Therefore, in answer to your question, it is my opinion that it was the legislative intent that the Adjutant General was not to be charged with the accomplishment of the administrative duties, in detail, for the enumerated agencies, but rather that he was given the statutory duty and granted the power to oversee, inspect and supervise administrative operations with the power of direction. The Legislature has not restricted the administrative acts to be performed to any specific listing of duties or functions but rather has delegated to the Adjutant General broad powers to insure the accomplishment of such acts as are necessary to carry out the legislative policies and purposes in conformity with sound business practices and established governmental procedures.

OFFICIAL OPINION NO. 11

January 19, 1962

Hon. William E. Babincsak
State Representative
1856 South River Drive
Munster, Indiana

Dear Representative Babincsak:

This is in answer to your recent request for an Official Opinion concerning the rights of towns to employ auxiliary policemen.

Your questions, based on your letter and our subsequent conversation, may be stated as follows:

1. The right of a town having a Board of Metropolitan Police Commissioners to employ auxiliary police officers, without tenure rights, to supplement the regular police officers, and

2. The power of arrest of auxiliary police officers.

In our conversation you advised that your inquiry concerned towns, that each of these towns now has a Board of Metropolitan Police Commissioners and that it is the desire of such towns to appoint auxiliary police officers for part-time services.
1962 O. A. G.

The authority for appointment of police officers in towns which have availed themselves of the provisions of the Acts of 1951, Ch. 298, Sec. 2, as amended, and found in Burns' (1961 Supp.), Section 48-6332, is through a Board of Metropolitan Police Commissioners.

Your letter makes special reference to H. B. 151 which became Acts of 1959, Ch. 19. This amended the Acts of 1951, Ch. 298, Sec. 2. The Acts of 1961, Ch. 89, Sec. 2, was the latest amendment to the 1951 Act and said Sec. 2, as amended, and found in Burns' (1961 Supp.), Section 48-6332, reads, in part, as follows:

"The board of metropolitan police commissioners of any town of this state shall have the power to appoint ten [10] persons to serve on the police force of such town, one [1] of whom shall be appointed to serve as the chief of the police force. Not more than five [5] of such persons shall be members of the same political party. The Commissioners shall also have the power to appoint such other employees as are necessary to carry on the work of the police department. Such commissioners shall fix and determine the compensation to be paid to members of the police force and other employees in such amount as will be just and reasonable and in compliance with any law of the state of Indiana governing such compensation or salary. * * *" (Our emphasis)

It is interesting to note in connection with the Acts of 1951, Ch. 298, supra, that the Legislature in 1959, by the amendment contained in Acts of 1959, Ch. 19, supra, increased the number of persons that could be appointed to the police force of such a town from five [5] to ten [10]. The amendment in the Acts of 1961, Ch. 89, supra, merely deleted the following words: "having a population of more than three thousand according to the last preceding United States census."

In our conversation you suggested that the authority to appoint such auxiliary policemen might be based on the following words from Burns' 48-6332, supra:
"The commissioners shall also have the power to appoint such other employees as are necessary to carry on the work of the police department." (Our emphasis)

The wording employed in Burns' 48-6332, supra, authorizes the commission to appoint two groups of employees, the first being police officers and the second being "other employees." (Our emphasis) Webster's New International Dictionary, 2nd Ed., page 1729, defines the word "other" as:

"Being the one of two (or more) distinct from the one already mentioned or understood."

In my opinion the legislative intent indicated by the use of the words "other employees" as used in the above section was to refer to supporting employees such as maintenance and clerical employees as a category distinct from police officers. (Our emphasis)

There are two statutes which authorize the employment of part-time or auxiliary police officers. Neither of these statutes is applicable in the case of a town having a Board of Metropolitan Police Commissioners. These statutes, together with my comments showing why they do not apply, in the instant case, are set forth as follows:

(a) Acts of 1897, Ch. 59, Sec. 11, as amended and found in Burns' (1950 Repl.), Section 48-6312, supra. It is specifically provided in Acts of 1897, Ch. 59, Sec. 1, as amended and found in Burns' (1950 Repl.), Section 48-6301, that this Act applies to "cities of this state of ten thousand (10,000) inhabitants, according to the last preceding United States census, or according to a census taken under the authority of the mayor of said city, and not exceeding thirty-five thousand (35,000) inhabitants." The Acts of 1951, Ch. 298, Sec. 4, as found in Burns' (1961 Supp.), Section 48-6334 provides, in part, as follows:

"The operation, management and control of such police departments shall be governed by the provisions of the laws of the state applicable to the management and control of metro-
politico police departments where such laws are not inconsistent with the provisions of this act [§§ 48-6331-48-6334]. * * *" (Our emphasis)

However, by adopting Burns' 48-6332, supra, the Legislature has defined the power of the Board of Metropolitan Police Commissioners of a town to hire members of a police force and Burns' 48-6332, supra, being inconsistent with Burns' 48-6312, supra, would therefore be controlling.

(b) Acts of 1905, Ch. 129, Sec. 162, as found in Burns' (1950 Repl.), Section 48-6108. The title to this Act reads: "AN ACT concerning municipal corporations." The Act contains two subdivisions, namely: "I. TOWNS," covering Sections 1 to 37, inclusive, and "II. CITIES," covering Section 38, et seq., including Section 162. Therefore, Section 162 applies only to cities and cannot be used as applicable to towns.

Therefore, in my opinion, the answers to your questions are as follows:

First, a town having a Board of Metropolitan Police Commissioners does not have the authority to appoint and compensate auxiliary police officers to supplement, upon a part-time basis, the regular police officers appointed by said board, and, secondly, it naturally follows that inasmuch as the board has no authority to appoint such auxiliary police officers there would be no power of arrest without authorized appointees to exercise it.

OFFICIAL OPINION NO. 12
February 14, 1962

Hon. John W. Donaldson
State Representative
1081/2 North Lebanon Street
Lebanon, Indiana

Dear Representative Donaldson:

You have requested my Official Opinion in the following letter: