issues, the names and addresses of all of its subscribers and
the amounts for which each shall be liable, but that it may use
the same form of policy as is used by it in the state of its
domicile.

AUDITOR OF STATE: Construction of statute concerning
salary, appointment and duties of county agent.

February 13, 1933.

Hon. Floyd E. Williamson,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter submitting the following ques-
tions:

"1. Shall a county agent draw salary partly paid by
the state funds for a longer period of time than that
for which he was appointed or elected by a county
board of education?

"2. Is it incumbent upon Purdue University to con-
tinue to nominate candidates for county agent to the
county board of education until someone so nominated
be appointed by said county board of education and
said appointment be approved by the state board of
education of Indiana before further state funds are
paid for the services of such county agent?"

The applicable statute authorizing the appointment of a
"county agent" is section 7045 of Burns 1929 Supplement to
Burns Annotated Indiana Statutes of 1926, which provides
as follows:

"Whenever twenty or more residents of a county who
are actively interested in agriculture shall file a peti-
tion with the county board of education for a county
agent, together with a deposit of five hundred dollars
to be used in defraying expenses of such agent, the
county board of education shall file said petition within
thirty days of its receipt, with the county council, which
body shall, upon receipt of such petition, appropriate
annually not less than fifteen hundred dollars and not
more than four thousand dollars to be used in paying
part of the salary and expenses of such county agent, which may include compensation for office help. When the county appropriation has been made, the county board of education shall apply to Purdue University for the appointment of a county agent, whose APPOINTMENT shall be made ANNUALLY, except that reappointment may be made for a term of two years, and be subject to the approval of the county board of education and the state board of education. When such appointment has been made, there shall be paid from the state fund provided for in this act, to Purdue University, to be paid to the county agent, the sum of one thousand dollars per annum as a part of the salary of the county agent, appointed as herein provided, payments to be made in equal monthly installments.

"It shall be the duty of such agent, under the supervision of Purdue University, to co-operate with the farmers' institutes, farmers' clubs and other organizations, conduct practical farm demonstrations, boys' and girls' clubs and contest work and other movements for the advancement of agriculture and country life and to give advice to farmers on practical farm problems and aid the county superintendent of schools and the teachers in giving practical education in agriculture and domestic science.

"The county board of education is hereby authorized to file monthly bills covering salary and expenses of county agent, the same to be approved by Purdue University, with the county auditor who shall draw his warrant or warrants on county treasurer for the payment of same." (Our italics and capitals.)

While your second question does not clearly so state, I assume it has reference to the case of, and is upon the theory of, a vacancy produced by a county agent having completed the term for which he was appointed. It has been contended that section 3 of Article 15 of the Indiana Constitution applies to prevent such a vacancy, on account of which a present incumbent should be held to hold over until a reappointment or until a new county agent is appointed in his stead. The constitutional provision above referred to is as follows:
“Whenever it is provided in this Constitution or in any law which may be hereafter passed that any officer, other than a member of the general assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term and until his successor shall have been elected and qualified.”

Burns Annotated Indiana Statutes of 1926, Sec. 232.

I think it is apparent that the question of the applicability of section 3 of article 15, supra, to county agents lies at the threshold of the investigation. If the above section applies, then a county agent holds over. If it does not apply, then a county agent much rely for his tenure upon an annual appointment, or, in the case of a reappointment, his appointment may be for a term of two years.

Burns 1929 Supplement to Burns Annotated Indiana Statutes of 1926, Sec. 7045.

Whatever may be said as to the applicability of the above article and section of the Constitution, I think it is clearly the duty of Purdue University to continue to make appointments upon the expiration of a previous contract with a county agent until a new county agent is found, who is approved by the county board of education and the state board of education. If this is not true, and it shall be held that the hold over provision of the Constitution applies, then such a hold over county agent may continue indefinitely at the pleasure of Purdue University, even though his reappointment is disapproved by both the county board of education and the state board of education.

It may be observed that the status of a county agent, as to whether he is an officer or an employee, is not entirely clear. While his duties are prescribed by statute, as a matter of practice, it is my understanding that he is required to sign a contract. An office has been defined by the Supreme Court of Indiana as “a public charge or employment, in which the duties are continuing, and prescribed by law and not by contract, invested with some of the functions pertinent to sovereignty, or having some of the powers and duties which inhere within the legislative, judicial or executive departments
of the government, and emolument is usual, but not a necessary element thereof."

Wells v. State, ex rel., 175 Ind. 380, at page 384.

In so far as the duties of a county agent are fixed by statute, his status, therefore, partakes of the nature of an office, and in so far as they are fixed by contract, his status would appear to be that of an employee. The office or employment, whichever it may be, is created by an act, entitled "An act to provide for the encouragement, maintenance and supervision of vocational education in industries, agriculture and domestic science," and it has been suggested that such county agent should be treated as a member of the staff in the extension division of Purdue University. It is undoubtedly true that the statute requires him to perform his duties "under the supervision of Purdue University." Burns 1929 Supplement to Burns Annotated Indiana Statutes of 1926, section 7045.

