given case, and whether or not the article or item purchased is in fact “printing,” both of which terms are used in the statute, will have to be determined on the merits of each particular case. However, the definitions expressed herein can be used as a basis for determining these matters as they arise.

In summary, therefore, I am of the opinion that there is no conflict between Burns' 60-1805, supra, and Burns' 63-1638 et seq., supra, with respect to the purchasing of printing for agencies of the state. Such purchases must be advertised and the contracts awarded annually or biennially, as provided in Burns' 63-1638 et seq., supra, except in the case of “emergency” printing needs. “Emergency” printing needs may be advertised for specially at any time, but if not so advertised, then they must be given to the contractor already awarded the division of the Class in which they fall.
to that regularly received in the performance of their main duties.”

In any such situation pertaining to the legal right of an individual to simultaneously hold more than one position under state government, the following tests should be taken into consideration, namely:

(1) Is each position a “lucrative office” within the meaning of the Indiana Constitution, Art. 2, Sec. 9?

(2) Would such holding be in violation of the Acts of 1905, Ch. 129, Sec. 46, as amended, and found in Burns’ (1963 Repl.), Section 48-1247?

(3) Are the offices incompatible with each other?

(4) Is there a conflict of interests?

(5) Would such holding be against public policy?

The constitutional prohibition, contained in the Indiana Constitution, Art. 2, Sec. 9, supra, is not applicable, in the instant case, inasmuch as to be classed as the holder of a “lucrative office * * * under the State,” one must be in a position to exercise a portion of the sovereignty of the State of Indiana. The law is well settled in Indiana that a city fireman is merely an employee and not an officer within the meaning contained in said constitutional prohibition. Therefore, a city fireman performing additional work under the city engineer, as outlined in your letter, would not be in violation of the Indiana Constitution, Art. 2, Sec. 9, supra.

The answer to your question requires a consideration of the provisions of Burns’ 48-1247, supra, which reads, in part, as follows:

“No member of the common council or board of trustees, nor any officer, clerk, or deputy of such officer, or other employee of any city or incorporated town of this state, shall, either directly or indirectly, be a party to, or in any manner interested in, any contract or agreement, either with such city or incorporated town, or with any officer, board, clerk, deputy or em-
ployee of such city or incorporated town, for any matter, cause or thing by which any liability or indebtedness is in any way or manner created or passed upon, authorized or approved by such council or board of trustees or by any member thereof, or by any officer, board, clerk, deputy or employee of such city or incorporated town. Any contract in contravention of the foregoing provisions shall be absolutely void; and any person violating any of such provisions shall be fined not more than one thousand dollars [$1,000] and imprisoned in the state prison not less than one [1] year nor more than ten [10] years * * *” (Our emphasis)

The fact is well recognized that city firemen, in numerous instances, seek and follow other gainful employment during their off-duty hours, to supplement their income from the municipality by which they are employed as firemen. The propriety of such off-duty employment, outside the field of municipal government, was approved in the case of Mobley v. City of Evansville (1960), 130 Ind. App. 575, 167 N. E. (2d) 473. However, your questions involve the legality and propriety of such off-duty employment by another department of said city, specifically, a city fireman performing work for and under the supervisory jurisdiction of the city engineer. The service to be performed, under the city engineer, is not a service which the city fireman is obliged to render as a member of the fire department.

A general statement on the subject of entitlement to extra compensation is found in 62 C. J. S. Municipal Corporations, § 534, Extra Compensation, page 981, which reads as follows:

“The rule of law forbidding extra compensation to a municipal officer does not extend to payment for services not within the compass of his office, unless it appears that such services were intended to be gratuitous, or unless to permit such payment would be violative of a statute. Thus an officer appointed by the common council to perform an extraofficial service stands in the same position as a stranger and is entitled to payment therefor.” (Our emphasis)
In 20 I. L. E. Municipal Corporations § 82, Additional Compensation, 409, 410, it is said:

"Ordinarily a person holding a municipal office for which a salary has been established by a statute or pursuant to statute is not entitled to receive additional compensation for performing duties which are required by law unless there is a provision for such additional compensation, and then additional compensation may be paid only to such extent * * *

"In the absence of any valid prohibition against one person holding two municipal offices, a person who holds two such offices may be entitled to receive the salary that is attached to each." (Our emphasis)

The authority cited for the paragraph last above cited includes 1936 O. A. G., page 43. This Opinion involved the right to compensate the city civil engineer by additional compensation as Secretary of the Plan Commission and reads, in part, as follows:

