ATHLETIC COMMISSION—Of what same consists.
Soldiers’ and Sailors’ Monument—Who performs the functions of said Board.
Battle Flags Commission—Functions thereof referred to Tax Board.
Grand Army of the Republic—Who authorized to expend biennial appropriation for above use.
Year Book and Statistical Division—Duty of preparing Year Book.

July 15, 1941.

Hon. Richard T. James,
State Auditor,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter wherein you ask who has the authority to perform the duties prescribed in the several acts and to expend the funds appropriated therefor by the 1941 General Assembly, involving the offices, commissions and departments hereinafter named.

STATE ATHLETIC COMMISSION

The duties, powers and functions of the State Athletic Commission created by Acts of 1931, ch. 93, p. 273 (Sec. 63-201, Burns, Ind. St. Ann. 1933) to consist of three persons to be appointed by the Governor and given the authority to appoint a Secretary and Attorney, were placed in the Division of Public Safety of the Executive Department April 15, 1933, pursuant to an executive order effecting a reorganization of State Government of Indiana. (A1) This executive order was issued pursuant to Ch. 4, Acts 1933, p. 7. Ch. 4, Acts of 1941, p. 8, repealed Ch. 4 of the 1933 Acts and terminated all executive orders issued pursuant to the 1933 Act. Ch. 13, Acts of 1941 purported to place the Athletic Commission in a department of audit and control created in said chapter. This act was held unconstitutional by the Indiana Supreme Court in the case of Tucker et al. v. State of Indiana, decided June 26, 1941, rehearing denied July 11, 1941. Consequently, the Athletic Commission will function under the statute originally creating it, under a chairman chosen from the three members appointed by the Governor. Also, if appropriations therefor by the 1941 General Assembly are sufficient, there may be appointed such
deputies, secretary and attorney as are authorized, though not required, by Sec. 63-203 Burns, etc., 1933 (Acts 1931, ch. 93, Sec. 3.) The making of such appointments, however, constituting an exercise of the executive function of government, should be performed by the Governor. The disbursement of the funds appropriated by the 1941 General Assembly will be made in accordance with Sec. 63-203 Burns, etc., supra, which provides that “the salaries of the commission, and the salaries and expenses of its secretary, attorney, deputies, and employees, shall be paid monthly by the state treasurer on warrant of the Auditor of State, and upon requisition of the chairman of the commission * * *”

**Soldiers and Sailors Monument**

The Acts of 1901, Ch. 242, Sec. 2 (Burns, Sec. 59-103) created a board of control consisting of three soldiers or sailors, citizens of Indiana, who have been in the Mexican, Civil or Spanish-American War to be appointed by the Governor for three year terms, not more than two of whom should belong to the same political party. The Act authorized the Board to appoint a Superintendent who should have police power, give bond, have charge and supervision of the Monument and Monument Place and, with the advice and consent of the Board, appoint the necessary assistants.

By the executive order above referred to (A2), the functions of this Board were transferred to the division of Adjutant General. The termination of such order, effected by Ch. 4, Acts 1941, restores these duties to the Board created by Sec. 59-103, Burns, supra, which under Sec. 59-105, is entitled to be paid necessary hotel and traveling expenses. The Superintendent, being entrusted with the care and management of State property, and being authorized by statute to report and pay over funds received and to keep account of all receipts and expenditures, thus being in effect authorized to requisition the payment of all expenses other than those of board members, in the light of the following language of the Supreme Court, should be appointed by the Governor:

“The management of the State’s property is an executive function. The General Assembly may legislate concerning the State’s property, the Courts may adjudicate concerning it, but the Governor, vested with
the executive power, must manage the state's property."

**BATTLE FLAGS COMMISSION**

Originally created at the 1908 Special Session of the General Assembly, this Commission, by subsequent amendments, is to consist of three members, who have served in the Civil, Spanish-American or World War, or the Philippine Insurrection, appointed by the Governor. (Sec. 59-901, Burns, etc., *supra*.)

The transferral of the functions of the Commission by executive order, above referred to (A2), to the Division of Adjutant General having been terminated by Ch. 4, Acts 1941, the discharge of the duties imposed by statute will be carried out by a commission appointed by the Governor pursuant to Sec. 59-901, *supra*. The appropriation made by the 1941 General Assembly will be expended pursuant to the direction of such commission.

**STORE LICENSES**

The statutes imposing fees for store licenses conferred the duty of enforcing the act upon the State Board of Tax Commissioners (Sec. 42-302 et seq. Burns, etc., 1933, Acts 1929, Ch. 207). By the executive order above referred to, the duties relative to the act were transferred to the Department of Treasury (D-7). Ch. 4 of the Acts of 1941 terminated the effectiveness of this executive order. As a result the performance of the duties required by Ch. 207, Acts of 1929, again rests with the State Tax Board or its successor as created by Ch. 11 of the Acts of 1941, the Indiana Tax Board.

