1932, Ch. 233, supra, and such special act provides that the board of such health department shall fix the compensation of all officers and employees, it is my opinion based on the authorities as cited in 1959 O. A. G., page 328, No. 64, supra, that said boards have the authority to fix the compensation of all officers and employees of such departments, and the provisions of Acts of 1959, Ch. 107, supra, do not affect this authority.

Your letter also makes reference to 1959 O. A. G., page 19, No. 4. However, this Opinion concerned the power to fix the compensation of all officers and employees of a county full-time health department. Therefore the Acts of 1959, Ch. 107, supra, which deals solely with cities could have no effect upon the conclusions set out in that Opinion.

OFFICIAL OPINION NO. 32

August 12, 1960

Hon. William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Wilson:

Your letter of July 29, 1960, has been received and reads as follows:

“Vincennes University has applied to the Commission on General Education to share, on a matching basis, the benefits of Federal Funds provided under Title III of P. L. 85-864, 1958 for the improvement of Instruction in Science, Mathematics and Modern Foreign Languages. Their project application is in proper form, and is signed by the proper officials. A copy of this project application is attached for your information.

“The Commission on General Education in considering this application has raised two questions on which your opinion is requested:

“First, is Vincennes University essentially and actually a publicly supported and publicly controlled institution? That is, does it come under
the intent of P. L. 85-864, 1958 and the approved Indiana Plan, both of which limit participation to public schools? (See Indiana State Plan paragraph '(j)' page 2 and '(o)' and '(p)' page 3.

“Second, if Vincennes University is technically eligible as a publicly supported and publically controlled institution does it qualify as a secondary school under the present provisions of the Indiana State Plan. (See paragraph '(r)' page 3 of the Indiana State Plan.) That is, can the two years, grades 13 and 14, of Vincennes University be interpreted as an extended secondary school opportunity for the youth of Knox County as a continuation of their present grades 7 to 12?

“Other states are admitting public Junior Colleges to the benefits of the law by defining them as a part of the secondary schools of local school corporations. If Indiana were to follow this precedent of other states in defining the public Junior College as an extended secondary school for grades 13 and 14, should the Indiana State Plan, Title III National Defense Education Act—P. L. 85-864, 1958 paragraph '(r)' page 3 be amended to show ‘grades 7-14’ instead of the ‘grades 7-12’ as approved originally?

“Your opinion on these two questions will enable me to advise the Commission on General Education what action on the application of Vincennes University would be within the intent of P. L. 85-864, 1958 and the Indiana State Plan for Strengthening of Instruction in Science, Mathematics and Modern Foreign Languages.”

Title III of P. L. 85-864, 1958, is found in 20 U. S. C. A. § 442 et seq., 1959 Cumulative Annual Pocket Part. The schools to which such statute is applicable are clearly referred to in Section 303, Clause (5) of said Act which authorizes payment for services “in public elementary and secondary schools in the fields of science, mathematics and foreign languages,” and in the “administration of the State plan.”
The Indiana State Plan, paragraph "(j)" page 2 and "(o)," "(p)" and "(r)," page 3, are as follows:

"(j) 'Local educational agency' means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision in a State.

"(o) 'Public' as applied to any school means a public school that is a part of the State Educational System and is supported at least in part by local tax funds.

"(p) 'School' means a division of instructional organization consisting of a group of pupils comprised of one or more grade groups, organized on a class basis as one unit with one or more teachers to give instruction of a defined type, and housed in a school plant of one or more buildings. More than one school may be housed in one school plant, as is the case when the elementary and secondary schools are housed in the same school plant.

"(r) 'Secondary school' means grades 7-12, inclusive or any combination of these grades so recognized by the State Department of Public Instruction."

From the foregoing it is apparent that the state plan entered into with the federal agency is more restrictive in its application to schools than the language contained in the federal statute. The federal statute refers to "secondary schools" and the state plan is limited to grades 7-12 inclusive. Since provision is made in the federal statute for amendments of the state plan, we must first determine if Vincennes University is a "public school" within the meaning of the federal statute. Of course, the construction to be made of the federal statute is primarily one for consideration by the federal authorities.

In an Official Opinion of this office, being 1941 O. A. G., page 91, in determining that members of the faculty of Vincennes University are eligible to participate in the benefits of the Indiana State Teachers' Retirement Fund Law, and in construing and applying for such purposes Acts of 1939, Ch. 138,
Sec. 2, as amending Acts of 1931, Ch. 175, Sec. 6, as found in Burns' (1948 Repl.), Section 25-2405a, it was said:

"Without discussing the interesting history of the legal status of Vincennes University, as presented in the statement which accompanied your letter, it may be said that Section 2 of Chapter 138, Acts 1939, in amending Chapter 175, Acts 1931, provides that upon acceptance of the provisions thereof, 'any such university shall become and is hereby declared to be a public school corporation in and for the county in which it is located, and its corporate charter shall be deemed amended accordingly.' The Board of Trustees of Vincennes University accepted the provisions of this act by adoption of a resolution filed in the office of the Secretary of State March 17, 1939.

"In view of the provisions of the 1939 law, and the acceptance of its terms by the University, it seems clear that the University is definitely 'a public school of this state,' and that the faculty thereof may properly become members of the Indiana State Teachers' Retirement Fund."

The above Indiana statute is Acts of 1931, Ch. 175, as amended, as found in Burns' (1948 Repl.), Section 25-3401 et seq. Section 3 of said Act, being Burns' 25-3403, authorizes the county council in which such university is located, on petition of resident freeholders of the county, to grant public aid to such university and authorizes the fixing of the rate of the tax levy to be imposed on the property of such county, for such purposes, at not to exceed five cents on each one hundred dollars worth of taxable property.

Each of your questions must be answered in the affirmative for from the foregoing it is clear Vincennes University is a "public school of Knox County, Indiana," and would in my opinion come within the classification of a "public school" made by the federal statute in question. Therefore, the Commission on General Education of the Indiana State Board of Education could follow the precedent of other states in interpreting such classes in Vincennes University as an extended
secondary school for grades 13 and 14, and accordingly amend its plan, subject to the approval of the federal agency. In such event said classes in Vincennes University would, in my opinion, be eligible for participation under the federal statute and the amended state plan.

Numerous enabling statutes and an Official Opinion of this office are set out and referred to in Appendix H, pages 80 to 86 of your printed pamphlet, "The Indiana State Plan for the Strengthening of Instruction in Science, Mathematics and Modern Foreign Language under Sections 301-304 of Title III, P. L. 85-864," and furnish adequate authority for such commission's action.

OFFICIAL OPINION NO. 33

August 17, 1960

Mr. James K. Ashley, Commissioner
Department of Insurance
State of Indiana
309 W. Washington Street
Indianapolis 4, Indiana

Dear Mr. Ashley:

This is in reply to the letter received from your predecessor in office, requesting an Official Opinion on the following point:

"Can an officer of a life insurance company be licensed as an agent for that life insurance company?"

Determination of the question presented requires a study and construction of the various definitions of the term "agent" as used in the Indiana Insurance Law, which is Acts of 1935, Ch. 162, as amended, as found in Burns' (1952 Repl., 1960 Supp.), Section 39-3201 et seq. The term "agent" is specifically defined in Part I, Article I, and in Part IV, Articles I and II of that Act. The definition found in Article I of Part IV, which is Burns' 39-4501, supra, refers only to insurance agents other than life insurance agents and is therefore not considered here since it is beyond the scope of the question presented.

The word "agent" is first defined as follows in Section 3 of the Indiana Insurance Law, which is Burns' 39-3203, supra: