Where an inmate of the Indiana Boys School was a passenger in a motor vehicle driven by an employee and was injured in an accident, an action could be brought against the employee for damages based on negligence. If a judgment were rendered against the employee, then, as stated before, he would be protected to the extent of the insurance policy limits.

In answer to your questions it is my opinion:

1. That an employee driving a state-owned vehicle, which is properly in his possession, would only incur personal liability for damages for negligent operation of such vehicle in excess of the insurance policy limits on such vehicle.

2. The same answer would apply in a situation where an inmate of the Boys School was a passenger and a judgment based on negligence was rendered against the employee.

OFFICIAL OPINION NO. 7

January 12, 1962

Mr. Harry E. McClain, Commissioner
Department of Insurance
509 State Office Building
Indianapolis 4, Indiana

Dear Mr. McClain:

This is in answer to your request for an Official Opinion concerning the question of the applicability of the Acts of 1961, Ch. 263 to the holders of all lines fire and casualty agent’s licenses, your inquiry reading, in part, as follows:

“What is the interpretation to be given to the proviso found at Section 12 of Chapter 263 of the Acts of 1961? This proviso is as follows:

“* * * Provided, further, That the provisions of this act shall not apply to the holder of a valid ‘all lines fire and casualty agent’s license.’

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"Your official opinion and discussion as to the effect of this proviso on Chapter 263, Acts of 1961 is requested."

The Acts of 1961, Ch. 263, to which your question relates, as found, in part, in Burns' (1961 Supp.), Section 9-3701 et seq., is entitled:

"AN ACT concerning the licensing of bail bondsmen and runners, providing for license fees, rules and regulations of conduct and providing for criminal penalties, and declaring an emergency."

As indicated by the foregoing title, the act concerns the licensing of bail bondsmen. To ascertain the extent of the application of the act to bail bondsmen, Section 1, subparagraphs 3, 4, 5 and 6 establish definitions and standards from which to determine the meaning of "bail bondsman" as used in the act, and provide as follows:

"(3) 'Bail Bondsman' shall mean a surety bondsman, professional bondsman or a property bondsman as hereinafter defined.

"(4) 'Surety Bondsman' shall mean any person who has been approved by the commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings and receives or is promised money or other things of value therefor.

"(5) 'Professional Bondsman' shall mean any person who has been approved by the commissioner and who pledges cash or approved unregistered bonds as security for a bail bond in connection with a judicial proceeding and receives or is promised money or other things of value.

"(6) 'Property Bondsman' is a person or persons who pledge real or other property as security for a bail bond in a judicial proceeding and receives or is promised money or other things of value therefor."

Although the foregoing statutory definitions, and particularly the definition of "surety bondsman," are sufficiently
broad, presumably, to include any person previously approved by the insurance commissioner and appointed as agent by a surety company to execute and countersign bail bonds, and although this act seemingly is broad enough to include all persons who conduct the bail bond business so as to receive money, or the promise of money or other things of value, Section 12 of the Act, as found in Burns' (1961 Supp.), Section 9-3703, apparently excludes certain of such persons from the application of the act. It is this section which gives rise to your problem and in which the proviso to which you refer is contained, which section reads as follows:

“No person shall act in the capacity of a bail bondsman or runner or perform any of the functions, duties or powers prescribed for bail bondsmen or runners under the provisions of this act unless that person shall be qualified and licensed as provided in this act: Provided, however, that none of the provisions or terms of this section shall prohibit any individual or individuals, from pledging real or other property as security for a bail bond in judicial proceedings and who does not receive, or is not promised, money or other things for [of] value therefor.

“No license shall be issued except in compliance with this act and none shall be issued except to an individual: Provided, however, That upon the taking effect of this act, any person then performing the functions of a bail bondsman or runner, within the definition of this act, shall not be required to take an examination, but shall be issued a license upon making the application herein required, and renewals thereof shall be granted subject to the provisions of sections 13, 14 and 20 of this act: Provided, further, That the provisions of this ACT shall not apply to the holder of a valid all lines fire and casualty agent's license.

“A firm, partnership, association, or corporation, as such shall not be licensed.

