Mr. Frank T. Milis
Commissioner of Revenue
Indiana Department of State Revenue
141 South Meridian Street
Indianapolis, Indiana

Dear Mr. Milis:

This is in reply to your letter requesting an Official Opinion which reads as follows:

"Chapter 83 of the Acts of 1933 levies a tax on banks, trust companies and the stock and deposits therein. It provides certain exemptions but does not specifically make any exemption of deposits of charitable organizations of any type.

"Chapter 170 of the Acts of 1945 makes certain provisions for the exemption of certain charitable organizations from Intangibles Tax.

"I would like your official opinion as to whether or not the exemption contained in Chapter 170 of the Acts of 1945 applies solely to Chapter 81 of the Acts of 1933, which is the general Intangibles Tax Act or whether the terms of this act allow deposits of the organizations described to be nontaxable under Chapter 83 of the Acts of 1933. If Chapter 170 of the Acts of 1945 does not exempt charitable deposits from tax, is there any other provision which would authorize the nontaxation of charitable deposits in banks and trust companies?"

Prior to 1933, intangibles were taxed as all other property and specifically as personal property. Pursuant to the Acts of 1919, Ch. 59, all property—real, tangible personal and intangible personal—was assessed and taxed alike. Thus, many abuses arising out of the concealed ownership and possession of monies and intangible personal property developed and became prevalent and there was obvious need for a change in the taxing system of this type of property.
The Indiana Legislature provided an excise tax for privileges connected with the ownership or control of intangibles by the Acts of 1933, Chs. 81, 82 and 83, as found in Burns’ Indiana Statutes (1951 Repl.), Sections 64-901 et seq., 64-822 et seq. and 64-801 et seq., respectively. Chapter 81 of said Act relates to intangibles generally; Chapter 82 to the surplus, deposits, and stock of loan associations; and Chapter 83 to the capital stock, deposits and surplus of banks and trust companies.

In the case of Zoercher et al. v. Indiana Associated Telephone Corp. (1937), 211 Ind. 447, 455, 7 N. E. (2d) 282, and likewise in the case of Zoercher et al. v. Indianapolis Union Railway Co. (1937), 211 Ind. 703, 7 N. E. (2d) 289, it was stated that:

“* * * the general purpose of the act in question was to find a more effective method of reaching intangibles owned by persons for the purpose of taxation, for the reason that the property tax law had become ineffective in reaching this class of property. * * *”

The Acts of 1933, Ch. 81, supra, defines property covered and property excluded.

The Acts of 1933, Ch. 82, supra, provides for the taxing of loan associations computed by identical methods with those methods provided under the Acts of 1933, Ch. 81, supra.

The Acts of 1933, Ch. 83, supra, provides for taxing of bank stock and deposits as in the previous two chapters.

It has been held that these Acts must be construed as one taxing Act. In Lutz et al. v. Arnold et al. (1935), 208 Ind. 480, 193 N. E. 840, 848, the Court said:

“* * * Chapters 81, 82 and 83 must be construed together as parts of one body of law and as together expressing the legislative will. These three chapters were enacted by the same Legislature and approved on the same day. (citing authority) ‘Statutes which relate to the same thing, or to the same subject, person, or object, are in pari materia, and it is presumed that such acts are imbued with the same spirit and actuated by the same policy. * * * And they should be construed
together as if parts of the same act * * * to determine their effect. * * * This rule applies with peculiar force to statutes passed at the same session of the Legislature.'"

It has also been held that these Acts create and impose an excise tax as distinct from a property tax. Again quoting the Lutz v. Arnold case, p. 845, supra:

"We think the tax imposed under the act in question is an excise tax and not a property tax. It has the incidence of an excise tax. We think this construction of the act is compatible with its meaning and effect. * * *"

The Acts of 1933, Chs. 81, 82 and 83, supra, impose an excise tax on privileges computed upon the value of intangible property in lieu of all other taxes on such property except gross income and inheritance taxes by specific provisions.

Acts of 1933, Ch. 83, Sec. 16, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-816;

Acts of 1933, Ch. 82, Sec. 9, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-830;

Acts of 1949, Ch. 29, Sec. 9, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-844;

Acts of 1933, Ch. 81, Sec. 31, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-931.

