When we consider the provisions of Burns’ 20-803, supra, which authorizes the State Fire Marshal to appoint, among others, certain assistants to assist him in the performance of the duties of his office and the work of the department, together with the provisions of Burns’ 20-804, supra, specifying certain local officers as assistants to the State Fire Marshal, it is clear that the language “local assistants to the state fire marshal” appearing in Burns’ 20-813, supra, refers to those assistants enumerated in Burns’ 20-804, supra. It is also clear that the various municipal officers enumerated in Burns’ 20-804, supra, receive their salaries from their own municipalities as distinguished from the assistants appointed by the State Fire Marshal whose salaries are paid by the state.

Therefore, in answer to your question, it is my opinion that pursuant to Burns’ 20-813, supra, a fire chief in a city with a population of five thousand or less, who is performing the duties of an assistant to the State Fire Marshal pursuant to Burns’ 20-804, supra, must receive fifty cents for each report of each separate fire reported to the State Fire Marshal and, in addition, he is entitled to the sum of fifteen cents for each mile traveled to the place of fire. Such fire chief may also, in the discretion of the State Fire Marshal, receive a sum not to exceed two dollars for each day’s service spent in the investigation of such fire.

OFFICIAL OPINION NO. 8

February 4, 1960

Mr. John R. Peters, Chairman
State Highway Department
State House Annex
Indianapolis, Indiana

Dear Mr. Peters:

This is in reply to your letter of January 19, 1960, requesting an Official Opinion concerning the receipt of bids by the State Highway Department for the construction, reconstruction, resurfacing or improvement of highways. As indicated in your letter the applicable statutory material is found in the Acts of 1941, Ch. 12, Sec. 11, as amended, as found in Burns’ (1949 Repl.), Section 36-170 which reads, in part, as follows:
"The chairman, as soon after appointment as practicable, and before any work is ordered, shall cause to be prepared and shall adopt and place on file in the office of the commission, standard specifications for three [3] or more distinct types of modern highways, of which at least two [2] shall be a hard surface type and one [1] or more shall be of the nonrigid type of modern pavement, to be designated as the type of highways for which bids are to be received. Such specifications may be amended from time to time, or new specifications may be substituted therefor. When any part of such state highway is ordered to be constructed or reconstructed, the state highway commission of Indiana shall cause to be prepared profiles, plans and specifications and estimates for these state highways as they are designated by the commission for construction or reconstruction and, if the proposed work consists of only resurfacing improvement or repair of a state highway, it shall be necessary for the commission to prepare and place on file only specifications and estimates, and it shall be the duty of the chairman when any part of such state highway is ordered to be constructed, reconstructed, resurfaced or improved by the commission, to advertise for proposals and he shall give notice by one [1] publication in two [2] newspapers representing the parties casting the highest and next highest vote in the county, of general circulation in the county, where the work is to be performed, that on a date to be named by the chairman, in such notice, sealed proposals will be received by the chairman, at the office of the state highway commission of Indiana, or other designated place, for the construction, reconstruction, resurfacing or improvement of such state highways in accordance with the plans and specifications which have been adopted, and which are on file in the office of the state highway commission of Indiana, and when such order provides for the construction, reconstruction, resurfacing or improvement of such highways, or any part thereof, such notice shall state that bids will be received on one [1] of the types of highways approved by the commission. * * *" (Our emphasis)
You have asked for my Opinion in regard to the above statutory language as follows:

"Under the law as it now stands, when the State Highway Department desires to resurface a state highway, can we receive alternate bids on the same project for a hot asphaltic surface and a cold asphaltic surface or must we receive bids on only the hot mix surface or only on the cold mix surface?"

In 1942 O. A. G., page 148, the then State Highway Commission asked the same question concerning resurfacing, i.e. whether they had the discretionary power to take bids on more than one type of resurfacing for any designated project. The Opinion at page 152 expressed that unless the advertisement was for proposals for the construction or improvement of designated light traffic highways, the notice should specify the type of highway for which bids would be received. A reference to "light traffic highways" was made for the reason that prior to the 1943 amendment Burns’ 36-170, supra, contained the following proviso:

"* * * Provided, the Commission when designating certain light traffic state highways for construction or improvement may advertise for and receive bids for one or more types of highways; and for which specifications have been adopted, as heretofore provided."

The fact that this proviso was deleted after the 1942 Opinion was issued without further change in the language of this section would indicate that the 1942 Opinion was correct in its interpretation of Burns’ 36-170, supra, as to the receipt of more than one type of bid for any designated project. The 1945 General Assembly, amending Burns’ 36-170, supra, likewise acquiesced in the 1942 Opinion.

A study of the adopted and filed Standard Specifications for different types of modern highways, drawn up pursuant to Burns’ 36-170, supra, has been made and in reviewing the pamphlet publication entitled "State Highway Department of Indiana Standard Specifications for Road and Bridge Construction and Maintenance" (1957) it is noted that specifications have been provided for ten distinct types of modern highways. Included in these types and classified separately are
Hot Asphaltic Concrete base and surface and Bituminous Coated Aggregate base and surface (cold asphaltic), each being listed and specified as a distinct type.

As is seen in the emphasized portion of Burns' 36-170, supra, "bids will be received on one [1] of the types of highways approved by the commission."

It is my opinion, therefore, that since separate Standard Specifications are provided for both hot mixed surface and cold mixed surface, each being considered a distinct type of highway, bids should be received and based on either one or the other type but not on both types for the same project.

OFFICIAL OPINION NO. 9
February 5, 1960

Hon. Albert A. Steinwedel
Auditor of State
238 State House
Indianapolis, Indiana

Dear Mr. Steinwedel:

This is in reply to your letter of January 26, 1960, which reads as follows:

"It has been called to my attention that a member of the General Assembly has been appointed as a Deputy Prosecuting Attorney. I am requesting your official opinion in regard to the following:

"1. Is the office of Deputy Prosecuting Attorney a lucrative office?

"2. If the office is considered a lucrative office, then upon acceptance of that position did he vacate his seat in the General Assembly?"

In any question pertaining to the legal right of an individual to hold more than one position under state government the following tests should be taken into consideration, namely:

(1) Is each position a "lucrative office" within the meaning of the Indiana Constitution, Art. 2, Sec. 9?