**SUPERINTENDENT OF BUILDINGS AND PROPERTY**

Sec. 49-2401 et seq. (Acts 1895, Ch. 146, Acts 1919, Ch. 116) created a Board of Public Buildings and Property consisting of the Governor, Secretary of State and the Auditor of State and authorized such board to appoint a superintendent to have charge of the capitol building and all furniture, machinery and equipment, fixtures and other property therein. This superintendent was to hold office subject to removal by the board. The duties imposed by such statutes were trans-
ferred by the 1933 executive order to the Department of Public Works which department was abolished by Ch. 29, Acts 1941, and its powers and duties transferred to a State Board of Public Works and Property consisting of the Governor, Lieutenant Governor and Treasurer of State. By Ch. 4, Acts of 1941, the effectiveness of the executive order transferring the duties imposed upon the board by the 1895 and 1919 Acts was terminated. Neither the creation of the State Board of Public Works and Property by Ch. 29 nor the termination of the executive order by Ch. 4 Acts 1941, had the effect of repealing the provisions of the 1895 and 1919 Acts imposing duties upon the superintendent referred to in such Acts.

It would be your duty, as Auditor of State, to recognize such superintendent as the officer charged with such duties. There is authority contained in the statement made by the Indiana Supreme Court, above quoted, in the case of Tucker et al. v. State for the proposition that such superintendent should be appointed by the Governor and that the administrative officials named as members of the board cannot constitutionally exercise the executive function of appointing such superintendent and controlling the performance of his duties. However, inasmuch as there is a superintendent of buildings appointed by the executive authority any question as to your right to recognize his authority is purely moot for the reason that the Governor would be the only board member upon whom the power of appointing a Superintendent could be conferred constitutionally.

**GRAND ARMY OF THE REPUBLIC**

All recent biennial appropriations acts have included a sum designated for the use of the Grand Army of the Republic. By the 1933 executive order, the powers, functions and duties required in the approval of withdrawals of moneys from the State treasury under appropriations made by the General Assembly for this organization were transferred to the division of Adjutant General. The termination of the effectiveness of such order by Ch. 4, Acts 1941, and the fact that there is no effective statute vesting the approval of withdrawals in any officer, requires the conferring of such duties upon an executive officer designated by the Governor, whose approval of expenditures from this appropriation should be recognized by you.
YEAR BOOK AND STATISTICAL DIVISION

Secs. 60-1001 (Ch. 64, Acts 1905) and 60-1002 (Ch. 25, Acts 1917), Burns, etc., supra, require all offices, boards, commissions, and organizations of State government to furnish to the Governor such statistical information as he may request, and require the preparation, under the Governor’s direction, of a Year-Book by the bureau of legislative and administrative information. The contents of such Year Book are set out in Sec. 60-1002 and 60-1003.

In 1925 there was created an Indiana Library and Historical Department, one division of which was known as the legislative bureau (Acts 1925, Ch. 58, p. 190; Secs. 63-801, 63-803 Burns, etc.) One of the duties of such bureau was the assembling of statistical information, and its director was made ex officio editor of the Year Book which he should compile, edit, publish and distribute under direction of the Governor. (Sec. 63-816, 63-822, Burns.)

The executive order of April 15, 1933, transferred the duties imposed by these statutes to the Division of Accounting and Statistics.

In 1939 an independent act was passed creating a legislative bureau principally for the use of the members of the General Assembly, Governor and other departments, institutions and agencies of the state. It was to be in charge of a director appointed by the Governor.

The 1939 Act repealed all laws in conflict.

It was passed during the effectiveness of paragraph A-4 of the 1933 executive order, and contained no provision imposing upon the legislative bureau thereby created, any duties with reference to the Year Book.

The creation of the legislative bureau by the 1939 Act with its omission of duties respecting a Year Book and gathering of statistics therefor, together with its repeal clause, avoids the automatic re-transfer of such duties to such bureau upon the termination of the 1933 executive order by Ch. 4, Acts 1941. Nevertheless said Ch. 4, Acts 1941, does not repeal the provisions of Ch. 64, Acts 1905 and Ch. 25, Acts 1917, requiring the assembling of statistics and publishing of the Year Book at the Governor’s direction, and such duties shall continue to be performed at his direction by such persons as he may designate. The amount appropriated therefor by the
AUDITOR OF STATE: Biennial Appropriation of 1941—
Duties of auditor as to newly created boards and com-
missions.

July 16, 1941.

Honorable Richard T. James,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge your letter of July 5, 1941, asking for an official opinion with respect to the liability of the Auditor of State on his bond should he make payments from appropriations set up by the General Assembly, for the operation and expense of departments created by the Acts of 1941 General Assembly, during the period when certain boards or commissions were functioning under previous laws and before such boards and commissions had been duly appointed and qualified as provided by the several Acts which are outlined in your letter. It is further stated that you have found several conflicts existing between the boards and commissions and the express terms of the Appropriation Act, which, in some cases, might lead to the conclusion that, according to the records, some boards and commissions do not, in a strict sense of the word, exist.

For purposes of clarity, I will discuss the several boards and commissions outlined in your letter in several classifications. The following boards and commissions fall into my first classification:

Chapter 11, Acts 1941, page 16, creates the “Indiana Tax Board” which board shall consist of three (3) members, who are required to file a bond in the penal sum of $10,000.

Chapter 12, page 21, Section 2, creates a “State Highway Commission of Indiana” to take over the duties of the “State Highway Commission,” the chairman of said board must give bond in the sum of $25,000.00.