"On and after April 1, 1943, such prosecuting attorneys shall be paid for such expenses in the same manner as they are paid for salaries, excepting that the amounts shall be due quarterly following the months of March, June, September and December of each year."

STATE SOLDIERS' AND SAILORS' MONUMENT BOARD:
Whether the budget of Soldiers' and Sailors' Monument Board is under control of Adjutant General; whether the Board has authority to authorize one certain member to sign vouchers.

April 26, 1943.

Mr. Wilson C. Oren,
Secretary and Treasurer of Board,
Soldiers and Sailors Monument,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter concerning the legal status of the Board of Control of the State Soldiers' and Sailors' Monument. You submit the following questions:

"1. What are the duties and responsibilities of the members of the Board?

"2. Is the budget of the Soldiers and Sailors Monument under the jurisdiction and control of the Adjutant General, of the State of Indiana, or the Board of Control of said Soldiers and Sailors Monument?

"3. Must all vouchers for payment be approved by the Board, before payment can be made?

"4. Has the Board the authority to authorize one certain member of the Board to sign all vouchers, or does the law give this authority to the superintendent?

"5. Must the books and records be kept at the Monument or at the office of the Adjutant General?

"6. What jurisdiction, if any has the Adjutant General over the property known as the Soldiers and Sailors Monument, Indianapolis, Indiana?"
Your questions grow out of the reorganization act of 1933 (Chapter 4 of the Acts of 1933) and certain proclamations or orders which were made by Governor McNutt professing to act pursuant to that Act, which Act, together with all proclamations and orders issued thereunder, was expressly repealed by Chapter 4 of the Acts of 1941. (Acts of 1941, page 8.)

The order or proclamation to which you refer doubtless was the executive order made effective on April 15, 1933, which provided, among other things, as follows:

"Be it Therefore Hereby Ordered, That the powers, duties and functions of the bureaus and departments of government of the State of Indiana, as now and before the promulgation of this order existing, be and the same are hereby transferred and assigned, respectively, to the respective departments named in section 2 of chapter 4 of the Acts of the General Assembly for the year 1933, as designated and set out in this order, such assignments and transfers to include and comprise all state governmental powers, duties and functions of existing bureaus, departments, commissions, agencies, activities or subjects designated, under any and all laws of the State of Indiana, including Acts of the General Assembly for year 1933, whether or not, such law or laws be cited in this order, and such laws are made a part of this order, as fully as though written herein."

Thereafter follow provisions purporting to assign certain functions and duties and powers to one of the eight departments provided for in Chapter 4 of the Acts of 1933. The one in which you are particularly concerned is designated as "A2—Division of Adjutant General", providing as follows:

"All duties, powers and functions of the following named departments, bureaus, commissions, agencies, activities, and offices are hereby transferred and assigned to the Executive Department, Division of Adjutant General * * * Board of Control, State Soldiers' and Sailors' Monument: All powers, functions and duties, as provided by Chapter 242, Acts of 1901, at
page 557 of Acts of 1901, and all acts amendatory thereof and/or supplemental thereto:"

Appendix to Baldwin's Indiana Statutes, Annotated, 1934, p. 3635.

It will be noted that the above order does not purport to abolish the Board of Control of the State Soldiers' and Sailors' Monument, although it does purport to transfer the duties and authority and powers to the Division of Adjutant General. It is quite clear that the order issued did not purport to abolish the Board itself or to destroy any authority which the Board theretofore possessed by statute, the sole purpose being to make a transfer of the authority, functions, and powers. In other words, the new agency was obliged to look to the statute creating your Board for its authority. Further evidence that it was not the intention either to destroy the Board or to destroy the authority set up in the act is found in the fact that re-transfers were provided for. (Acts of 1933, page 7.)

Since the repeal of Chapter 4 of the Acts of 1933, together with the repeal of this particular proclamation whereby the Adjutant General received by assignment the powers and duties theretofore exercised by the Board, it is clear, I think, that no statutory authority nor authority by virtue of the above proclamation longer resides in the Adjutant General. The question is now as to who, if anyone, is authorized to exercise the powers originally exercised by the Board and which were transferred to the Adjutant General and exercised by him prior to the repeal of Chapter 4 of the Acts of 1933 and the repeal of the assignments made thereunder by Chapter 4 of the Acts of 1941.

Of course, the repeal of an act which repealed a former act does not revive the former act (Burns' Ind. Statutes Ann. 1933, Sec. 1-307), but that is not what we have here. The Act of 1901, creating a Board of Control and setting out the authorities of such Board of Control for the maintenance of the State Soldiers' and Sailors' Monument, was never repealed. The utmost that has been done was to repeal the proclamation by which the powers and duties of the Board had been assigned to another agency. It seems to me that the logical view is that the repeal of such order or assignment
would have the effect of re-establishing the authority in the Board. I am not unmindful of the language of the Court in the case of Tucker v. State, 218 Ind. 614 at page 681 wherein the statement was made that:

"The management of the state's property is an executive function."

I do not see that the Acts of 1901, creating the Board of Control, would violate that provision since the members of the Board are required to be appointed by the Governor. See official opinion of January 29, 1942, addressed to Mr. J. B. Cummins, President Indiana State Fair Board. Opinions of the Attorney General, 1942, page ——.

For the same reason, the budget of the Soldiers' and Sailors' Monument is not now under the jurisdiction and control of the Adjutant General of the State of Indiana but is under the control of the Board of Control of such Soldiers' and Sailors' Monument. The 1941 biennial appropriation act supports this conclusion. Note page 815 of the Acts of 1941.

Your third question is answered in the affirmative; that is, vouchers should be approved by the Board, except that, as suggested in your question numbered 4, the Board can, by written instrument showing such appointment, authorize one certain member to approve all vouchers.

In answer to your fifth question, I do not find anything in the statutes as to just where all books and records are to be kept.

In answer to your sixth question, in my opinion the Adjutant General now has no control of the property of the Soldiers' and Sailors' Monument.