from time to time to alter the maximum and minimum number of enlisted men which shall form part of any organization, department or corps. The aggregate forces of the national guard in time of peace, fully armed, uniformed and equipped, shall be not more than are authorized by the Militia Laws of the United States.

"The governor shall have power to order officers, enlisted men and members of said militia for the performance of duty * * *.”

It, therefore, seems unnecessary for me to decide whether or not you may legally create a defense force for the State of Indiana, inasmuch as such a force is already in existence. That you may convocate and organize the sedentary militia seems beyond question.

Since this authority is specifically granted to you by statute, it is my opinion that such action may be taken by Executive Order.

TREASURER: ALSO UNEMPLOYMENT COMPENSATION DIVISION: Whether employees of Indiana Unemployment Compensation Division are protected by the Indiana Workmen’s Compensation Act. Whether Workmen’s Compensation payments are Administration expense.

November 18, 1940.

Hon. Joseph M. Robertson,
Treasurer of State, and Chief Administrative Officer,
Department of Treasury,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of November 14, 1940, requesting an official opinion as to the liability of the Indiana Unemployment Compensation Division under the Workmen's Compensation Act of Indiana. The questions concerning which you desire the official opinion of this Department may be summarized as follows:

“(1) Are the employees of the Indiana Unemployment Compensation Division protected by the Indiana
Workmen's Compensation Act by reason of Section 18 thereof?

"(2) In the event that employees of the Indiana Unemployment Compensation Division are so protected, are payments made thereunder properly chargeable to the Unemployment Compensation Administrative Fund, as defined in Section 12 of the Unemployment Compensation Law?

"(3) If such payments are not chargeable to the Unemployment Compensation Administrative Fund, from what sources are such payments to be derived?

"(4) Are workmen's compensation claims against the State legally payable from appropriations to the particular state department for salaries?

"(5) Is the State of Indiana or any department thereof permitted to insure its liability under the Workmen's Compensation Act?"

Section 18 of "The Indiana Workmen's Compensation Act of 1929" provides as follows:

"The provisions of this act shall apply to the state, to all political divisions thereof, to all municipal corporations within the State, to persons, partnerships and corporations engaged in mining coal, and to the employees thereof, without any right of exemption from the compensation provisions hereof."

Answering the first question, I think it is obvious that the employees of the Indiana Unemployment Compensation Division are protected by the Indiana Workmen's Compensation Act, and in view of Section 2 of that Act the contract of employment carries with it the agreement upon the part of the State to pay and upon the part of the employee to accept the compensation for personal injuries or death by accident arising out of and in the course of the employment as is provided in the Act.

Burns' Indiana Statutes Annotated, 1933, Section 40-1202.
Section 12 of the Unemployment Compensation Act of Indiana provides as follows:

"Sec. 12. Unemployment compensation administration fund. Special Fund. There is hereby created in the State Treasury a special fund to be known as the unemployment compensation administration fund. All monies which are deposited or paid into this fund, are hereby appropriated and made available to the board. All monies in this fund shall be expended solely for the purpose of defraying the cost of the administration of this act, and for no other purpose whatsoever. The fund shall consist of all monies appropriated by this state, and all monies received from the United States of America, or any agency thereof, including the Social Security Board, or from any other source, for such purpose. All civil fines and penalties collected pursuant to the administration of this Act are hereby appropriated to and shall be paid into this fund. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balance in this fund shall not lapse at any time but shall be continuously available to the board for expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 13 of this act, shall be paid from the monies in the unemployment compensation administration fund."


It seems to me that the amount paid to an employee under the Indiana Workmen's Compensation Act is an administration expense. In other words, such amount is a contractual liability rather than a tort liability, the contract in effect
providing that the employer shall pay not only the salary contracted for but the compensation in case of an injury arising out of and in the course of employment. While the amounts of compensation payable are not, strictly speaking, salary they are based upon salary and are payable in the ordinary case, in somewhat the same manner as salary, is paid.

I think the answer to the second question should be in the affirmative.

The second question having been answered in the affirmative, the third question requires no answer.

The amounts paid in order to comply with the Indiana Workmen’s Compensation Act are undoubtedly, in my opinion, administration expenses.

As to the fourth question, upon inquiry I find that it is the practice followed by other departments to pay the compensation claims out of “Personal Service Appropriations” which is the same appropriation from which salaries are paid. Hospital bills and doctors’ bills required to be paid by the Workmen’s Compensation Act as a matter of practice, I am informed, are paid out of “Other Operating Expenses” appropriations. This relates back to the definition of certain words in the Biennial Appropriation Act of 1939, which is the same as has been followed in previous appropriation acts for a number of years. In that Act the term “Personal Service” is construed to include all payments made as and for salaries and wages. The term “All Other Operating Expenses” in the same Act, is defined, among other things, to include all payments for medical charges.


As to the fifth question, the State is not required to insure its liability (see Burns’ Indiana Statutes Annotated, 1933, Sec. 40-1205), but I know of nothing which would prevent the State or any Department of State from insuring its liability under the Workmen’s Compensation Act if a proper appropriation had been made to enable it to do so. Of course, there must be a prior appropriation before any Department can enter into such a contract.

Having considered the questions separately, I now desire to make some general observations.
In the first place, I think it is very clear that the Workmen's Compensation Liability of such Department is an administration expense and, while following the practice which has been followed by other Departments of paying this item out of "Personal Service Appropriations" is, I think, valid, it appears to me that in this case it may be desirable to budget such an item where it can be determined with any degree of accuracy as would be the case where an award has already been made.

LIBRARIES: Whether tax limitation in Township Act applies to city or town libraries.

November 27, 1940.

Miss Hazel B. Warren, Chief,
   Extension Division,
   Indiana State Library,
   Indianapolis, Indiana.

Dear Miss Warren:

I have before me your request for an official opinion concerning certain questions arising under the various Acts for the establishment of libraries. You call attention first to Section 41-601 of Burns' Indiana Statutes Annotated, 1933, which is Section 1 of Chapter 110 of the Acts of 1896 as amended in 1933 by Chapter 35 of the Acts of 1933. This Act is entitled:

"AN ACT authorizing township trustees to levy a tax for the increase and maintenance of libraries established by private donation, and for the purchase and improvement of real property for such libraries."


It provided among other things, that in any township in which there has been or may hereafter be established by private donations a library of the value of $25,000.00 or more, including the real estate and buildings used for said library, for the use and benefit of all the inhabitants thereof, the township trustee was required annually to levy and collect a tax upon the taxable property within the limits of the township of not more than six cents (6c) on the one hundred dollars.