OFFICIAL OPINION NO. 20

June 6, 1963

Hon. Dorothy Gardner
Auditor of State
238 State House
Indianapolis 4, Indiana

Dear Mrs. Gardner:

This is in reply to your letter of May 21, 1963, which reads as follows:

> "The Computer Committee has asked me to obtain an Official Opinion as to releasing blank warrants from the jurisdiction and control of the office of Auditor of State."

The computer committee, to which reference is made in your question, is an advisory committee created to assist the Department of Administration in reviewing and making recommendations for compatibility with existing procedures and equipment particularly in the field of data processing.

The office of Auditor of State is a constitutional office created by the Indiana Constitution, Art. 6, Sec. 1, which provides as follows:

> "There shall be elected by the voters of the State, a Secretary, *an Auditor* and a Treasurer of State, who shall, severally, hold their offices for two years. *They shall perform such duties as may be enjoined by law;* and no person shall be eligible to either of said offices, more than four years in any period of six years." (Our emphasis)

In my 1962 O. A. G., page 328, No. 59, I considered the duties and responsibilities of the Auditor of State and made the following statements in that connection:

> "It is apparent from the foregoing provision that while the Constitution of Indiana has created the office of Auditor of State it has not prescribed any specific duties in connection therewith. It does, how-

ever, authorize the Auditor of State to perform such duties as may be enjoined by law.

"1 R. S. 1852, Ch. 7, Sec. 2, as found in Burns' (1951 Repl.), Section 49-1702, enjoins the Auditor of State to perform specific duties, including those found in clause eight thereof, which provides:

> " 'Eighth. Draw warrants on the treasurer for all moneys directed by law to be paid out of the treasury to public officers, or for any other object whatsoever, as the same may become payable, and every warrant shall be properly numbered.'

"In this connection reference is made to Acts 1905, Ch. 169, Sec. 520, as found in Burns' (1956 Repl.), Section 10-3715, which provides:

> " 'If the auditor of state shall draw any warant upon the treasurer of state, unless there be money in the treasury belonging to the particular fund upon which such order is drawn to pay the same, and in conformity to appropriations made by law, he shall, on conviction, be fined not less than one hundred dollars [$100] nor more than one thousand dollars [$1,000], and be imprisoned in the county jail not less than one [1] month nor more than six [6] months.' "

In a consideration of your question, particular attention is invited to the characteristics of blank warrants to which you refer. An examination of such blank warrants indicates that they are in a form approved by the state board of accounts; that they are printed on a distinctive paper bearing a large imprint of the Seal of the State of Indiana; that they carry serial numbers; that such warrants are used in directing payments from a large number of funds, including the General Fund, Payroll Fund, Highway Fund, Working Capital Fund, Trust and Agency Fund, Distribution Fund, Gross Income Tax Refunds and others; that these warrants when completed are used and payable as are bank checks and are drawn

on the Treasurer of State. It is emphasized that, by their very nature, extreme care in handling, preparation and accounting is of prime importance and this is equally true of the supporting papers and documents used in connection with the procurement of the factual data for such warrants. It is evident that strict accountability and special safety measures for the safe-guarding and storage of such blank warrants is a continuing necessity. This is a responsibility placed on the Auditor of State by virtue of the office.

The Supreme Court of Indiana considered the provisions of the Indiana Constitution, Art. 6, Sec. 1, *supra*, in the case of State *ex rel.* Collett v. Gorby (1889), 122 Ind. 17, 26, 27, 23 N. E. 678, and the court stated:

> "* * * Section 1, article 6, of the Constitution, provides that there shall be elected by the voters of the State a secretary, an auditor and a treasurer of state, and that they shall perform such duties as may be enjoined by law. Not a single duty to be performed by these officers is prescribed by the Constitution. *If the construction contended for by the appellee can be sustained, the General Assembly may create any number of State offices its discretion may dictate, under any name it may choose, make them appointive, and transfer to them the statutory duties now performed by the* secretary, *auditor* and treasurer *of state, thus rendering the constitutional provision that these administrative State officers shall be elected by the people, a dead letter.* It would be difficult to find any constitutional provision expressly prohibiting the General Assembly from the creation of such offices, making them appointive, and from transferring to them the statutory duties now performed by the administrative State officers above named, and yet such a proceeding would be such a plain violation of the intention of the framers of the Constitution that no court would hesitate to declare that it did not possess such power. *To permit such a construction would place it in the power of the Legislative department of the State to wholly absorb and usurp the executive and administrative department.* It is immaterial whether it is usurped by the direct action of the

> General Assembly, as a legislative body, or whether it is done indirectly by its own appointed agents. The result in either case is the same * * *" (Our emphasis)

See also: Book v. State Office Bldg. Comm. *et al.* (1958), 238 Ind. 120, 167, 149 N. E. (2d) 273;

Tucker v. State (1941), 218 Ind. 614, 673, 685, 686, 703, 717, 735, 35 N. E. (2d) 270;

Carey v. State *ex rel.* Dept. Fin. Inst. (1938), 213 Ind. 181, 184, 12 N. E. (2d) 131.

In the case of The State *ex rel.* Cornwell v. Allen (1863), 21 Ind. 516, 521, 522, it is stated as follows:

> "The auditor of a county is bound, by the constitution and laws of the State * * * and *to faithfully discharge the duties of the office.* He certainly must discharge the duties of *the office, for he takes an oath and gives a bond to do that.* He may have a deputy to assist him, *but the duties of the office must be discharged under his supervision. If this is not so, the theory of the people having a right to designate who shall be their auditor is a delusion.* It is a familiar principle of law that the acceptance of every office is upon an implied contract that the acceptor will perform its duties with integrity, diligence and skill. 3 Black. Comm. 164." (Our emphasis)

See also: 42 Am. Jur., Public Officers, § 267, p. 82;

67 C. J. S. Officers, § 114, p. 402.

In my opinion the law, as stated above, is equally applicable in the case of the Auditor of State.

The Legislature in the 1961 Session of the General Assembly, in the passage of the Administration Act of 1961, *recognized the responsibility placed on state elected officials.* This is shown in my 1962 O. A. G., No. 59, *supra*, on page 333, wherein I said:

> "I have examined the Administration Act of 1961, the same being Acts 1961, Ch. 269, as found in Burns'

(1961 Repl.), Sections 60-101 *et seq.*, to determine if any provisions thereof, and particularly those in reference to the powers and duties of the data processing division of the Department of Administration are in conflict with the legally established functions of the Auditor of State.

"In my opinion no such conflict exists, particularly in view of the following language which appears in Sec. 2 of said Act, as found in Burns' (1961 Repl.), Section 60-102, which reads in part as follows:

> "'* * * The commissioner shall be well versed in administrative management and in affairs of state government which by law are the responsibility of the governor, *and shall in no manner effect the separate departments of state government which by law or the Constitution of the state of Indiana are now under the jurisdiction and are the responsibility of other state elected officials* * * *'

"In conclusion it is my opinion that if no special disbursing officer has been duly appointed for the two retirement fund agencies in question pursuant to, and in accordance with, the foregoing provision of the Financial Reorganization Act of 1947, then the only person who could legally draw checks on the retirement funds of said agencies would be the Auditor of State." (Our emphasis)

Therefore, it is my opinion, that inasmuch as you, as Auditor of State, are charged with the responsibility of safe-guarding such blank warrants at all times, together with the fact that the nature of such warrants require utmost care in handling and custody, you are not required to release blank warrants from the jurisdiction and control of the office of Auditor of State.