The second question presents a different problem. Since the State Personnel Board under which the vacation was earned is extinguished by Chapter 101 of the Acts of 1943, it is difficult to see how the right to accrued vacation leave from that Board may be transferred to a new board, the Indiana Personnel Board. Therefore, I am of the opinion that the only right remaining in the employee is that of vested right to pay. See the opinion of the Attorney General to the Indiana Personnel Board dated March 9, 1943.

The answer to the second question herein should be limited to the exact fact situation presented and not extended to others.

INDIANA STATE POLICE: Whether State may pay insurance premiums to protect state policemen.

Mr. Don F. Stiver, Superintendent,

Indiana State Police,

Indianapolis, Indiana.

Dear Mr. Stiver:

This is to acknowledge your letter of April 5 in which you make the following request:

"Will you kindly furnish me with an official opinion as to whether or not under the 1941 Acts, Chapter 52, it is legal for a department of state government to pay out of its appropriation for insurance on state-owned automobiles, insuring the personal interest of the individual operator for property damage and public liability."

As preliminary to the determination of the main question, it is probably advisable to dispose of one or two collateral considerations. It will be noted that Chapter 52 of the Acts of 1941 (39-1819, Burns’ 1940 Replacement) is not mandatory and consequently the department or municipality involved is not required to purchase such insurance. Further, in view of the empowering nature of the Act and its indecisive wording in this regard, I do not intend in this opinion to pass upon
the question whether the Act permits suits against the state or a municipal corporation to the extent of the insurance.

There can be little question but that the statute was designed to permit the purchase of insurance upon state employees, agents and officers, and to pay for this insurance out of public funds. Two things in the statute seem to impel that interpretation: (1) It provides that the state or municipal corporation is empowered to purchase insurance insuring "officers, appointees, agents and employees of the state or municipal corporation against loss or damage because of the liability imposed by law upon such officer * * *." (emphasis ours) Obviously the only liability imposed by law is that which is incurred while acting as an officer, agent or employee of the state or municipal corporation. (2) The last clause of that same sentence in the Act provides, "* * * and to pay the premiums thereon out of public funds." The question still remains then, whether the payment of premiums to insure employees, agents and officers of the state and its subdivisions against a private liability, or liability for their own acts, is such a public purpose as to justify the expenditure of public funds.

As stated in State ex rel. Jackson v. Middleton, 215 Ind. 219 (1939), at page 230:

"The exact line of cleavage between what is, and what is not, a public use, is somewhat difficult to mark. Some purposes readily align themselves on one side of the line as being clearly public in their nature, while others as readily fall on the other side as being obviously private, and there is a debatable ground between the two. The courts have never attempted to lay down with minute detail an inexorable rule distinguishing public from private purposes, because it would be impossible to do so. Such determination is primarily one for the legislative branch of the government and it can not be held to any narrow or technical rule of action. Courts will not intervene unless there is a plain departure from every public purpose which could reasonably be conceived."

It is well settled in Indiana, as well as in other states, that public funds may be expended for moral or equitable obliga-
tions, as well as contractual. See Hanley v. Sims, 175 Ind. 345 (1910).

A recent New York case is a good example of the application of that doctrine to that type of problem here involved.


There the question arose whether the city might expend public funds in payment to bystanders for injuries sustained in the recapture of fugitives. A rather broad ordinance permitted awards in such cases by the city and in passing on the validity of the ordinance and particularly on the award made, the court said:

"The power has thus been delegated, both expressly and by implication, to the city to allow equitable claims against it, so that the city has all the power to recognize equitable claims against it that the state had to recognize equitable claims against the state, except as limited by the Constitution itself and by general laws."

If a state or its subdivision might assume such liability after the occurrence of an injury, it would follow that a previous recognition of the moral claim by insuring against it would likewise be a public purpose.

Further, in several cases where the question has been raised, it has been held by the courts that a municipality is justified in the expenditure of public funds to secure group insurance upon officers and employees. See Annotations 16 A. L. R., p. 1087; 27 A. L. R., p. 1267. Clearly the benefits there are largely personal to the officer or employee.

The logical extension of these principles would answer your inquiry, and so it appears in People v. Standard Accident Insurance Co., 108 Pac. (2d) (Calif.) 923 (1941), which seems to be the only case in point upon your problem. In answer to a similar question, the court there said:

"I conclude that defraying the cost of insurance to protect a state officer is a public expenditure and not prohibited by the Constitution."
For those reasons, I am of the opinion that the answer to your question is in the affirmative.

PUBLIC INSTRUCTION: Whether under Chapter 200 of the Acts of 1943 township trustees may accept bids for school bus contracts. Whether school bus drivers are required to take physical examinations.

April 19, 1943.

Honorable Clement T. Malan,
Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Malan:

I am in receipt of your letter of April 19, 1943, requesting my opinion on the following questions, to wit:

1. Does Chapter 200, Acts of 1943 permit the township trustee to accept bids for letting of school bus contracts or does it make the negotiation of such contracts mandatory?

2. Are school bus drivers still required to take the physical examination before being awarded a school bus driver's contract?

Chapter 200 of the Acts of 1943 is entitled "An Act concerning the transportation of school children, suspending certain laws and declaring an emergency."

Section 1 of the Act expressly provides that Chapter 161 of the Acts of 1941 is suspended until March 15, 1945.

Section 2 reads in part as follows:

"The trustee of any township of this state, with the consent and approval of the advisory board as provided herein, shall procure the services of school bus drivers and shall make contracts for the services of school bus drivers of such townships upon the most advantageous terms to such township which may be secured, pursuant to due notice and advertised hereinafter provided."