“The applicant shall apply in writing, on forms prepared and supplied by the commissioner, and the commissioner may propound any reasonable interrogatories to an applicant for a license under this chapter or on
any renewal thereof, relating to his qualifications, residence, prospective place of business, and any other matters which, in the opinion of the commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The commissioner may also conduct any reasonable inquiry or investigation he sees fit, relative to the determination of the applicant’s fitness to be licensed or to continue to be licensed.

“The failure of the applicant to secure approval of the commissioner shall not preclude him from applying as many times as he desires, but no application shall be considered by the commissioner within one year subsequent to the date upon which the commissioner denied the last application.” (Our emphasis)

From an examination of the problem, it appears that your question is necessarily divided into two facets as follows:

First: What is meant by the phrase “all lines fire and casualty agent’s license” contained within the proviso?

Second: Once the class of persons who are holders of a “valid all lines fire and casualty agent’s license” is determined, then to what extent are the provisions of the act not applicable to such persons?

Although Section 1 of the Act, as found in Burns’ 9-3701, supra, contains definitions of terms used therein, it does not contain a definition of the phrase “all lines fire and casualty agent’s license.” Also, I am unable to find in the “Indiana Insurance Law,” being the Acts of 1935, Ch. 162, as amended, as found in Burns’ (1952 Repl.), Section 39-3201 et seq., any definition of that phrase, although Section 3 of the “Indiana Insurance Law,” Burns’ 39-3203, supra, contains definitions of a number of terms used in that act, and other sections of the “Indiana Insurance Law” contain specific definitions of terms used in particular articles which comprise that law. However, this phrase must have some commonly understood meaning, for it is used also in Sec. 14 of Ch. 263 of the Acts of 1961, Burns’ 9-3705, supra, it there being stated that one
alternative which the application for a bail bondsman license may show is that the applicant has held a “valid all lines fire and casualty agent’s license” for one year within the last five years, which is the identical phrase used in Section 12, supra.

In the absence of a statutory or judicial definition of this phraseology, from my discussion of this problem with members of your department and with the insurance industry generally, it is my understanding that an “all lines fire and casualty agent” means an “other than life agent” who is authorized and empowered to write all kinds of insurance, except life insurance. The form of application and other printed material which the insurance department distributes to prospective applicants substantiates this conclusion and recognizes three basic types of insurance agents’ licenses in Indiana:

1. Accident and health insurance only;

2. Other than life insurance; and

3. Life insurance.

Although with respect to the authority of insurance companies and the classification of the insurance which they are authorized to provide, the Acts of 1935, Ch. 162, Sec. 59, as amended, as found in Burns’ (1961 Supp.), Section 39-3501, refers to “the kinds of insurance” which such companies may provide, nevertheless, the term “line” of insurance is used with respect to insurance agents. (Our emphasis) Reference to the Acts of 1935, Ch. 162, Sec. 212, as amended, as found in Burns’ (1961 Supp.), Section 39-4504, discloses that “other than life insurance agents,” as a prerequisite to the issuance of such a license, must make a showing to the department that they are “reasonably familiar with the insurance laws of this state applicable to the lines of insurance to be solicited * * *.” (Our emphasis) Therefore, for answer to the first facet of your general question, it is my opinion that by the term “all lines fire and casualty agent’s license,” as used in the Acts of 1961, Ch. 263, supra, is meant a license issued to an agent who, by the type of license issued and because his principal or principals have so empowered him, is authorized to write all lines or kinds of insurance, other than life insurance.
For answer to the second facet of your general question, it should be noted that the proviso, to which your inquiry makes specific reference, states that it is the provisions of "this act" which shall not apply to the holder of a valid all lines fire and casualty agent's license, and not merely the provisions of Section 12, supra, or some other section or sections which shall not apply to the holder of such a license. (Our emphasis) It is noticeable in Section 12 that the first proviso contained within the first paragraph thereof states that none of the provisions or terms "of this section" shall prohibit persons from pledging real or other property as security for bail bonds when they do not receive, or are not promised, money or other things of value therefor. (Our emphasis) By contrast, the proviso with which this opinion is concerned states that the provisions "of this act" shall not apply to the holder of such licenses, so that this differentiation of terms used by the scrivener would indicate that the latter proviso was meant to embrace all of the provisions of the act, rather than merely the provisions of that section, or only certain other sections.

