As was said by Judge Kime in his concurring opinion in the case of Yellow Manufacturing Acceptance Corporation v. Linsky, 99 Ind. App. 691:

"In Indiana today it is possible for the mechanic to determine, with very little effort, the positive ownership of an automobile. If the repair job is not worth this effort it is not worth considering by the mechanic."

The garageman or mechanic who makes repairs on a stolen automobile does so at his peril, and it is my opinion that he is not entitled to retain possession of the automobile upon which such repairs have been made except he can show that such repairs were ordered by the owner or his duly authorized agent.

It is my opinion, therefore, that in the absence of such a showing, a police officer finding a stolen car in the possession of a garageman may take possession thereof and deliver same to the lawful owner.

CONSERVATION, DEPARTMENT OF: Right of state to convey land in Pokagon State Park for right-of-way for county road.

September 27, 1938.

Hon. Virgil M. Simmons,
Commissioner, Department of Conservation,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in which you state that a number of property owners on Lone Tree Point at Lake James are desirous of petitioning the Board of County Commissioners of Steuben County for the improvement and resurfacing of a county road which runs through Pokagon State Park. You state further that this road was established many years before the State of Indiana acquired the land now comprising Pokagon State Park and is the only inlet and outlet to the cottages located on Lake James.

You further state that the state owns the land on both sides of the road for a considerable distance and that a part of the road is used as an entrance to the park and connects
with State Road 127, but that the part which the cottage owners desire to have improved and resurfaced is beyond the part used as an entrance by the state.

Based upon the above statement of facts, you desire to be informed whether the Department of Conservation has the authority to grant an easement for the purpose of widening the above road, the grant to be a strip twenty-five feet wide off of each side of the park property.

It is well settled that state officers can only deal or contract in relation to the property of the state when they are authorized to do so by the express provisions of some statute and that any agreement made or attempted to be made in relation to such property which is not so authorized is void as against the state.

McCaslin v. The State, ex rel., Auditor of State, 99 Ind. 420, p. 440;

In the last case above mentioned, the court uses the following language:

"** * * Public officers have no authority to dispose of the state's lands except such as is conferred upon them by positive statute. Any sales of such lands by them without such statutory authority are void as against the state, unless they are in some proper way ratified by the state. * * *"

The general statutes of the state with respect to the sale of state lands authorize the sale of swamp and indemnity lands, saline lands, the lands which have escheated to the state, and which may escheat to the state, and the lands forfeited to the state by non-payment of taxes, and which may hereafter become forfeited by non-payment of taxes, or any other lands belonging to the state and not set apart by law for state purposes.

Numerous special provisions are made for specifically described tracts, but I do not find any provision which would authorize the department to sell the above described right-of-way. The department would, of course, have the right to make such improvements as may be necessary in the form of roadways within the park itself, but in my opinion it could not
lawfully under existing statutes sell the necessary land to widen this particular road to be established as a county road. This particular county road would be vacated except for the fact stated in your letter that the vacation of the road would make privately owned land inaccessible to a public highway.

Burns' Indiana Statutes, Annotated 1933, Cumulative Pocket Supplement, June, 1938, Sec. 60-813.

INSURANCE DEPARTMENT: Surplus amount necessary for certificate of authority to do insurance business.

September 27, 1938.

Hon. George H. Newbauer,
Insurance Commissioner of State of Indiana,
State House,
Indianapolis, Indiana.

Dear Mr. Newbauer:

In your letter of September 23, you propound two questions. They are: "Can this Department legally authorize a new stock company to issue contracts of life insurance if at the time it applies for its authority to issue contracts of insurance it has less than fifty thousand of surplus?"

"If this Department can legally license a new company with less than fifty thousand of surplus, then what amount of surplus is required under the law?"

Your first question arose out of paragraph E of Section 74 of Chapter 162, of the Acts of the Indiana General Assembly for 1935, which chapter is known as the Indiana Insurance Law. This paragraph is a portion of the section dealing with requirements for stock companies as to the amount of capital stock paid up in money. Paragraph E is as follows:

"Each domestic capital stock company organized under this law, in addition to the capital in and by this section required, shall have a surplus paid-in equal to at least fifty per cent (50%) of the capital required of such company."

In the instant case the capital required of the company is one hundred thousand dollars therefore then the question