Therefore, it is my opinion that minors emancipated from the care and custody of their parents or guardians by marriage or otherwise are subject to the statutory provisions regulating the employment of minors, including the forty working hours per week limitation imposed by the 1967 General Assembly.

OFFICIAL OPINION NO. 4
January 21, 1968

DUAL OFFICE HOLDING—CONSTITUTIONAL LAW—
OFFICERS, CITY—Right of City Controller to
Also Serve as Controller for Municipal
Transportation Corporation.

Opinion Requested by Mr. Richard L. Worley, State Examiner.

This is in response to your request for an Official Opinion on the legal right of the City Controller of South Bend, Indiana, to also serve as Controller for the South Bend Public Transportation Corporation, the ultimate question being whether such service would violate the constitutional prohibition against holding two lucrative offices.

Article 2, § 9, of the Constitution of Indiana provides in pertinent part:

"No person . . . shall . . . hold more than one lucrative office at the same time, except as in this Constitution expressly permitted. . . ."

It must, therefore, be determined whether the above two positions are "offices" as contemplated by the prohibition
against holding dual offices and if so, whether they are "lucrative."

A public office was defined in relation to Article 2, § 9, of the Constitution of Indiana, in Wells v. State ex rel. Peden, 175 Ind. 380, 94 N.E. 321 (1911); cited with approval in Book v. State Office Bldg. Comm’n., 238 Ind. 120, 153, 149 N.E. 2d 273, 290 (1958), as follows:

"'An office is a public charge or employment, in which the duties are continuing, and prescribed by law and not by contract, invested with some of the functions pertinent to sovereignty, or having some of the powers and duties which inhere within the legislative, judicial or executive departments of the government, and emolument is a usual, but not a necessary element thereof.'"

In applying a similar definition to the position of City Attorney, one of my predecessors concluded that,

"In the event that the city attorney is appointed a member of the board of public works and safety, under the authority granted in Burns' 48-1219, supra, his duties would involve an exercise of some portion of the sovereign power under the state. The board of public works and safety has immediate control of the police force, including its organization, operation and supervision to insure the public peace by the detection and suppression of crime under the laws of the state." 1964 O.A.G. p. 50.

However, if the City Attorney was not appointed or declined appointment to the Board of Public Works and Safety, then his status would be that of an employee and would not fall within the prohibition of Article 2, § 9.

The City Controller in cities of the second class (South Bend being a city of the second class) is appointed by the Mayor, is a member of the Board of Public Works and Safety and has statutorily defined duties, the nature of which involves the exertion of control over the finances of the city.
Acts 1933, ch. 233, § 5, as last amended by Acts 1959, ch. 107, § 1, the same being Burns § 48-1215 and Acts 1905, ch. 129, §§ 87-88, as last amended by Acts 1909, ch. 188, § 5, the same being Burns §§ 48-1601—1602.

Applying the rationale from past opinions regarding City Attorneys, if the City Controller serves on the Board of Public Works and Safety, he holds an “office” as contemplated by Article 2, § 9.

The same office would be “lucrative” since compensation is given in return for service. The Supreme Court of Indiana in the Book case, supra, defined “lucrative office” as “... an office to which there is attached a compensation for services rendered.” Similar language has been recently interpreted to mean “entitled to compensation” regardless of whether compensation is in fact paid. 1967 O.A.G. p. 268.

The question, therefore, essentially becomes one of whether the position of Controller for the South Bend Public Transportation Corporation is a “lucrative office” within the meaning of Article 2, § 9.

I have recently stated that:

“It has long been the law in Indiana that a position or job that is wholly and purely municipal in its character is not an office within the context of Art. 2, § 9, since it does not involve the exercise of the State’s sovereignty. State ex rel. Platt v. Kirk, 44 Ind. 401 (1873). Chambers v. State ex rel. Barnard, 127 Ind. 365, 48 N.E. 103 (1890),” 1967 O.A.G. p. 1.

The above statement was made after reviewing the status of the position of Executive Director of the Housing Authority of East Chicago and upon concluding that said position is not an “office” within the meaning of Article 2, § 9 of the Constitution of Indiana. Like the Housing Authority, the Public Transportation Corporation, although designated as a “distinct municipal corporation” which is “coterminous with the city,” Acts 1965, ch. 387, § 10, the same being Burns § 48-8810, is in effect a city department exercising a proprietary function and as such does not exercise state sovereignty.
Consequently, the position of Controller of the South Bend Public Transportation Corporation is not an "office" within the meaning of Article 2, § 9 of the Indiana Constitution. Therefore, it is my opinion that the City Controller of South Bend could simultaneously serve as Controller of the South Bend Public Transportation Corporation.

OFFICIAL OPINION NO. 5
March 8, 1968

CRIMINAL LAW AND ENFORCEMENT—OFFICERS, COUNTY—Acceptance of Cash Bail or Other Deposit by Sheriff.

Opinion Requested by Mr. James A. Buck, Legal Deputy, Marion County Sheriff.

I am in receipt of your letter requesting an opinion as to whether the Sheriff of Marion County may accept cash bail or a cash deposit in lieu of bail when the office of the County Clerk is closed.

The nature of bail and of cash deposit in lieu thereof can be gleaned from the following judicial statements:


"Technically considered, bail is the delivery of a person to the sureties on his bond, he being supposed to continue in their friendly custody instead of jail; so that the sureties on the bail bond become the bailees or custodians of the person of their principal, and may at any time, before the entry of forfeiture or possibly, judgment, be exonerated by his surrender