The above statutory provisions eliminated the direct property tax on intangibles and limit the tax liability thereon to payment of an excise or privilege tax. The Acts provide for an excise tax on privileges computed upon the value of intangibles which are specifically included in the Acts of 1933, Ch. 81, supra, and on bank and loan association stocks and deposits and surplus. For although the latter two types of intangibles are excluded from the Acts of 1933, Ch. 81, Sec. 1 (b), supra, they are subject to the tax imposed by the Acts of 1933, Chs. 82 and 83, supra.

In discussing whether or not banks or trust companies were included in the classification provided for by the taxing Acts of 1933, supra, it was contended in Lutz v. Arnold, p. 848, supra,
that the Acts of 1933, Ch. 81, *supra*, imposed an arbitrary and unreasonable classification. The Court said in that case as follows:

"It is contended that the classification as provided for in said act is arbitrary and unreasonable because there is no real or natural reason why banks, trust companies, building and loan companies, and certain other corporations are not taxed under said act. This contention cannot be sustained for the reason that chapters 82 and 83 both have to do with taxation and take care of the situation complained of. * * *"

Thus, bank deposits are taxable in the same manner as other intangibles under the 1933 law.

Therefore, as of February 28, 1933, the effective date of the Acts of 1933, Chs. 81, 82 and 83, *supra*, there was no state tax on intangible personal property except the excise tax existing by virtue of the above chapters, they having, in effect, repealed the property tax imposed upon such intangible property. These Acts did not exempt charities from payment of the tax.

However, the 1919 Direct Property Tax Act and the 1921 Foundation and Holding Company Act exempted charitable institutions from all taxes. Acts of 1919, Ch. 59, as amended by the Acts of 1945, Ch. 35, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-201 and Acts of 1921, Ch. 246, as found in Burns' Indiana Statutes (1948 Repl.), Section 25-1109.

This matter was pointed out by the Attorney General of Indiana in 1944 O. A. G., page 33, No. 9, in which the following language appears:

"I am unable to find any language in Section 64-901, *supra*, or in any other section of the Intangibles Tax Act, which expressly and specifically exempts intangibles owned or held for the use and benefit of any literary, scientific, benevolent, religious or charitable institution, from the payment of the excise or privilege tax imposed by the Act, and in the absence of such an exemption the provisions of the Act are applicable for the reason that the language contained in Section
64-901, supra, applies to every intangible except those mentioned in the section under clause B, as being excluded.”

The Acts of 1945, Ch. 170, Sec. 1, as amended, as found in Burns’ Indiana Statutes (1951 Repl.), Section 64-942, provides as follows:

“No intangibles tax shall be imposed upon or collected on intangibles at any time after February 27, 1933, owned by or held for the use and benefit of any corporation, institution, foundation, trust or association operating exclusively for religious, charitable, educational, hospital, scientific, fraternal, civic or cemetery purposes and not for a private profit.”

This provided for an exemption to charities from the payment of excise tax upon intangibles owned or held by them as imposed by the Acts of 1933, Chs. 81, 82 and 83, supra, and is tantamount to restoring the exemption granted to charities by the Property Tax Law of 1919, Ch. 59, supra.

The Attorney General’s Opinion of 1944, supra, had some bearing upon an immediate passage of the 1945 Act, supra.

The Acts of 1945, Ch. 170, Sec. 3, as found in Burns’ Indiana Statutes (1951 Repl.), Section 64-943 note provides:

“The provisions of this Act shall not be deemed to repeal, modify or affect any of the provisions of but shall be supplemental to Chapter 246 of the Acts of the General Assembly for the State of Indiana for the year 1921, as amended, which provides certain exemptions from taxation of intangibles held by foundation and holding companies.”

The Legislature intended that the exemption provided by the Acts of 1945, Ch. 170, supra, should not repeal the exemption granted in the aforementioned 1921 Foundation and Holding Company Law. That statute was not a tax measure but an Act providing the procedure for creating certain charitable organizations and exempting those charities from tax liability on certain of their property. In accordance with the Attorney General’s Opinion of 1944, supra, the Acts of 1933, Chs. 81, 82 and 83, supra, deprived holding and foundation companies the
exemptions on their intangibles and the Legislature made it clear that the Acts of 1921, Ch. 246, \textit{supra}, and the Acts of 1945, Ch. 170, \textit{supra}, were to supplement each other.

