city health officer can be removed by the city board of health or may be removed by the State Board of Health for specified cause. That the mayor does not appoint and cannot remove the city health officer.

This opinion does not apply to cities of the first class nor does it apply to the period to be served by appointees who are appointed to fill a vacancy caused by death or resignation of a member or health officer before serving his term, nor does this opinion consider the question of impeachment under Section 49-821, Burns' 1933.

Neither does this opinion give consideration to Section 5 of said Act, as amended by Chapter 282 of the Acts of 1947, which applies only to a full time city health department in second class cities in Lake County or to Section 5 (a), which was added by Chapter 202 of the Acts of 1947 and applies to joint city-county full time health departments as I do not understand that your questions involve any situation arising under said sections.

OFFICIAL OPINION NO. 4

January 19, 1948.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of recent date in which you quote Section 1, Chapter 272, Acts 1947, which reads as follows:

"The auditor, assessor, clerk of the circuit court, sheriff, recorder, surveyor, judges of the circuit and superior courts, except such judges whose salaries were increased under the provisions of Chapter 242 of the Acts of the General Assembly of 1945, and who are at the effective date of this act receiving said increase, and the treasurer of each county in this state having a population of not more than seventy-five thousand, according to the last preceding United
States census, shall be paid a per diem of one dollar and seventy-five cents for each day such official shall be engaged in the official duties of his office, said per diem to be in addition to all other provisions of law for his compensation, regardless of any limitation set by law on the compensation received by any such county official.”

and you ask our official opinion on the following question based upon said Act:

“Can the judge of a circuit or superior court not drawing the increased salary provided by Chapter 242 of the Acts of 1945 be paid a per diem of one dollar and seventy-five cents per day while he is on vacation and a judge pro tempore is acting in his place?”

Official Opinion number 31 of 1945 (1945 O. A. G., page 149), construed Chapter 295, Acts 1945, which was identical in most respects with the above quoted Act; and in speaking of the per diem provided in said statute the opinion states at page 150:

“Not being a salary which is payable solely by virtue of the office and not in consideration of the quantum of services rendered, but, on the contrary, being a compensation which is conditioned directly upon the rendition of services, it must follow that the per diem established by this law for the officers named in your question is payable only when such officers are engaged in their duties as such officers.

“It is my opinion, therefore, that these officers are entitled to receive the per diem established by this law only upon those days when they are engaged in the discharge of the official duties of their office.”

It further states that a judge of the circuit and superior court would under said statute be entitled “to receive the per diem allowed by this law upon any day he performed his duties as judge, whether such duties consisted of presiding over the court in term time or in legally exercising a power or performing a duty as judge at any time permitted by law, whether in term or out of term.”
Section 4-316, Volume 2, Part 2, Burns’ 1933, same being Chapter 19, Section 4, Acts 1855, page 61, provides that:

“If, from any cause, any judge of a circuit court shall be unable to attend and preside at any term of said court, or during any day or part of such term, such judge, or in his absence, or when he shall be unable to make such appointment, the clerk, auditor and sheriff of the proper county, or a majority of them, may appoint, in writing, any other judge of a court of record of this state, or any attorney thereof eligible to the office of such a judge, to preside at such term, or during any day or part of said term.

* * *

Section 4-402, Volume 2, Part 2, Burns’ 1933, same being Chapter 170, Section 1, Acts 1929, page 533, provides as follows:

“When, from any cause, any judge of any superior court in the state of Indiana shall be unable to attend and preside at any term of said court, or during any day or days, or during any part of any term, such judge may appoint in writing, any attorney eligible to the office of such judge, or any other judge of a court of record in this state, to preside at such term, or day or days, or part of such term. Such written appointment shall be entered of record in said court, and if such appointee is not a judge of a court of record, he shall take the same oath required by law of judges of superior courts, and such appointee shall conduct the business of such court in the same manner and shall have the same power and authority during the continuance of his appointment as a regularly elected judge of such court.”

A Judge *pro tempore* is appointed for the term or some part thereof, during which time he exercises all the functions of the regular judge. State, *ex rel.* Hodshire v. Bingham, Judge (1941), 218 Ind. 490.

Under proper appointment, a judge *pro tempore* is the judge of the court and during such appointment has the same power and authority and jurisdiction as if he were the duly
elected judge of said court; and the regular judge is without authority to perform any judicial act as judge of such court during such appointment. State, *ex rel.* Freeman v. Superior Court of Marion County *et al.* (1940), 216 Ind. 372 (376).

It is noted that under the above quoted statute a judge is only entitled to *per diem* for those days when he “shall be engaged in the official duties of his office. * * *”

It was held in United States v. King (1893), 147 U. S. 676, that a public officer (Clerk of the Circuit Court) was entitled to a *per diem* for official acts performed even though such acts were performed by his deputy at a time when he, himself, was absent. Such entitlement was grounded on the proposition that the acts of the deputy were the acts of the officer himself.

According to the weight of authority, a duly appointed deputy is empowered to act for his principal in his name and behalf in all matters in which the principal may act; and, the principal is responsible for the acts of the deputy. A deputy is in effect an agent of the principal and the acts of the deputy are the acts of the principal. The deputy must sign or act in his principal’s name. It is often said that he is an “arm” or “hand” of his principal. The authority exercised by the deputy is the authority conferred on the principal and not authority inherent in the deputy. Accordingly such authority must be exercised in the name of him in whom it exists. 43 Am. Jur. Public Officers, Sec. 460, *et seq.*

But the relationship of deputy and principal does not exist as between a regular judge of a court and a judge *pro tempore* thereof. A judge *pro tempore* is not a “hand” or “arm” of the regular judge; nor is he a deputy or agent of the regular judge. The regular judge is not responsible for the acts of the judge *pro tempore*. The acts of the judge *pro tempore* are not the acts of the regular judge but are acts performed pursuant to authority conferred on him as judge *pro tempore*. During the time of his appointment, the judge *pro tempore* is the judge of the court with ample powers and authority to exercise all the functions of the regular judge; and the regular judge is prohibited from performing judicial acts for such court during the time of such appointment.

Based on the foregoing it is therefore my opinion that the regular judge would not be entitled to the *per diem* estab-
lished by the above quoted statute while he is away from his court on vacation even though a judge pro tempore were during such time exercising the official functions and discharging the duties of his court.

OFFICIAL OPINION NO. 5

January 21, 1948.

Mr. Forrest V. Carmichael,
Executive Secretary,
Indiana State Teachers' Retirement Fund,
336 State House,
Indianapolis 4, Indiana.

Dear Mr. Carmichael:

Your letter of January 8th, 1948 has been received requesting an official opinion regarding the following question:

"Is a public school teacher entitled to service credit in the Indiana State Teachers' Retirement Fund for years of work done in 'Civilian Public Service' during World War II, more commonly known as conscientious objectors' camp service?"

Your inquiry involves an interpretation of Chapter 97 of the Acts of 1941 (Sec. 28-4322, Burns 1933 R. S. Supp.) Particularly to be determined is the question whether Section 6 (Sec. 18-4327, Burns 1933 R. S. Supp.) applies to a conscientious objector who was assigned to a civilian public service camp. That section reads as follows:

"Any teacher who enters the defense service on a full time basis, through volunteer or statutory selection, shall retain his contractual rights in any teachers' retirement fund of which he may be a member under the laws of the state of Indiana. Contributions and payments into such retirement fund shall be made as is now provided in the event that a member of such fund is granted a leave of absence under existing law pertaining to such fund or funds. Such teacher shall be deemed to have been granted a leave of absence for the duration of such service."