warrant shall have been drawn pursuant to some order of the board of commissioners or judgment of the court which is either void or voidable, but the validation of such act of the auditor shall not prevent the recovery of any sums of money from any person receiving the same that might have been recovered if this Act had not been passed."

It seems the intent of this Act that public business shall not be disturbed by reason of fear of personal liability on the part of the County auditor, and he is therefore released from liability.

Your seventh question is answered in the negative.

MOTOR VEHICLES, BUREAU OF: Reciprocity commission.  
Motor vehicle agreement with Illinois.  

July 29, 1937.

Hon. Frank Finney, Commissioner,  
Bureau of Motor Vehicles,  
Indianapolis, Indiana.

Dear Mr. Finney:

This is in answer to your request for an interpretation of certain language in the Agreement of Reciprocity dated December 6, 1936, between the Reciprocity Commission of Indiana and officials of the State of Illinois, with respect to motor vehicles operated between the two States. You attach a copy of such agreement and submit the following facts out of which the problem has arisen:

"An Ohio resident engaged in carrying freight in interstate commerce has been authorized by the Public Service Commission of Indiana to operate in this State. The Ohio resident operates motor vehicles from several states, including motor vehicles owned by Illinois residents which have been duly registered in Illinois.

"The arrangement between the Ohio operator and the Illinois owner is what is generally known as an "Owner-Operator" agreement. That is, the vehicles are leased by the Ohio resident operator and the owners of the vehicles are employed to drive them for an agreed compensation."
“We request an opinion as to the rights in Indiana of the Illinois owned vehicle under the Reciprocity Agreement. It must be understood also that there is an existing Reciprocity Agreement between Indiana and Ohio, substantially the same as the Illinois agreement.”

The agreement was made on the part of your commission under authority of chapter 251 of the Acts of 1933 of Indiana. (p. 1130.)

The Illinois Motor Vehicle Act of 1919, as amended in 1935, requires motor vehicles to be registered and to carry license plates, and carriers of freight are required to pay certain taxes. The sections containing such provisions are referred to in the fore part section 20 of the Illinois law, which provides for the matter or reciprocity in the movement of motor vehicles. Such section is as follows:

“Sec. 20. As amended. Except as is herein provided for foreign corporations, the provision of sections 8, 9, 9b, 9c, 9d, 9e, 9f, 9g, 9h, 9i, 9j, 9k, 10, 14, 17 and 27 of this Act shall not apply to any motor vehicle or motor bicycle owned by non-residents of this State if the owner thereof has complied with the law requiring the registration of motor vehicles or motor bicycles or the names of the owners thereof in force in the city, state, foreign country or province, territory or Federal district of his residence; and the registration number showing the initial or abbreviation of the name of such city, state, foreign country or province, territory or Federal district is displayed on such vehicle substantially as is provided in section 14 of this Act: Provided, that the provisions of this section shall be operative as to a motor vehicle or motor bicycle owned by a non-resident of this State only to the extent that under the laws of the city, state, foreign country or province, territory or Federal district of his residence, like exemptions and privileges are granted to motor vehicles or motor bicycles duly registered under the laws of and owned by residents of this State. If under the laws of such city, state, foreign country or province, territory or Federal district, motor vehicles or motor
bicycles owned by residents of this State, operating upon the highways of such city, state, foreign country or province, territory or Federal district, are required to pay the registration fee and carry the license plates or pay any other fee or tax to such city, state, foreign country or province, territory or Federal district, the motor vehicles or motor bicycles owned by residents of such city, state, foreign country or province, territory or Federal district, and operating upon the highways of this State shall comply with the provisions of sections 8, 9, 9b, 9e, 9d, 9e, 9f, 9g, 9h, 9i, 9j, 9k, 10, 14, 17 and 27 of this Act. Foreign corporations, partnerships and individuals owning, maintaining or operating places of business in this State and using motor vehicles or motor bicycles in connection with such places of business, shall comply with the provisions of sections 8, 9, 9b, 9e, 9d, 9e, 9f, 9g, 9h, 9i, 9j, 9k, 10, 14, 17 and 27 of this Act insofar as the motor vehicles and the motor bicycles used in connection with such places of business are concerned.” (Illinois Acts of 1919, page 668, Acts of 1935, page 1233.)

