the drunkometer test, only a reasonable amount of force, such as might be employed in fingerprinting or photographing or making a physical examination, can be used.

Summarizing, it is my opinion that the drunkometer is a scientific device of value and that the tests made by its use may provide evidence which is admissible in court and that the State Police may use all reasonable force in subjecting accused persons to this test.

INSURANCE: State, or political sub-divisions thereof, not authorized by any existing statute to insure against negligent operation of motor vehicles by their agents in governmental capacity.

October 8, 1940.

Honorable Frank J. Viehmann,
Commissioner, Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of August 21st which reads as follows:

"A question has been referred to the Insurance Department relative to an interpretation of certain Acts of the Legislature in connection with the placing of insurance by political sub-divisions of the State.

"We attach hereto a statement of fact with accompanying correspondence placed before the Department and respectfully request an opinion as to whether or not the carrying of public liability and property damage insurance by political subdivisions of the State of Indiana is permissible and whether the payment of premiums on such insurance by the said political subdivisions is legal."

The claim that political sub-divisions of the state may, at their option, carry public liability and property damage insurance is based upon the two sections of Chapter 245, page 1254, of the Acts of 1935 (Sections 39-1816 and 39-1817
Burns' Indiana Statutes, 1933, 1940 Replacement) which read:

Section 1. "No policy of insurance against loss or damage resulting from accident to or death or injury suffered by any person, or against loss or damage to property shall be purchased by or issued or delivered to the state or to any municipal corporation thereof by any insurance carrier unless there shall be contained within such policy a provision that if there arises or may arise a claim, suit or cause of action in relation thereto, such insurance carrier will not set up, as a defense, the immunity of the state or of such municipal corporation but that such cause of action will be tried on its merits only, and as it would have been if the insured were a natural person or private corporation. In no event shall the insurance carrier be liable, in any case, in any amount in excess of the maximum amount named in the policy of insurance.

Section 2. "The term 'state' means any department, or educational or other institution of the state or any officer or employee thereof and the term 'municipal corporation' means any county, township, city, town or school corporation or any officer, employee or agent thereof."

Much the same question as asked in your letter was answered in the negative by two official opinions from this office, issued to another state department, one dated April 22, 1937 and appearing in the printed Opinions of the Attorney General of 1937, at page 185, the other dated February 14, 1938, appearing in the Opinions of the Attorney General of 1938, page 96.

Neither of these opinions commented upon Chapter 245 of the Acts of 1935 above quoted. They stated in general terms that no statute in Indiana imposed liability upon counties for injuries resulting from the negligent operation of their county-owned motor vehicles employed in a governmental capacity, that in the absence of such liability county officers would not be authorized to purchase insurance against such contingencies, and that expenditures for any such purpose would be unlawful.
Chapter 245 of the 1935 Acts is loosely drawn and ambiguous in meaning. It does not fix liability upon the state, or sub-divisions thereof, in the event a policy is purchased and a claim or suit thereunder should arise. It merely provides that their immunity from liability shall not be pleaded as a defense by the insurance carrier.

The law of this state, in a long line of decisions, is to the following effect:

"It is well established that where subdivisions of the State are organized solely for a public purpose, by a general law, that no action lies against them for an injury received by a person on account of the negligence of the officers of such subdivision, unless a right of action is expressly given by statute. Such subdivisions then, as counties, townships, and school corporations, are instrumentalities of government, and exercise authority given by the State, and are no more liable for the acts or omissions of their officers than the State. Cones v. Board, etc., 137 Ind. 404, and authorities cited; Board, etc., v. Daily, 132 Ind. 73, and cases cited; Morris v. Board, etc., 131 Ind. 285, and cases cited."

Preel v. The School City of Crawfordsville, 142 Ind. 27, at page 28.

Whatever may have been the purpose to be accomplished by Chapter 245, Acts 1935, since it does not impose liability upon the state or its sub-divisions for the tortious acts of its agents employed in a governmental capacity, as might establish basis for cause of action against them in connection with injuries resulting from such tortious acts, and since there is no state statute that does so, it is my opinion that officers of the state or of such sub-divisions are not authorized to purchase, or legally pay for, the insurance mentioned in your letter.