In construing the effect of a proviso, reference is made to the case of McDougal v. State of Indiana (1915), 183 Ind. 168, 108 N. E. 524, in which case a proviso, substantially similar to that here involved, was interpreted by the Supreme Court of Indiana. In considering the so-called "Blind Tiger Law" of 1907 concerning the operation of a place wherein intoxicating liquors were sold, bartered and given away, the court was called upon to construe a proviso in that statute which read, "* * * provided that none of the provisions of this section shall apply to any druggist or pharmacist who is licensed as such by the State Board of Pharmacy * * ". Concerning this proviso, the court stated, on pages 170, 171 and 172, as follows:

"The general and appropriate office of a proviso is to restrain the enacting clause and except something which would otherwise have been within it. Wayman v. Southard (1825), 23 U. S. 1, 6 L. Ed. 258. With the wisdom of such exceptions, as of legislation generally, courts are not authorized to deal, where the legislative intent is unequivocal. Where such purpose is uncertain, however, the reasonableness of an assumed intent may
be considered. *Indianapolis Union R. Co. v. Waddington* (1907), 169 Ind. 448, 455, 82 N. E. 1030.

"The language of this proviso to the effect that no provision of the section shall apply to a licensed druggist appears so plain as to practically foreclose controversy. There are however reasons that might have caused the General Assembly to adopt a policy of excepting licensed druggists from the operation of the provisions of the section. By § 12 of said act approved February 13, 1907, it was provided that a licensed druggist convicted for the first time of selling intoxicating liquors in violation of law thereby forfeited, for a period of two years any right to sell such liquors, and that on a second conviction he should suffer a revocation of his license. § 8348 Burns 1914, Acts 1907 p. 27. By § 13 of the same act (§ 8349 Burns 1914, Acts 1907 p. 27) it was made unlawful, under severe penalties, for a licensed druggist to sell intoxicating liquor, in any quantity, without a written prescription of a reputable practicing physician, while § 2 of said act of March 16, 1907 (§ 8352 Burns 1914, Acts 1907 p. 689) provides that a licensed druggist may sell intoxicating liquors in quart quantities, for medicinal, industrial and scientific purposes only, on prescription or written application. A violation of the provisions of the section subjects the offender to the same minimum penalty as is provided in § 8349 Burns 1914, *supra*. *Shank v. State* (1915), post 298, 108 N. E. 521.

"It is not improbable, as appellant's counsel suggest, that the General Assembly of 1907, when it came to a consideration of the proper enactment of the statute of March 16, 1907, concluded that the provisions in relation to revocation of licenses and punishment for illegal sales were sufficient to restrain licensed druggists or pharmacists from violating the law without making them amenable to the penalties of the 'Blind Tiger' provisions, and, because of such conclusion, the proviso in question was inserted in the later enactment. Whatever reason may have induced the legislature of 1907 to insert the licensed druggist proviso in the otherwise substantial reënactment of § 1 of the act of February
The McDougal case, *supra*, and the reasoning of the court therein, seems peculiarly appropriate in the determination of the problem presented by your request. In the first place, the language of the proviso of Sec. 12, Ch. 263 of the Acts of 1961, *supra*, to which your letter refers, as stated by the Supreme Court of Indiana in that case, "appears so plain as to practically foreclose controversy." There is really little, if any, basis for the application of rules of statutory construction to this proviso for the reason that it is susceptible of only one meaning, *i.e.* that the provisions of the Acts of 1961, Ch. 263, *supra*, "shall not apply to the holder of a valid all lines fire and casualty agent's license."

In the second place, the McDougal case, *supra*, and the reasoning of the court therein, is, likewise, applicable in the instant problem in explaining what may have been the reason for such an exclusion having been inserted by the 1961 General Assembly. Just as druggists, in the McDougal case, *supra*, were subject to other provisions which imposed penalties upon druggists for unlawful sales of intoxicating liquors, in like manner, the holders of all lines fire and casualty agent's licenses are subject to the provisions of the "Indiana Insurance Law." Reference to the Acts of 1935, Ch. 162, Sec. 59, as amended, as found in Burns' (1961 Supp.), Section 39-3501 discloses that any person who is licensed and also empowered by his principal to write all kinds of insurance, other than life insurance, is already, in effect, authorized to write insurance whereby his principal becomes a surety or guarantor for the performance by any person, copartnership or corporation of any lawful obligation, undertaking, agreement or contract of any kind, in which category the writing of bail bonds is includible.

