In conclusion, in answer to your first question, it is my opinion that all elections of town officers are to be conducted by the town election board and town officials, rather than by the county election board, which latter board conducts the primary elections in certain towns pursuant to the provisions of the Acts of 1957, Ch. 168, which amended the town election law without making any changes in the procedure of the fall elections of town officers.

In answer to your second question, it is my opinion that the clerk of the circuit court, acting as a member of the county election board, is entitled to mileage in the performance of his official duties in accordance with Burns' 49-1066, supra.

OFFICIAL OPINION NO. 50

September 8, 1959

S. T. Ginsberg, M. D.
Mental Health Commissioner
1315 West 10th Street
Indianapolis 7, Indiana

Dear Doctor Ginsberg:

This is in answer to your letter of July 30, 1959 requesting an Official Opinion and stating in part as follows:

"In the sale or disposition of State owned land under the provisions of Chapter 335 of the Acts of 1947, and assuming that the appraisal price is met:

1. May such sale be by sealed bids, to be opened and read publicly, at a specified time?

2. In the event that your answer to Number One, above, is 'Yes,'

   A. May an anti-collusion affidavit be required?
   
   B. Is it permissible to disclose the appraisal value to prospective bidders in their bid documents and in the legal notice of advertisement?
C. May a certified or cashier’s check be required for ‘earnest’ money, to be enclosed with the bid?”

Although not exactly stated, I will assume for purposes of discussion that you contemplate making the sale to the highest bidder.

Before answering your questions, I would like to discuss the general problems involved in your request. The statute to which you refer, i.e., Acts of 1947, Ch. 335, is found in Burns’ (1950 Repl.), Sections 22-529, 22-530 and states as follows:

“Whenever the board of trustees or other chief administrative authority of any penal, benevolent, correctional, or charitable institution of the State of Indiana shall deem it necessary or desirable for the welfare or convenience of such institution to sell any land belonging to the state of Indiana and held for the use and benefit of such institution, such land may be sold and transferred: Provided, That no such sale of land shall be made without the written approval of the governor, nor shall it be sold for less than a valuation placed thereon by three (3) disinterested appraisers appointed by the governor. Provided further, That nothing herein shall be deemed to authorize the sale and transfer of land held in trust unless consistent with the terms of such trust.

“The monies derived from the sale of lands as provided in section 1 hereof, after deducting the expenses of the sale and a fee of ten dollars [$10] each to be paid to the appraisers, are hereby appropriated to the division of procurement and supply or its successor for the purpose of purchasing other lands deemed necessary or desirable for the welfare or convenience of the institution making the sale or any other state charitable, benevolent, penal or correctional institution. In the event it shall be necessary or desirable to purchase lands for any such state institution, the trustees thereof, with the approval of the governor, may negotiate such a purchase in the name of the state of Indiana. In the event such monies are not used for the purpose of the acquisition of other lands by the end of the next
following fiscal biennium, the monies shall revert to the general fund of the state of Indiana."

The above quoted sections do not specify a procedure for the sale and transfer of such lands after the Governor's approval has been obtained and the land appraised. Therefore, we must presume that the Legislature intended the statute to be implemented in this respect by the Board of Trustees or other chief administrative authority of the state institution involved. This presumption is supported by the knowledge that any land which may be sold may vary greatly in size, desirability, utility and the like. These factors could require different procedures for the disposal of different lands. However, no matter what procedure is used, it must meet the general requirements which attach to any action of a state officer in matters of this sort, i.e., the sale must be in good faith to a bona fide purchaser.

Generally speaking, state officers, boards, commissions and departments have such powers as may have been delegated to them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed upon them, and administrative agencies have such authority as is necessary or proper to the efficient administration of the powers which the Legislature has clearly conferred on them. (See 81 C. J. S. States § 58.)

I note that your letter outlines a procedure for sale somewhat similar to that contained in Acts of 1947, Ch. 279, Secs. 12 and 13, as amended, as found in Burns' (1951 Repl.), Sections 60-1812 and 60-1813 which, in general, requires sales of property within the purview of that act to be by competitive sealed bids after notice of sale has been published in two newspapers of opposite politics for a period of 10 days.

It is my opinion that the procedures which you outlined for the sale of land which approximate that contained in Burns' 60-1812 and 60-1813 would certainly meet the requirements of good faith, and that the same constitute proper safeguards in effecting the sale of the real estate involved.

Therefore, in summary, the answers to your questions are as follows:
1. The sale of state-owned lands coming within the purview of Burns' 22-529 and 22-530, *supra*, may be made by the use of sealed bids, to be opened and read publicly, at a specified time.

2. A. An anti-collusion affidavit may be required.

   B. It is permissible to disclose the appraisal value to prospective bidders in their bid documents and in the legal notice of advertisement.

   C. A certified or cashier's check may be required for "earnest" money, to be enclosed with the bid.

OFFICIAL OPINION NO. 51

September 10, 1959

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

Dear Mr. Wilson:

Your letter of August 13, 1959, has been received and reads as follows:

"This letter comes as an official request to review the Driver Education Permit as created by the 1957 General Assembly (Chapter 305, Section 1, Paragraph G, Page 843) to determine if the present interpretation and use of the law is actually according to the intent of the legislature that prepared it at that time. The present interpretation of the law (since April 1959) is causing an undue hardship on high school students past the age of 15 years 7 months who enroll in an approved driver education program in the high schools in Indiana.

"The problem simply stated is this: Students who take driver education in the high schools after reaching the age of 15 years 7 months are compelled to hold the driver education permit for 6 months and are not permitted to apply for a probationary operator's license."