39-3203, Burns' 1933 R. S.) "insurer" is defined to specifically include reciprocals or interinsurers.

I am, therefore, of the opinion that the applicant is eligible under Chapter 50 to make multiple line coverage. However, it does seem to me that the declaration filed by the applicant should be amended to cover the kind or kinds to be effected or exchanged.

OFFICIAL OPINION NO. 37

April 19, 1948.

Hon. Frank T. Millis,
Treasurer of State,
State of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have your letter of April 12, 1948 in which you ask whether money can be obtained from the Post War Building Fund for the purchase of a building by the State of Indiana for the use of the Unemployment Compensation Division. This involves the question of whether there has been an appropriation of said fund or a part thereof for such purchase.

Sections 1 and 2 of Chapter 234 of the Acts of 1947 are as follows:

"Sec. 1. That there is hereby appropriated from the Postwar Construction Fund created by Section 13 of Chapter 357 of the Acts of 1945 the sum of twenty-five million, seven hundred thirty-three thousand, nine hundred eight dollars ($25,733,908.00) which appropriation shall be known as the Postwar Construction Contingency Appropriation to be used by the State Universities and Colleges which are supported in whole