leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate."

Under the contract in this case it is agreed that the first annuitant shall lease the property involved from the university during his life and that each successive annuitant will lease said property during the life of such annuitant so long as the property is owned by the university. I think that the above section of the statute applies to such a case and that the opinion heretofore given, dated April 14, 1938, is controlling.

In my opinion the real estate is exempt from taxation insofar as the university is concerned; that the annuity is also exempt from taxation, but that the leasehold interest is subject to taxation as real estate under the provisions of section 64-513 of Burns' Indiana Statutes Annotated of 1933.

See San Pedro L. A. & S. L. R. Co. v. City of Los Angeles (Cal.), 170 Pa. 393;
See also, Mehne, Treas. v. Dillon, 203 Ind. 346.

MUSCATATUCK COLONY: Whether superintendent is a lucrative officer and must vacate office of member of General Assembly.

July 14, 1938.

Dr. George E. Denny,
Medical Superintendent, Muscatatuck Colony,
Butlerville, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of July 13, 1938, in which you submit the question as to your eligibility to serve in the Special Session of the Indiana General Assembly called for July 19.

The fact that you are now the duly appointed, qualified and acting superintendent of the Muscatatuck Colony of Butlerville, Indiana, raises the question as to whether or not such appointment does not operate to vacate your office as a member of the General Assembly.
In reply to this question, your attention is directed to section 9, article 2 of the Constitution of the State of Indiana, which provides that—

"nor shall any person hold more than one lucrative office at the same time."

The law is well settled that the acceptance of one office under the Constitution vacates any other office held by such person.

Dailey v. State, 8 Blackford 329;
Kerr v. Jones, 19 Ind. 351;
Mehringer v. State, 20 Ind. 103;
Howard v. Shoemaker, 35 Ind. 111.

The only question, therefore, is whether your position as superintendent of the Muscatatuck Colony is a lucrative office within the meaning of our Constitution. Chapter 231, Acts of the Indiana General Assembly of 1937 provides that—

"The board of trustees of such colony with the approval of the government, shall appoint a superintendent of such colony, and the board of trustees and the superintendent so appointed shall assume charge of such colony on the first day of July, 1937."

The general law governing the colony provides that the salary of all officials and employees shall be fixed by the board of trustees. The position is, therefore, a lucrative one and in my opinion is also an office.

It has been held by the Supreme Court that everyone who is appointed to discharge a public duty and receives compensation in whatever shape is constituted a public officer.

Foltz v. Kerlin, 105 Ind. 221.

"An office," says the Supreme Court of the United States, "is a public station or employment conferred by the appointment of government. The term embraces the idea of tenure, duration, emolument and duties."

United States v. Hartwell, 6 Wallace 385.

It has further been held by the Supreme Court that the office of trustee of the Institute for the Education for the Deaf and Dumb is a lucrative office.

Chambers v. State, ex rel, 127 Ind. 365.
It has also been held that the office of director of the Southern Prison is a lucrative office.

Howard v. Shoemaker, 35 Ind. 111.

Unquestionably the trustees of the Muscatatuck Colony are lucrative offices in the state, and the superintendent employed by them and charged by law with the joint responsibility of operating this state institution would also be deemed a lucrative office under the laws of the state.

This being true, it is my opinion that your acceptance of the position as superintendent of the Muscatatuck Colony vacates your office as a member of the General Assembly.

BARBER EXAMINERS, STATE BOARD OF: Power of board to make certain rules and regulations. Barber schools commissions paid to students. Regulating of prices charged.

July 15, 1938.

Mr. Frank McKamey,  
Secretary, Indiana State Board of Barber Examiners,  
State House,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your request for an official opinion in answer to the following inquiry:

“Can this board legally make a ruling:

1. To prohibit barber schools from paying commissions to students for work done by them?
2. To prohibit such schools from charging customers more than an amount sufficient to pay for the supplies used?”

Your attention is directed to section 23, chapter 48, Acts of 1933 (Burns’ Indiana Statutes Annotated 1933, section 63-323), which reads in part as follows:

“The board shall have authority to make reasonable rules and regulations for the administration of the provisions of this act.”