politician 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
108½ North Lebanon Street
Lebanon, Indiana

Dear Representative Donaldson:

You have requested my Official Opinion in the following letter:
“On April 20, 1961, you issued an official opinion to Colonel John J. Barton, Superintendent, Indiana State Police, in which you strictly construed the acts of 1927, Chapter 109, Section 1, as amended, as found in Burns' (1952 repl.), Section 47-809, stating that in order to make an arrest for the violation of Indiana law regulating the use and operation of a motor vehicle on the public highways, the officer must be wearing a distinctive uniform and badge in keeping with the terms of the statute. Section 8 of the same chapter, being Burns' 47-816, states that this law shall not be construed as to require county sheriffs or their duly appointed deputies or game wardens to wear uniforms, or in any manner prohibit them from making arrests on public highways.

“Acts of 1957, Chapter 80, Section 2 prescribes that the standard uniform for sheriff shall be worn by the several sheriffs and their full time paid deputies on and after January 1, 1958.

“In view of the 1957 statute, in your opinion, must a county sheriff be wearing a distinctive uniform and badge in order to make an arrest for violation of Indiana law regulating the use and operation of the motor vehicle on the public highway. Also, would the fact that the person arrested for violation of Indiana law regulating the use and operation of a motor vehicle on the public highway recognized the arresting officer as the sheriff be a proper arrest if said sheriff at said time was not wearing a distinctive badge and uniform in keeping with the terms of the statute?”

Acts of 1927, Ch. 109, Sec. 1, as amended, as found in Burns' (1952 Repl.), Section 47-809, reads, in part, as follows:

“No peace officer shall have any authority to arrest any person for any violation of any of the laws of this state regulating the use and operation of motor vehicles on the public highways of the state, * * * unless, at the time of such arrest, such officer is wearing a distinctive uniform and a badge of authority which will clearly show him to casual observation to be an officer.

* * *"
The title to this act reads, in part, as follows:

"An Act prohibiting peace officers who are not in uniform and wearing badges of authority from making arrests for violation of the laws of this state * * * regulating the use and operation of motor vehicles on the public highways, * * *.”

You mention in your letter that Section 8 of the above act, supra, being Burns’ 47-816, exempts certain peace officers, which section reads as follows:

"Nothing contained in this Act shall be so construed as to require county sheriffs or their duly appointed deputies or game wardens to wear uniforms, or in any manner prohibit them from making arrests on public highways."

It should be noted that the above paragraph specifically exempts the application of this act, supra, from affecting power of arrest of county sheriffs.

You note in your letter that Acts of 1957, Ch. 80, Sec. 2, as found in Burns’ (1961 Supp.), Section 49-2813, requires sheriffs and their deputies to wear uniforms, which section reads, in part, as follows:

"On and after January 1, 1958 the standard uniform as prescribed by the commission shall be worn by the several sheriffs and their full time paid deputies * * *”

This act, supra, relates to sheriffs’ uniforms and car markings and contains nothing concerning power of arrest. This would indicate that the intent of the General Assembly in passing this act was not to alter, even by implication, the existing statutes concerning arrest powers of sheriffs, their deputies, and game wardens.

The Supreme Court has already determined that an officer can make a lawful arrest out of uniform, if he has reasonable cause to believe that there has been a violation of law for which he may make an arrest out of uniform.

By reason of the enactment of the Acts of 1957, Ch. 80, supra, and of the County Sheriffs Standard Car-Marking and Uniform Commission thereby created, the obvious intent of the Legislature was to end the possibility of confusion arising from the wearing of a variety of uniforms by sheriffs and their deputies in different counties of the state. Thus, the requirement that they shall wear the standard uniform prescribed by the commission in all counties on and after January 1, 1958.

Because the Acts of 1957, Ch. 80, supra, contains nothing concerning the power of arrest possessed by a sheriff or deputy sheriff, and because the Supreme Court has held that such an officer can make a lawful arrest out of uniform, should not be the basis for encouraging such a practice, since for sheriffs and their deputies to regularly and continuously exercise their arresting powers while in civilian clothing would clearly defeat the intention of the 1957 General Assembly. Such officers should take into account that drivers of motor vehicles apprehended by a sheriff or deputy sheriff out of uniform, and particularly if such officer is not using an officially-designated sheriff's car, may suspect that they are the prey of a holdup man rather than that they are being arrested by such an officer and thereby, from fear, further violate the law and endanger lives and property in attempting to flee from a supposed highway robber.

Thus, this Opinion is not to be construed as promoting the practice of making arrests out of uniform, but rather as recognizing that sheriffs and their deputies are full time officers whose powers of arrest are not impotent simply because, in an emergency situation, such an officer, in performing his duties, must make an arrest while off-duty and attired in his civilian clothing.

Therefore, in my opinion, the answer to your question is as follows: Notwithstanding the Acts of 1957, Ch. 80, Sec. 2, supra, it is not required that a county sheriff be wearing a distinctive uniform and badge in order to make an arrest for violation of Indiana law governing the use and regulation of motor vehicles on public highways. Whether the person arrested recognizes the arresting officer as the sheriff, at the time of such arrest, is immaterial.