If a person has already been licensed and holds an existing license to act as an agent for the writing of all lines of insurance, other than life, the Acts of 1935, Ch. 162, Sec. 212, as amended, as found in Burns' (1961 Supp.), Section 39-4504 recognizes that such person has already been required to make a showing to the insurance commissioner that he is reasonably familiar with all lines of insurance to be solicited,
which would include the writing of bail bonds, if the company for which he is agent is authorized to make such kind of insurance. Such an agent is already subject to the jurisdiction of the department of insurance and the insurance commissioner of the State of Indiana, and has already taken such examinations as are required under the "Indiana Insurance Law" to act as agent in the procuring of such kind of insurance. Thus, the 1961 General Assembly may have intended that a person so qualified as the holder of an all lines license has already established his qualifications and secured permission and authority to act as a bail bondsman, and that Ch. 263, supra, should apply to other persons who have not previously established and passed such extensive qualifications and examinations as are required of the holder of an all lines license, but who desire to act as agents for, or to conduct, a bail bond business.

That the factors of ability and experience were considered by the Legislature in determining those to whom the act should apply is seen by reference to Section 14 of the Act. That section, as found in Burns’ (1961 Supp.), Section 9-3705 lists the eligibility requirements which the application for license “to serve as a bail bondsman must affirmatively show: * * *.” An alternative to showing “knowledge, experience or instruction in the bail bond business” as required by this section is a showing that the applicant “has held a valid all lines fire and casualty agent’s license for one year within the last five years; * * *.” (Our emphasis) It is noticeable that this alternative showing in the application is stated in the past perfect tense and that the section is silent concerning one who presently holds such a license. Such omission, coupled with Section 12, supra, would seem to indicate further that the Legislature intended to except the present holders of such licenses from the provisions of the entire act and that they were not to be considered as being affected.

This situation is somewhat similar to the exclusion contained within the law concerning the licensing of real estate brokers and real estate salesmen, being the Acts of 1949, Ch. 44, as found in Burns’ (1951 Repl.), Section 63-2401 et seq. Section 21 of that Act, Burns’ 63-2421, supra, explicitly provides that such a license to act as a real estate broker or real estate salesman shall not be required of attorneys at law in
the performance of their duties as such attorney at law, and shall not apply to receivers, commissioners, trustees in bankruptcy, administrators, executors or other officers named by the court for the selling of real estate under order of court, or to a sheriff or other officer in the enforcement of any order or judgment of a court, such exclusions relating to situations in which the conduct of such persons' activities is pursuant to, and regulated, either by statute or the order of court.

I understand, from a practical standpoint, that a supplementary problem arises by reason of the fact that the license issued to an all lines agent may not show upon its face the kinds of insurance which such licensee is authorized to write. Further, that the extent of the authority of the license is dependent upon two elements, to wit: (1) The extent of the authority granted by the insurance commissioner; and (2) the extent of the authority granted by the insurance company which is the principal of the licensee. Thus, although the insurance department knows the extent of the authority of such a licensee by reason of knowing the extent of the authority of the insurance company for which the licensee acts as agent, the general public, courts and officers accepting bail bonds may be unable to determine the extent of such agent's authority solely from an examination of the license itself. However, I believe that this problem is one of administration whereby the department of insurance, by knowing the kinds of insurance which the company for which the agent acts may provide, should in the future, indicate upon the license itself that it is an "all lines fire and casualty agent's license," if such be the case, i.e., if the licensee has successfully passed the examination required by the "Indiana Insurance Law" and has established his qualifications to act as an agent in writing all lines of insurance, other than life.

Therefore, in answer to your question, it is my opinion that the Acts of 1961, Ch. 263, supra, does not apply in any respect to the holder of such an insurance agent's license as authorizes the licensee to write all kinds of insurance, except life insurance.