I think, too, that the name "county agent" suggests certain implications which have a bearing upon the status of such "county agent" as an officer or employee. It will be noted that section 8 of the Vocational Education Law of which section GJDE, supra, is a part, provides for the appointment of an "agent" in supervising agricultural education, "who shall serve in a dual capacity as an agent of the state superintendent and an assistant at Purdue University." It is also provided that "such person shall be subject to removal for cause by the state board of education." Burns Annotated Indiana Statutes of 1926, section 7041. Section 12 of the act which, as subsequently amended, is section 7045, supra, provides for the appointment of a "county agent," who apparently assumes within his county a position and status similar to the position and status assumed by the "agent" provided for in section 8 within the entire state.

The method of the appointment of a "county agent" also is significant. He is appointed by Purdue University upon the application of the county board of education "subject to the approval of the county board of education and the state board of education." Burns 1929 Supplement to Burns Annotated Indiana Statutes of 1926, section 7045. As the section was originally enacted, it provided that the appointment should be made annually (Acts of 1913, page 43)—this provision having been subsequently amended, however, to authorize
a *reappointment* for a term of two years within the discretion of the parties making and approving the appointment. The length of service, I assume, is embodied in the contract.

In view of the foregoing, I think it is doubtful whether a "county agent" is an "officer" within the meaning of the section of the Indiana Constitution above quoted, who is entitled to "hold over" upon the expiration of a "given term."

Moreover, the law under consideration does not provide upon a *reappointment* that the county agent "shall hold his office for any given term"; that is, *fixed term*. The term may be fixed by the appointing authorities at either one year or two years. The constitutional provision above quoted, it will be observed, provides a mandatory rule of construction applicable to all laws of the state which fix a definite term of office for officers other than members of the general assembly, providing that in all such cases "the same" (meaning the Constitution or laws) "shall be construed to mean that such officer shall hold his office for such term" (that is, the term fixed by said law) "and until his successor shall have been elected and qualified." But this law does not fix a definite term, at least, in the case of a reappointment. That question, within the limits fixed by law, is left to the appointment authorities, and to that extent, at least, the term of service is contractual. It is clearly the intention of the above section 7045, to limit the term of service of a county agent without reappointment to not more than one year in the case of a first appointment, and to not more than two years in the case of a reappointment, and unless such terms are extended by the "hold over" provision of section 3 of Article 15 of the Indiana Constitution, the otherwise clear meaning of the language of the statute should prevail.

As already stated, it is the understanding of the writer, that as a matter of practical and administrative construction and procedure, county agents, upon being appointed, are required to sign contracts. These contracts may cover a period of one year, or in case of a reappointment, may be for a period of two years. It is my opinion, for the reasons herein given, that section 3 of Article 15 of the Indiana Constitution does not apply to extend the term of service of a "county agent" and that such term is limited by the provisions of his contract as fixed by the appointing authorities pursuant to law.
From the foregoing, it follows that, in my opinion, your first question should be answered in the negative and your second question should be answered in the affirmative. The above answers, however, are subject to the following limitations, viz.: while your questions seem to assume that the appointment of a "county agent" is made by the county board of education, the law specifically and in terms provides for the appointment to be made by Purdue University subject to the approval of the county board of education and the state board of education. In other words, an effective appointment requires the approval of the two boards and the designation by Purdue University.

WOMAN'S PRISON, SUPERINTENDENT OF: Whether it is permissible to give "time off" for good behavior to inmates.

February 13, 1933.

Mrs. Marion F. Gallup,
Superintendent, Indiana Woman's Prison,
Indianapolis, Indiana.

Dear Madam:

I have before me your inquiry of February 8th, in which you desire me to express an opinion as to whether or not it is permissible for your institution to give "time off" for good behavior to the inmates of the Indiana woman's prison.

Under the provisions of an act of 1883, a diminution of the sentence because of good behavior was authorized. Later, under our so-called Indeterminate Sentence Law, the former statute was repealed by implication. The question of whether or not the two statutes could stand together, was passed upon in the case of McCoy v. Reed, 172 Ind. 182, in which case, at page 193 of the opinion, the court used the following language:

"The inconsistencies between the provisions of these two acts are obvious; therefore, it is not necessary that all be referred to or pointed out specifically. That the act of 1883 was repealed by implication by the indeterminate act in question, follows as a logical conclusion."

It is my conclusion, therefore, that there is no provision whereby you may shorten the period of the incarceration of your prisoners for so-called "good behavior" and only legislation authorizing the same would make such action possible.