OFFICIAL OPINION NO. 93

October 10, 1946.

Hon. A. V. Burch,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of October 8, 1946, received requesting an official opinion as to whether you may legally issue warrants in payment of certain vouchers payable to certain lumber and construction companies for remodeling of some four or five offices to be used by the State Board of Health as district offices.

As I understand the facts the State Board of Health, through its Secretary, executed separate leases for these offices in the name of the State Board of Health and then incurred the expense in question in order to place such leased premises in a tenantable condition.

The only statute I find authorizing the renting of outside rooms for state officers or departments is Section 49-2413 Burns' 1933 same being Section 2, Chapter 269, Acts 1913, which reads as follows:

"The governor, the secretary of state and the auditor of state are hereby empowered and authorized to lease or rent any building or rooms necessary for the use of any state officers, boards or commissions, when the same can not be accommodated in the capitol building, and the rentals for said buildings or rooms so rented shall be paid out of any money in the state treasury not otherwise appropriated."

I desire to further point out that where an office is created by statute, public officers may exercise only such powers as are expressly authorized by statute.

Blue v. Beach (1900), 155 Ind. 121, 131;
State ex rel. v. Goldthait (1909), 172 Ind. 210, 216, 217;
However, an exception to the above general rule is recognized where certain incidental powers are implied for the purpose of carrying out the express powers given a public officer.

43 Am. Jur., Public Officers, Section 25;
State ex rel. v. Goldthait, supra.

Under the foregoing authorities I am of the opinion the leases executed while binding on the landlord are voidable as far as the State of Indiana is concerned. Therefore, since Section 49-2413 Burns' 1933, supra, does authorize the Governor, the Secretary of State and Auditor of State to lease or rent any building or rooms necessary for the use of any state officers, boards or commissions, that they would have the authority to validate said leases on behalf of the State by formally ratifying and affirming the same.

When said leases have been properly ratified I am of the opinion said claims for the costs of remodeling and placing such offices in a tenantable condition could be legally paid on warrants issued by you for the reason the authority to lease such premises would carry with it the implied authority to place such premises in a proper condition.

OFFICIAL OPINION NO. 94

November 12, 1946.

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

Dear Sir:

Your letter of October 29, 1946, addressed to the Attorney General has been received in which you request an official opinion on the following questions:

"Is there any law which would authorize or permit payment of compensation to the township trustee for his services as such ex-officio member of the board of trustees of such city in addition to the compensation