not claim service credit in the Indiana State Teachers' Retirement Fund for services rendered prior to the date when they were required by law to hold a license for the performance of such work.

OFFICIAL OPINION NO. 2
January 11, 1946.

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

Dear Mr. Ruston:

I have your letter of recent date in which you request an official opinion on the following facts:

On October 5, 1942 there was a burglary of approximately $207.50 from the office of a branch manager of the Bureau of Registration, Licensing and Regulation of Motor Vehicles. It appeared that the money was in a cash drawer which was not locked. The burglary occurred while the office was locked and the employees were out to lunch. Entry to the office was obtained by using an instrument to force the lock on the office door. The money taken was one week's accumulation of automobile license fees.

It further appeared that the branch manager was appointed by the Secretary of State and at the time of his appointment entered into a written contract, a copy of which you enclosed, wherein it is provided that the branch manager shall be personally responsible for all fees collected by him for and on behalf of the "Department" and is required to remit and deliver the same to the "Department" at 109 State Capitol Building, Indianapolis, Indiana not later than 24 hours after the close of the business day in which such fees shall have been collected. However, it is further provided that these receipts may be mailed and also that such requirement may be dispensed with by the "Department" upon such instructions as may be given from time to time.

It further appeared that this latter requirement was modified and required that remittances be made once a week. It
was further required, however, that each day's receipts must be placed in the bank at once, and deposited to the account of the "State of Indiana, Bureau of Motor Vehicles." Remittances are then made by drawing a check on such account and sending it to the "Department" at Indianapolis, Indiana.

Based upon the foregoing facts, you asked the following questions:

"(1) In light of the Agreement signed by the Branch Manager with Bureau of Motor Vehicles, and the issued printed regulation of the Bureau of Motor Vehicles, and the facts as stated in this particular case, is the Branch Manager liable for the loss; or is the Bureau of Motor Vehicles and the Secretary of State liable for the loss?

"(2) If no negligence could be shown on the part of the Branch Manager, in other words, all the money that was in the cash drawer had been received between eight o'clock and twelve o'clock on the morning of October 5, 1945, and not deposited in the designated bank, who would be responsible for the loss?

"(3) If robbery had occurred between five and six p.m. and Branch Manager had taken in some five or six hundred dollars after the depository had closed its doors for the day, who would be responsible for the loss?

"(4) The first paragraph of Article 2 of the agreement, as herein set forth, provides the Branch Manager shall be personally responsible for all fees collected by him for and on behalf of the Department and shall remit and deliver the same to the Department at 109 Capitol Building, Indianapolis. Who is the Department? Isn't the Branch Manager the Department and delivery to the Department is made when the applicant pays his fee? * * * If this be true the only protection for this money by insurance must be had by the state."

Section 47-307 of Burns' 1940 Replacement provides in part as follows:
“In order to facilitate the operation of the provisions of this act and to expedite the issuing of licenses and registration of title certificates, the department of treasury is hereby authorized and empowered to deputize such officers of motor clubs or other persons as he (it) may think necessary for that purpose.”

The above-quoted language was construed by the Indiana Supreme Court in the case of State of Indiana v. Stultz, Receiver (1935), 208 Ind. 543 as meaning that a branch manager of the Bureau of Licensing was a deputy Secretary of State, and, therefore, an agent of the Secretary of State for the purpose of distributing licenses and registration of title certificates, and collection of fees therefor prescribed by statute. The court also held that when the branch manager collected the fees for auto licenses, they became the funds of the State of Indiana and he held them in trust for the state. On this matter, the court said at page 550:

“* * * Cecil C. Lockwood at the time here in question (was) named by the secretary of state as his deputy, and placed in charge of the branch automobile license office at Bluffton, Wells county, Indiana. By being so named and designated by the secretary of state, he became a deputy secretary of state and his agent for the purpose for which he was appointed. As shown above, the fees collected from the business transacted, were the funds of the State of Indiana and the legal title thereto never at any time belonged to Cecil C. Lockwood, but he, as a deputy secretary of state, held them in trust for the State of Indiana, and Cecil C. Lockwood had no authority to deposit the state’s funds in the Wells County Bank either in his own name or in the name of the State of Indiana. * * *”

It was also held in the case of Wetzel v. McNutt (1933), 4 Fed. Supp. 233 that a branch manager of the auto license department was a public officer and exercised part of the sovereign power of the state in granting or rejecting applications for licenses.
The courts of this state have consistently held that in the absence of a statute to the contrary, a public officer collecting funds for the State of Indiana is an insurer of those funds and is required to account for them irrespective of whether they have been lost through no fault of his own.

McClelland, Trustee v. The State (1894), 138 Ind. 321, 328;
Shelton v. State (1876), 53 Ind. 331, 334;
Rowley, Administrator v. Fair (1885), 104 Ind. 189, 193-194.

I also call your attention to Article 2, page 2 of the agreement entered into by the branch manager in this case and the Bureau of Licensing which provides that the branch manager shall be personally responsible for all fees collected by him for and on behalf of the "Department".

Also, Article 10, page 4 of this same agreement provides that the branch manager shall provide a bond conditioned for the faithful performance of each and all the agreements, stipulations and covenants agreed therein by the branch manager to be performed and particularly the remittance of all fees collected, without diminution, except for service charges.

Based upon the foregoing authorities and the express provisions of the contract entered into by the branch manager and the Bureau of Licensing, it is my opinion that the branch manager in this case is liable for the loss irrespective of the question of his negligence. This, therefore, answers your first three questions.

It is to be noted that the Public Depository Law of this state provides that no public officer shall be liable for loss of public funds in any closed depository when such funds have been deposited in the manner required by law. (Burns' ISA 1943 Replacement, Section 61-655). However, the loss in this case did not result after the funds were deposited in a bank, but were lost before deposited, so that this law affords no protection to the branch manager in this case.

In answering your fourth question, it is my opinion that both the branch manager and the State Department of Licensing have a sufficient insurable interest in the funds to warrant either one carrying insurance to protect them from such loss
as occurred in this case. So far as the branch manager is concerned, since he is required to account for the funds, he certainly has an interest in seeing that they are not lost by burglary or robbery. Also, since the court in the case of the State of Indiana v. Stultz, Receiver (1935), 208 Ind. 543, 547, held that money received by a branch manager was public funds and belonged to the State of Indiana, the State of Indiana has an interest in protecting these funds against loss by burglary, robbery or other cause.

OFFICIAL OPINION NO. 3

January 11, 1946.

Hon. Edgar A. O'Harrow, Secretary,
Indiana Board of Pharmacy,
307 State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter has been received in which you request an official opinion on the following questions:

"Is one that does not qualify under Chapter 31, Acts of 1943 by not renewing within the allotted 6 months after the date of discharge, exempt from fees while in service?

"If he is exempt from fees while in service, even though he did not renew within the allotted 6 months after date of discharge, will the reinstatement fees be prorated on the annual fee or on the annual fee plus penalty for the year in which he is discharged or is the fee waived for this year?

"May a registered pharmacist who at the time he entered service was delinquent for a period of less than 5 years, upon being discharged reinstate by paying the regular reinstatement fee for the delinquent years prior to entering service and be granted the exemption of renewal fees for the time he was in service?"