With reference to the "public interest" consideration of the policy, suggested in the preceding opinion of the Attorney General of Minnesota, I quote briefly from General Insurance Company of America v. Earle, Insurance Commissioner (Oregon, 1937), 65 Pac. (2d) 1414, which, in holding valid a similar policy, under a similar statute, had this to say:

"Whatever sum would later be repaid to the policyholder under this participating clause was of benefit to the policyholder and in the public interest."

Answer to your second question, in specific form, is that issuance of the participating policy of the American Motorists Insurance Company does not, in my opinion, violate the provisions relating to rates or discrimination of either the Indiana Workmen's Compensation Rating Bureau Law or the Indiana Insurance Law.

ADJUTANT GENERAL: Transfer of enlisted personnel and re-commissioning of officers to conform to the Indiana State Guard Act of 1941.

April 2, 1941.

Colonel J. D. Friday,
Acting Adjutant General,
State House,
Indianapolis, Indiana.

Dear Colonel Friday:

I have before me your letter of March 26 requesting an official opinion, which follows:

"Pursuant to Executive Order issued effective November 19, 1940, there was created in the State of Indiana the Indiana Civil Defense Force, to be commonly known as the "home guard." Under date of December 19, 1940, the Adjutant General, State of Indiana, attempted to amend the Executive Order by informing the personnel of the Indiana Civil Defense Force that they were to be known from that date as the Indiana State Guard.

"Under the provision of this Executive Order, officers were appointed and enlistments were taken and full
In the first place, I call your attention to the official opinion of the Attorney General issued to former Governor Townsend on November 13, 1940. This opinion was concerned largely with the authority of the Governor legally to create a defense force to replace the National Guard and the conclusion was there reached that under Sections 1 and 5 of Article 12 of the Constitution of Indiana, and under Sections 45-102 and 45-105 Burns' Indiana Statutes Annotated 1933, the contemplated defense force was already in existence and that, consequently, the Governor's power to organize the sedentary militia, was only the exercise of an existing power. Conformable to that opinion, the Governor, by Executive Order issued November 19, 1940, created an Indiana Civil Defense Force, commonly called the "Home Guard." From your letter I note that the Adjutant General sought to amend this Executive Order by informing the personnel of the Defense Force that they were to be known as the "Indiana State Guard."

As your letter states, Senate Bill No. 64 was signed by the Governor on March 10, 1941, and whereas it contained an emergency clause, it became a law as of that date. This law provided for a State Guard and in Section 2, authorized the Governor to prescribe rules and regulations "governing the enlistment, organization, administration, equipment, mainte-
nance, training and discipline of such forces.” Section 10 of the Act provided that all officers to be commissioned in such forces should take an oath substantially in the form prescribed by officers of the National Guard, substituting the words “Indiana State Guard” where necessary; and Section 11 of the Act contained a like provision with respect to enlisted men.

Section 1 of Article 12 of the Constitution provides for the organization of a militia and provides further that such a militia, composed of male persons between the ages of eighteen and forty-five years, should be organized and officered in such manner as may be provided by law. Quite apart from any statutory enactment, it therefore appears that the Governor would have the power, as the Commander-in-Chief of the State's armed forces, to organize or transfer such armed forces in any manner that he deems proper. The only effect of the State Guard Bill, passed by the General Assembly, is to provide the manner in which the Governor shall carry out and fulfill his constitutional duties as Commander-in-Chief of the armed forces of the State. Since Section 45-105 Burns' Indiana Statutes Annotated 1933 expressly provides that the Governor, in his judgment to increase the efficiency of the state forces, shall have the power to change the organization of any department or corps to any other department, it follows that the men who have enlisted under the Indiana Civil Defense Force, then known as the “Home Guard,” can be transferred bodily to the Indiana State Guard by an Executive Order issued by the Governor simply confirming the fact of their enlistment in the Home Guard and transferring them with confirmation to the State Guard.

With respect to the officers commissioned under the Indiana Civil Defense Force, they, likewise, can be transferred by Executive Order, to the Indiana State Guard created by the General Assembly of 1941, but since said officers receive commissions and subscribe an oath, I think it proper and necessary for new commissions to be issued and the proper oath in the name of the Indiana State Guard, subscribed so that there may be no misunderstanding whatsoever. A cancellation of the old commission and the issuance of a new commission is essentially the practice which is followed in the United States armed forces, when, for example, a marine corp officer is transferred to the United States Navy.

Summarizing, it is my opinion that the Governor should issue an Executive Order transferring all enlisted men and
officers of the Indiana Civil Defense Force, created November 19, 1940, confirming the enlistments of certain enlisted men and transferring both men and officers to the Indiana State Guard, created March 10, 1941, by Act of the General Assembly; and in addition thereto, that the Governor, acting through the Adjutant General, should see that new commissions issue to the officer personnel in the name of the Indiana State Guard.

TEACHERS' RETIREMENT FUND BOARD: Vincennes University is a public school of this State and the faculty thereof may properly become members of the Indiana State Teachers' Retirement Fund.

April 8, 1941.

Mr. Robert B. Hougham,
Executive Secretary,
Indiana State Teachers' Retirement Fund Board,
334 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of March 22, 1941, which reads as follows:

"The Indiana State Teachers' Retirement Fund Board respectfully requests your official opinion as to whether the duly licensed, qualified, and regularly employed members of the faculty of Vincennes University are eligible to participate in the benefits of the Indiana State Teachers' Retirement Fund Law.

"This office has been furnished with a Statement of the Legal Status, Scope, and Character of said university, which may be of some value to you in reaching a conclusion on the subject, and which is therefore enclosed herewith."

The question to be determined is whether Vincennes University is a "public school of this state" such as to entitle its faculty to become members of the Indiana State Teachers' Retirement Fund, more particularly whether the members of the faculty come within the terms of Section 14(a) of that law, being Sec-