It should be observed that the Illinois law contains no provision for a reciprocity commission. The statute is in a sense self-operating. The Illinois authorities simply accepted the statement of your commission as an assurance that Indiana would grant to Illinois motor vehicles the same exemption as to the payment of fees that Illinois by its laws granted to Indiana motor vehicles.

The main purpose of entering into the Reciprocity Agreement upon your part was to secure for Indiana interstate motor vehicle carriers the rights and privileges contemplated by the above Illinois statute.

A study of chapter 251 of the 1933 Indiana statute will disclose that the Indiana commission went to the limit of its authority in entering into the agreement and it ought not to be extended beyond its clear intent. This is said without reference to the amendment made in 1937 to chapter 231 of the 1933 Act. The Indiana commission considered that it was authorized to say to the Illinois officials who were responsible for the enforcement of the Illinois Motor Carrier Statute, “We accept your law and will see to it that Illinois resident
operators are accorded the same exemption in Indiana that you give to our Indiana operators in Illinois.” The Indiana-Illinois reciprocity agreement of December 6, 1936, after referring to the provisions of the 1933 Indiana law under which your commission made the agreement, sets out the above section 20 of the Illinois law and then states:

“BE IT, THEREFORE, RESOLVED, That said section 20 of said Act of the State of Illinois is hereby accepted in all its terms and provisions and that this commission and the governor of the State of Indiana in pursuance to said chapter 251, above named, do hereby agree to waive all provisions of the Indiana law relative to the movement, registration and regulation of motor vehicles owned and licensed in the State of Illinois, including Public Service Commission filing fees, and using the highways of the State of Indiana, except that all provisions of law, rule and regulation providing for other than the payment of a tax, assessment or fee remain in force.”

The question now presented is as to the rights in Indiana under the agreement of a resident of Ohio who operates a truck owned by a resident of Illinois and leased to the Ohio resident under a contract referred to as “Owner-Operator” agreement. The words “owner-operator” would more nearly describe the relation between the Ohio resident and the Illinois vehicle owner if it read “owner-driver.” While the title to a leased motor vehicle may be in the driver and the vehicle may have been registered by him in Illinois, the real operator that carries on the carrier business for hire is the Ohio resident. The State of Indiana, especially the Public Service Commission, must look to the operator who uses the vehicle in carrier service as the owner. It is with respect to such operator that the regulatory laws apply.

The proviso of section 20 of the Illinois law waives the requirement of registration in Illinois by a “non-resident,” to the extent that the state of residence of the non-resident exempts Illinois owned motor vehicles from registration, and also upon the condition that the vehicles are licensed or registered in the home state of the non-resident. Those were the provisions that the Indiana Reciprocity Commission accepted in the agreement and it could not go further and se-
cure an exemption under the Illinois law for the benefit of an Ohio resident interstate carrier. Especially where the vehicles in service were not registered or licensed in Indiana or Ohio. I do not believe that the State of Illinois contemplated that Indiana would exempt an interstate common carrier who was an Ohio resident because he employed vehicles that carried an Illinois license plate and were driven by an Illinois resident who held the legal title to the vehicle.

My opinion is that the language in the agreement that Indiana commission and the governor "Do hereby agree to waive all provisions of the Indiana law relative to the movement, registration and regulation of motor vehicles owned and licensed in the State of Illinois" when read in the light of the Illinois statute refers to a vehicle employed in carrier service by an Illinois resident and not to a vehicle operated by an Ohio resident. The situation which you describe in your statement of facts does not bring the case of an Ohio operator within the Indiana-Illinois agreement as I construe it, and, in my opinion, the Illinois vehicles used by him are not entitled to be exempt by the Public Service Commission of this State from the payment of its registration fees.

I understand that the payment of weight tax or license plate fees is not involved in your inquiry.

As to the Indiana-Ohio reciprocity agreement I am unable to see that it has any bearing on the question which you submit.

PUBLIC SERVICE COMMISSION: Motor vehicles—trucks used to carry livestock and agricultural commodities.

July 29, 1937.

Hon. Perry McCart, Chairman,
Public Service Commission,
State House,
Indianapolis, Indiana.

Dear Mr. McCart:

This is in answer to your inquiry of July 24, 1937, asking an opinion and calling attention to a letter from the assistant general manager of the Indiana Farm Bureau Co-operative Association. The problem about which he writes arises out of an interpretation of the 1937 amendment to the Indiana