> "Can a small loan licensee operating under chapter 125, Acts of 1917 amended by chapter 154, Acts of 1933 charge the borrower for the intangible tax stamps attached to the note secured by a chattel mortgage?"

In answer to this question beg to say that our Supreme Court, in the case of Zoercher, et al., v. Indiana Associated Telephone Corporation, has held that section 64-902, Burns Indiana Statutes, 1933 Revision, did not intend to impose a tax on the person who issues and executes an intangible. This decision contains the following language:

> "We are clearly of the opinion that the legislature, by the Act in question, intended to impose the tax upon the owner of the intangibles and not upon the issuers of the intangibles."

It is apparent, therefore, from the decision above quoted, that the man who executes his note and mortgage to the loan company cannot legally be charged with the intangible tax required under the law to be collected on such intangible.

ACCOUNTS, STATE BOARD OF: Official bonds, premiums on bonds of deputy officer properly payable out of public funds.

April 8, 1937.

Hon. W. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of April 6 containing the following questions:

> "Can the Board of County Commissioners legally pay from public funds the premium for a surety bond on a deputy appointed by the county auditor, county treasurer, county recorder, county sheriff, county coroner, or county surveyor, where a bond is required by the officer making the appointment under section 49-501, Burns 1933, where the bond is made payable to 'the State of Indiana'?

> "Can such payment be legally made where the bond is made payable to the principal, i.e., the officer appointing the deputy?"

In answer to the above questions your attention is directed to section 49-501, Burns Indiana Statutes, 1933 Revision, which provides that,

> "* * * and every * * * county auditor, county treasurer, county recorder, county sheriff, county coroner, county surveyor * * * may appoint deputies, when necessary or when required, if provision shall have been made for paying such deputies for their services from the funds of the state or of the county or from fees received for their services. Any such officer may require any deputy so appointed to give a bond, in such amount as may be prescribed by law or as may be fixed by such officer, conditioned for the proper and faithful discharge of all of his official duties as such deputy, and for the safe accounting of all funds received by him or entrusted to his care, control or management."

Your attention is directed to the language in the above statute which provides that the officers therein named may appoint deputies if provision shall have been made for paying such deputies for their services from the funds of the county or from fees received for their services. This Act, however, is supplemented by chapter 21, Acts of General Assembly of Indiana, 1933, the same being section 49-1001, Burns Indiana Statutes, 1933 Revision, which specifically provides for the appointment of deputies and for the payment thereof in the counties of this State. For example, in counties having a population of fifteen thousand or less the county auditor, county treasurer, county sheriff and county recorder were each authorized to appoint one deputy whose salary shall be paid by the county. You will note that in counties of this class the county coroner and county surveyor are not authorized to appoint deputies whose salaries shall be paid by the county. No provision is found in the general salary schedule act for the appointment of deputies for county coroners or county surveyors, except in counties of more than one hundred thousand population and in such

counties only such deputies shall be appointed as shall have the approval of the county commissioners, who shall also pass upon their salary.

It is apparent, therefore, that our statutes contemplate the appointment of deputies for the officers included in your question under the conditions prescribed by statute and where appointments are made pursuant to such statutory authorization it is my opinion that they are, when so appointed, public officers.

Wells v. State, ex rel., 175 Ind. 380.

The section of the statute above quoted (49-501, Burns Indiana Statutes, 1933 Revision) accordingly provides that,

> "Any such officer may require any deputy so appointed to give a bond, in such amount as may be prescribed by law or as may be fixed by such officer, conditioned for the proper and faithful discharge of all of his official duties as such deputy, and for the safe accounting of all funds received by him or entrusted to his care, control or management."

As was said in the case of Southern Surety Company v. Kinney, 74 Ind. App. 205,

> "Thus we have a case where a public official gives a bond required of him by his superior, in pursuance of a statute in that regard, and in which bond the official capacity of such officer is expressly recognized, and an obligation is assumed to make good losses sustained by reason of his fraud or dishonesty in connection with his office. It has been held that a bond, taken in pursuance of a public statute, falls under the description of an official bond. * * * Or, as sometimes stated, a bond taken pursuant to the requirement of a statute is an official bond."

This same authority further announces and affirms the proposition that,

> "Every bond demanded of and given by a deputy for the faithful discharge of his duties * * * is an official bond."

It is apparent, therefore, from the authorities above cited, that in counties where the statute so provides the county

officers named in your question may appoint deputies in accordance with such statutory provisions and when so appointed may require them to execute bonds, conditioned as by law required, which bonds, when so executed, will have the rank and dignity of official bonds.

Section 49-112, Burns Indiana Statutes, 1933 Revision, provides that,

> "All official bonds shall be payable to the State of Indiana" * * *

Subject to the conditions above enumerated, it is my opinion, therefore, that your first question should be answered in the affirmative.

Where these bonds are not made payable to the State of Indiana but are made payable to the principal, i.e., the officer appointing the deputy, such fact does not operate to invalidate the bond, for as was said in the above named case of Southern Surety Company v. Kinney,

> "It would be immaterial whether such bond is in terms payable to the State: The law makes it so payable."

Defects in official bonds, either as to form or substance, are cured by statute in this State.

> "No official bond shall be void because of defects in form or substance or in the approval and filing thereof, but, upon the suggestion of such defects, such bond shall be obligatory as if properly executed, filed and approved."
>
> Sec. 49-113, Burns Indiana Statutes, 1933 Revision.

It is my opinion, therefore, that your second question should also be answered in the affirmative.