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
received by him as township trustee? If so, what amount, and from what budget would it be payable?"

Accompanying your letter is a copy of a contract entered into between a school township and a school city, heretofore executed between such school corporations for the operation of a joint high school pursuant to the provisions of Section 28-1265 Burns’ 1933.

Under the provisions of Section 29-1901 Burns’ 1933, same being Section 1, Chapter 236, Acts 1933, township trustees are elected and hold office for a term of four years. Under Section 65-104 Burns’ 1933, same being Section 6, Chapter 133, Acts 1859, Clause 4, the township trustee is required to see to the proper application of all monies belonging to the township for school purposes and required to perform all duties heretofore required of the township trustee, clerk and treasurer under the School Acts. Under Section 28-2410 Burns’ 1933, same being Section 1, Chapter 224, Acts 1901, the township trustees are required to take charge of the educational affairs of their respective townships, employ teachers and establish a sufficient number of schools for the education of the children therein.

Section 28-1265, Acts 1933, same being Section 1, Chapter 175, Acts 1925 provides for a joint management control and operation of a high school between a township and a city located in said township and among other things provides that in case of such consolidation such township trustee shall be ex officio a member of the board of trustees of such city in the management and control of such high school.

The present law governing the salaries of township trustees is Section 65-201 et seq. Burns’ 1943 Replacement, same being Chapter 159 of the Acts of 1917 which in substance provides that the township officers, including township trustee shall receive for their services the compensation provided in said Act “and they shall receive no other compensation whatever.” This Act will be superseded January 1, 1947 as hereinafter pointed out.

The provisions of the foregoing Act are supplemented by an emergency per diem compensation Act, same being Chapter 311, Acts 1945 found in the notes to Section 65-201 Burns’ 1945 Supplement. This Act by the provisions of Section 5 thereof expires at midnight December 31, 1946.
After January 1, 1947 the compensation of township trustees and township officers therein named will be governed by the provisions of Section 65-208 et seq. Burns' 1945 Supplement, same being Chapter 251 Acts of 1945, section 1 of such Act providing that the township officers named in said Act, which includes township trustees, shall receive for their services the compensation provided for therein and further provides "that they shall receive no other compensation whatever." Section 16 of said Act found in the footnotes to Section 65-222 Burns' 1945 Supplement provides that said Act shall not supersede the provisions of Chapter 159 of the Acts of 1917, being Section 65-201 Burns' 1943 Replacement, supra, until January 1, 1947.

It is to be noted that none of the aforesaid Acts provide any additional compensation to the township trustee for his services in connection with operating the schools for the benefit of the children located in said township.

It is further to be noted that from the foregoing statutes it was the duty of the township trustee to operate the schools of the township for the education of the children residing in said township outside of the city school corporations. By the provisions of Section 28-1265 Burns' 1933, supra, which provides for the consolidation of such schools by agreement between the township and city, no basically new duties devolved upon the township trustee in connection with such consolidated school, but the duties necessary to be performed in connection therewith are performed in place of the duties formerly performed solely by the township trustee in the operation of the township schools.

I fail to find any statute specifically authorizing additional compensation to the township trustee in connection with the operation of such joint high school referred to in your letter. In such event his salary is controlled by the provisions of the previously referred to sections of the statute for all duties performed.

In the case of State ex rel. v. Duncan, 175 Ind. 661, on page 663, the Supreme Court of Indiana says:

"It is settled that in the absence of constitutional restriction, the legislature may at its pleasure increase or diminish the duties of public officers. Gilbert v. Board, etc. (1846), 8 Blackf. 81; Turpen v. Board, etc.
(1855), 7 Ind. 172, 173; Walker v. Dunham (1861), 17 Ind. 483, 485; Yeager v. Board, etc. (1884), 95 Ind. 427, 430, and cases cited; Bynum v. Board, etc. (1885), 100 Ind. 90, 91; Sudbury v. Board, etc. (1901), 157 Ind. 446, 456.

“As was said in Yeager v. Board, etc., supra, at page 430: ‘The person who accepts and assumes to act in the office takes it cum onere, not only of existing duties, but subject to such as may thereafter be legally imposed, and subject to such rights and liabilities as to compensation as the legislature has (declared) or may declare. If the legislature imposes burdensome or unremunerative duties, he must perform (them) as required or resign the office.’”

From the foregoing I am of the opinion there is no law authorizing payment of compensation to a township trustee for his services as an ex officio member of the board of trustees of the city in the operation of a joint city and township school, except the regular salary or per diem authorized by law for the township trustee.

OFFICIAL OPINION NO. 95

November 29, 1946.

Hon. John H. Nigh, Director,
Indiana Department of Conservation,
140 North Senate Avenue,
Indianapolis, Indiana.

Dear Mr. Nigh:

A letter of recent date from your predecessor asks for an official opinion upon the following statement of fact:

Recently the County Commissioners of Daviess County passed a zoning ordinance and established a Planning Commission. This ordinance is referred to as Zoning Ordinance No. 1, Board of Commissioners, Daviess County. You attach to your letter a copy of the ordinance in question.

An examination of the title of this ordinance reveals that it was enacted to promote the public health, morals, safety,