out of the general fund in the treasury of the state, not otherwise appropriated, a sufficient sum of money with which to pay the sum of three thousand dollars annually to each of said widows during their natural lives, and said pensions shall be paid in equal monthly installments by the treasurer of the state on warrant of the auditor of the State of Indiana to said widow or widows upon claim being made therefor to the auditor of state, by a qualifying widow or one acting for her, and unless claim is made for said pensions, any amount so appropriated to pay the same, shall revert to the general fund at the end of each fiscal year.'

"Stipends granted to the widows of former governors, and the widow of the governor in office or governor-elect, of the State of Indiana at the time of the passage of section 1, Chapter 6, Acts 1945, State of Indiana, come within the category of gifts and are exempt from the income tax under the provisions of section 22(b)(3) of the Internal Revenue Code."

I am, therefore, of the opinion that the pensions granted by Section 1, Chapter 6, of the Acts of 1945 (Sec. 49-1510, Burns' 1945 Supp.), to the widows of the former governors of this state are not subject to federal income tax and that, therefore, the withholding provisions of the Federal Income Tax Laws are not applicable to these payments.

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OFFICIAL OPINION NO. 60

June 20, 1946.

Hon. Clarence E. Ruston, State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of May 23, 1946, received requesting an official opinion on the following questions:
“1. Is the county council authorized to make appropriations, the board of county commissioners to allow and the county auditor to pay claims for services of a stenographer, clerk or other clerical assistants employed by the prosecuting attorney?

“2. Is the county council authorized to make appropriations, the board of county commissioners to allow and the county auditor to pay claims for services of a stenographer, clerk or other clerical assistants employed by the county health officer?”

The accounts under consideration by your department referred to in the first question are for the years 1943 to 1946 inclusive and those referred to in the second question are for the years 1944 to 1946, inclusive, and are from Henry County, Indiana.

1. The question presented by your first question was the subject of an official opinion found in 1937 Indiana O. A. G., page 41, where it was held:

“I conclude, first, that the Acts of 1933 pertaining to the salary of the prosecuting attorney and his deputies in no way prohibits the allowance of the estimate. Second, there appears to be no prohibition to the county council to make appropriations for office expense such as outlined in your letter. Hence the conclusion is that there is an implied, if not a specific, right on the part of the county council to make appropriations for the items stated. It is understood, of course, that all of the items as set out are necessary to the proper functioning of the office of prosecuting attorney, and that no part will be expended otherwise; hence if these items be allowed by the Board of Commissioners and be paid by the Auditor they will be regular expenditures from county funds.”

I am in accord with the above finding for in my opinion necessary stenographic assistance to such an officer would not be construed to be work such officer would be required to perform for the salary specified in Section 49-2601 Burns’ 1933 and 1945 Supplement. I am of the opinion such public officer would have the implied power to employ a stenographer
necessary for him to carry out the duties enjoined upon him from such office. On the question of general implied powers see State *ex rel.* v. Home Brewing Company (1914), 182 Ind. 75, 92.

2. The answer given to your question number one answers your question number two. However, in addition it is pointed out that Section 35-122 Burns' 1945 Supplement, same being Section 5, Chapter 217, Acts 1935, regarding appointment of county health officers provides:

"The county commissioners of any county, or the common council of any city shall have the power and authority to provide for a full-time county or city health officer, and for the expenses of his office, and for that purpose the county council or common council, as the case may be, shall annually make the necessary appropriation in the same manner as appropriations are made for other county or city offices. * * *" (Our emphasis.)

The foregoing statute in my opinion would authorize the appropriation and payment of a reasonable salary for a stenographer or other clerical assistants for the county health officer.

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**OFFICIAL OPINION NO. 61**

June 21, 1946.

Hon. Clarence E. Ruston, State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of June 4, 1946, received requesting an official opinion on the following questions:

"1. Since Chapter 203 of the Acts of 1945 provides that in cities having a population of over two hundred fifty thousand as shown by the last preceding United States census, the annual salaries for the officers herein named shall be fixed by the common council at