OPINION 26
OFFICIAL OPINION NO. 26
April 11, 1958

Hon. Kenneth J. Brown, Jr.
State Senator for Delaware County
1517 N. Tillotson Avenue
Muncie, Indiana

Dear Senator Brown:

Your letter of March 18, 1958, has been received requesting an Official Opinion of this office and reads as follows:

"I hereby respectfully request an official attorney general's opinion on the interpretation of the disposal of funds collected by taxation for education of the children of Muncie, Indiana. The Act in question is Chapter 112, page 196, of the Indiana State Acts of 1957. More specifically Section 2 of said Act provides 'that when a city annexes territory from another school corporation prior to the end of the calendar year and the annexing city assumes the responsibility for providing educational facilities for school children in the annexed territory, then the Auditor of said county shall pay to the Treasurer of the annexing school corporation a portion of the tax receipts payable in such year equal to the number of months during which the annexed school provides such facilities, excluding the months of summer recess and divided by nine.' My question is as follows: Assuming the annexation by the City of Muncie, Indiana, after January 1, 1957 and the city schools started providing educational facilities when school opened in September, 1957; and assuming that the first half year of tax receipts had been disbursed and settled to both the city school system and Center Township at the end of June; and assuming that the Center Township had paid transfer tuition for some of the same students which the City now is educating; then what portion of the tax receipts for the year would be paid to the City School System on the settlement for the last half of 1957?

"I would also like to know if the tax receipts figured for the distribution under the present law include all of
the following: (1) real estate taxes (2) personal prop-
erty taxes (3) poll taxes.”

The statute in question is Acts of 1957, Ch. 112, Sec. 1 of said statute, as found in Burns’ (1957 Supp.), Section 28-3727, defining the terms used in said statute, in part reads as follows:

“(e) ‘Tax receipts’ shall be the amounts received from the tax levy for the tuition and special school funds by the original school corporation from the annexed territory.” (Our emphasis)

Section 2 of said act as found in Burns’ (1957 Supp.), Section 28-3728, reads as follows:

“Whenever any city or town shall have annexed territory from an original school corporation and shall have assumed the responsibility for providing educational facilities for the children of school age residing in the annexed territory prior to the end of the calendar year in which such annexation occurs, the auditor or auditors of the county or counties in which the annexed territory is located shall pay to the treasurer of the annexing school corporation a proportion of the tax receipts payable in such year equal to the number of months and any major fraction of a month, excluding in such calculation, however, any time falling within the summer recess, during which the annexing school corporation provides such educational facilities divided by nine [9].”

Section 5 of said act as found in Burns’ (1957 Supp.), Section 28-3731, after making provision for the school corporations to agree upon a date that the responsibility for providing educational facilities will commence, then provides:

“* * * In the absence of such agreement, the annexing school corporation shall assume responsibility for providing educational facilities at the time of annexation.”

Your attention is called to the fact that the above statute did not contain an emergency clause and became in full force and effect on June 26, 1957.
Supplemental information has been furnished that the annexation became in full force and effect after January 1, 1957, and before March 1, 1957; that no contract was entered into between the respective school corporations regarding any time that the annexing school corporation would start providing educational facilities for the children in the annexed territory but that the annexing school corporation in fact started providing such educational facilities in early September, 1957.

When the above facts are applied to the statutory provisions above quoted, it is clear that the annexing school corporation would be entitled to four-ninths \(\frac{4}{9}\) of those taxes hereinafter specified as received from the annexed territory during the entire calendar year, 1957. The fact that there had been a partial distribution by the auditor in June for the first half of 1957, and that the township trustee having jurisdiction of the territory from which such area was annexed had paid some transfer tuition for students living in the annexed territory to the city school corporation which annexed such territory, such tuition being for the last half of the 1956-1957 school year ending in June, 1957, would not affect or change the requirements of the above statute. This is true because the statute did not become effective until June 26, 1957, and would require payment for the number of months the annexing school corporation educated such children, being: September, October, November and December, 1957. Therefore, the statute requires the payment of four-ninths \(\frac{4}{9}\) of the specified taxes received from the annexed territory during the calendar year, 1957.

As to your second question, the taxes to be paid by the county auditor to the annexing school corporation would include four-ninths \(\frac{4}{9}\) of the amount received in the calendar year, 1957, from a levy and collection of taxes in the annexed territory against real estate, personal property or for poll tax but limited to that part included in such levy for tuition and special school funds.