Bearing in mind the foregoing history of this problem, it appears that the nub of your inquiry is the question as to whether the Acts of 1945, Ch. 170, as amended, as found in Burns’ Indiana Statutes (1951 Repl.), Sections 64-942, 64-943 is to be confined in its application solely to the Acts of 1933, Ch. 81, as amended, as found in Burns’ Indiana Statutes (1951 Repl.), Section 64-901 \textit{et seq.} or is to be given a broader scope. Had the 1945 Legislature intended the exemption contained in Acts of 1945, Ch. 170, \textit{supra}, to be confined solely to the intangibles tax due and payable under the Acts of 1933, Ch. 81, as amended, \textit{supra}, the simple procedure by which to have accomplished that end would have been to amend Ch. 81, \textit{supra}. While not conclusive of this question, reference is made to the fact that a bill was introduced in the 1945 General Assembly on January 4, 1945, which, if enacted, would have amended Ch. 81, \textit{supra}, as amended, by excepting from the definition “person,” those groups which were “religious, charitable and fraternal organizations.” It is noteworthy that this Bill (Senate Bill No. 5), was not acted upon by the committee to which it was referred, nor was any further action taken thereon by the Legislature. Instead, on January 11, 1945, House Bill No. 59 was introduced and later enacted, the same becoming the Acts of 1945, Ch. 170, \textit{supra}, the statute, as amended, which is now in question. Further reference is made to the fact that the Acts of 1945, Ch. 170, \textit{supra}, was not an amendatory but an independent Act, the effect of which was to provide the tax exemption therein granted, not only to intangibles \textit{owned} by religious, charitable, educational, hospitable, scientific, fraternal, civic, or cemetery organizations, but also to extend the exemption to intangibles \textit{held for the use and benefit} of any such corporation, institution, trust or association. The fact that the same session of the Legislature bypassed a Bill expressly confining the exemption to Ch. 81, \textit{supra}, and later enacted the Acts of 1945, Ch. 170, \textit{supra}, an independent Act expressed in broad general terms, is persuasive of the proposition that the Legislature did not intend the Acts of 1945, Ch. 170, \textit{supra}, as being applicable solely to the Acts of 1933, Ch. 81, as amended, \textit{supra}. 

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It is therefore my opinion that the 1919 tax laws creating a direct property tax on intangibles and exempting charities was repealed as to intangibles by the Acts of 1933, Chs. 81, 82 and 83, supra, creating an excise tax on intangibles and excluding certain other taxes thereon. I am of the further opinion that the Acts of 1945, Ch. 170, supra, restored the exemption granted charitable institutions under former laws and that the Acts of 1945, Ch. 170, supra, now extends to charitable institutions full exemption from tax liability on intangibles. Therefore, it is my opinion that charitable deposits in banks and trust companies are nontaxable.

OFFICIAL OPINION NO. 45

October 20, 1955

Mr. Harvey B. Stout
State Service Officer
Veterans’ State Service Dept.
431 North Meridian Street
Indianapolis, Indiana

Dear Mr. Stout:

This is in reply to your two letters to me under date of September 19, 1955, in which you request an Official Opinion as to whether or not a person committed to a hospital as a criminal sexual psychopath, upon release, must be restored in exactly the same manner as a person who is adjudged insane and committed to a hospital, and you also request an Official Opinion as to whether or not an alcoholic, upon his release, must be restored in the same manner as a mental patient committed to a hospital.

In view of the fact that both of your letters relate to similar subjects, I will take the liberty of answering both of your inquiries in one Official Opinion.

The Acts of 1949, Ch. 124, Sec. 1, as amended, as found in Burns’ Indiana Statutes (1942 Repl., 1953 Supp.), Section 9-3401, provides that any person over the age of sixteen [16] who is suffering from a mental disorder and is not insane or feebleminded, which mental disorder is coupled with criminal propensities to the commission of sex offenses, is declared to