"I am confronted, however, with the provision of Section 21 of Chapter 233 of the Acts of 1933 which expressly provides that 'the salaries as herein authorized' (including the salary of the City Civil Engineer) 'shall be in full for all services performed for the city including services for any public utility or utilities owned and operated by such city,' with certain exceptions not material to the consideration of the present question. It becomes important, therefore, to determine whether this latter provision is so far prohibitive of additional compensation as to prevent the employment by the city of the City Civil Engineer to perform duties not required by law. I doubt whether the prohibition goes that far. I think it extends only to the various duties imposed upon the officer because he is such officer. If the statute had provided that the City Civil Engineer is ex officio a member of the Plan Commission and by virtue of that office its Secretary, I think the prohibition in Section 21 supra would extend to such a case. However, he is not Secretary of the Commission by virtue of his office, that duty being imposed
upon him by the appointment of the Commission only. He could refuse the appointment and the Commission would thereupon be required to employ someone else at a salary fixed by them. If, however, they choose to employ the City Civil Engineer, (and the duties required of him as Secretary of the Commission are not incompatible with his other duties) it seems to me that he would be entitled to receive compensation for his services in such amount as is fixed by the Commission under the statute. Your question is answered in the affirmative.” (Our emphasis)

In considering the scope of the prohibition contained in Burns’ 48-1247, supra, it is interesting to note the case of Raymond v. Bartlett et al. (Calif. 1947), 175 Pac. (2d) 288, 289, 290, wherein it is said:

“A city’s employee or elected official is disqualified to hold his position or office only when by his acts he would be actually advancing his personal interests or those of another dealing as an independent contractor with the municipality. His acts cannot conceivably prejudice the public entity while he is working solely for it * * * 

“If a contract to be made with the state or any arm thereof would if consummated vest an interest in any official who has negotiated it or must authorize or approve it, and such interest is adverse to the public body, then it is forbidden and the official becomes subject to the provisions of section 886, supra, and of section 1090 of the Government Code. But if a city official is merely employed to perform other services for the city not incidental to his own office such statutes do not apply * * *”

The above case supports the position taken in 1936 O. A. G., page 43, supra.

The problem of so-called “interested dealing contracts,” such as are referred to in Burns’ 48-1247, supra, have long been a major concern to this office and the State Board of
Accounts. In the case of Noble et al. v. Davidson (1911), 177 Ind. 19, 28, 29, 96 N. E. 325, the court said:

"* * * This court has ever steadfastly adhered to the rule which invalidates all agreements injurious to the public, against the public good or which have a tendency to injure the public. Contracts belonging to this class are held void, even though no injury results. The test of validity of such agreements is the tendency to public injury, regardless of the actual intent of the parties, and regardless of actual results.

"Integrity in the discharge of official duty is zealously guarded by the law * * *"

In my Opinions, on this subject, I have repeatedly advised the need for extreme caution and that the risks involved in such contracts require the utmost caution in all situations and prudent public officials would resolve all doubts by avoiding any connection with such contracts.

The provisions of Burns' 48-1247, supra, were considered in 1962 O. A. G., pages 62, 65, No. 14, and the following statement was made therein:

"In an Official Opinion of this office (1943 O. A. G., pages 340, 343), the legislative history and effect of Burns' 48-1247, supra, was analyzed at length and it was concluded as follows:

"It is evident that by the amendment the Legislature intended the statute to apply to cases where a councilman, officer, clerk, deputy or employee of the city, in his official capacity, did an official act in creating, passing upon, authorizing or approving a contract or agreement with the city in which the councilman, officer, clerk, deputy or employee was directly or indirectly interested as a private individual. It sought to prevent an agent of the city from being on both sides of the same transaction, which would also make the contract or agreement illegal and against public policy at common law.'" (Our emphasis)

In the consideration of any specific case, involving the performance of extra services, attention should be given as
to whether the municipality, in question, has any ordinance or regulation of the fire department, which prohibits such additional employment. I have been advised that, in the instant case, there is no such prohibitory ordinance or regulation.

Therefore, it is my opinion, that there is no constitutional or statutory prohibition against the city engineer employing city firemen for the purposes enumerated. In the instant case, such employment of city firemen would not be in violation of the Indiana Constitution, Art. 2, Sec. 9, supra, or the provisions of Burns' 48-1247, supra. In conclusion it is my further opinion that the responsibility for a determination as to whether such employment would be against public policy, whether the duties of the two positions would be incompatible with each other, and whether there is a conflict of interests in such employment, rests with the appointing authority.

OFFICIAL OPINION NO. 57

September 25, 1964

Mr. M. Joseph Schwartz
Executive Secretary
Indiana Board of Pharmacy
State Office Building
Indianapolis, Indiana

Dear Mr. Schwartz:

This is in response to your request for an Official Opinion concerning the statutory exemption of certain medicinal preparations containing narcotic drugs found in the Acts of 1935, Ch. 280, Sec. 8, as last amended by the Acts of 1961, Ch. 90, Sec. 4, the same being Burns' (1964 Supp.), Section 10-3526.

You state in your letter:

"Recently it was brought to the attention of the Indiana Board of Pharmacy, by the Federal Bureau of Narcotics, that there is seemingly a conflict between exemptions under the Indiana Law and those specified by the Federal Law."