The state not being liable in tort, it follows that one of its instrumentalities, in this case one with a corporate entity, is likewise not liable. While this question has not been specifically passed upon by our courts, the similar question of tort liability of school corporations has been decided by the Supreme Court adversely to the tort claimant. In the case of Freel v. School City of Crawfordsville, 142 Ind. 27, it was decided that the school city was but an agent or instrumentality of the state in performing a governmental function and that the immunity of the sovereign attaches to the agent or instrumentality of the state when so engaged in a governmental function. This reasoning is equally applicable to the higher branches of our educational system.

Consequently, it is my opinion that the trustees of Indiana University are subject to no tort liability in the performance of their duties and, therefore, would be acting beyond their legal authority to purchase public liability insurance against a non-existent liability.

ACCOUNTS, STATE BOARD OF: Prosecuting Attorneys.
Right to retain fee in dog tax prosecutions.

June 8, 1938.

Hon. William P. Cosgrove,
State Examiner, Division of Accounting and Statistics,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of June 6 in which you inquire as to the right of a prosecuting attorney to retain as his personal property the fee of $5.00 allowed as a charge for prosecuting violation of the dog tax law.

In reply to this question your attention is directed to Section 4, Chapter 133, of the Acts of the Indiana General Assembly, 1937, which provides that the prosecuting attorney shall prosecute those who own, harbor or keep dogs without the payment of the tax thereon “and upon conviction thereof he shall receive the sum of five dollars ($5.00) for each case so prosecuted, and such fee shall be charged as part of the judgment and cost against such person so prosecuted.” While it would appear from the language of this section that the
prosecutor is entitled to this fee, your attention is directed to
Chapter 128, Acts of the Indiana General Assembly, 1937,
which is an amendment in part of the original fee and salary
law and reads as follows:

"Prosecuting attorneys and their deputies shall re-
ceive for their services the compensation provided in
this Act, which compensation shall be paid monthly,
from the general fund of the county, in the manner now
provided by law for the payment of official salaries, and
they shall receive no other compensation, fee, per diem,
per centum or other remuneration whatsoever. No pay-
ment of salaries shall be made until the prosecuting at-
torney or his deputy has made a report of all fees col-
lected and has paid such fees into the county treasury."

This Act was approved upon the same day that the dog tax
law was approved. It is my opinion that the Fee and Salary
Act controls and that the prosecutor is accordingly not per-
mitted to retain the $5.00 fee as his personal property. This
should be put into the county treasury as other fees of the
prosecuting attorney are collected and paid.

NURSES, EXAMINATION AND REGISTRATION OF: Au-
thority to prescribe educational requirements as prerequi-
site to examination. Legal status of rules and regulations.

June 8, 1938.

Miss Cordelia Hoeflin, R. N.,
Secretary, Indiana State Board Examination
and Registration of Nurses,
301 State House,
Indianapolis, Indiana.

Dear Madam:

Receipt is acknowledged of your letter of recent date re-
questing an official opinion on the following questions:

"We wish your interpretation of the clause in our
law under section 4. Under this section does this board
have the power to set the educational requirements of
four years of high school or more for matriculation to
accredited schools of nursing in Indiana?"