for the reason that the purpose of the budget is for the con-
duct of the State Government and the school system of the
State, even though split up and delegated for administration
to various local school corporations, is in fact and in law,
essentially a matter of function of State Government under
Article 8 of the Constitution of Indiana and as specifically
decided by the Supreme Court of the State of Indiana in the
following cases: State ex rel. Osborn v. Eddington (1934),
208 Ind. 160-164, 195 N. E. 92; Ratcliff v. Dick Johnson
School Township (1933), 204 Ind. 525-531, 185 N. E. 143.

OFFICIAL OPINION NO. 20

March 5, 1951.

Honorable Alembert W. Brayton,
Indiana State House
of Representatives,
Indianapolis, Indiana.

My dear Representative Brayton:

We have received your letter of March 5, 1951, which is as
follows:

"Attached hereto is a copy of House Engrossed Bill
No. 128, as printed on February 28, 1951, together
with certain Senate Amendments.

"I hereby request your official opinion as to whether
such bill, if enacted into law in its present form,
would be constitutional."

With an appeal for your consideration of the short space
of time allowed for an opinion on the expansive question as
submitted and in humility expressing a personal intent never
to invade the province of the legislative forum, we have con-
sidered your question as exhaustively as is possible.

Our consideration of the bill has been in its complete form
as submitted and our original reference is to the Constitution
of the State of Indiana.

It would appear that said bill in its present form would
be seriously questioned on the basis of Section 23 of Article
1 of our state Constitution, which is as follows:
"The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens."

Subsequent citations which are too lengthy and numerous to incorporate herein will, we believe, show a reasonable basis for our opinion.

We further refer to the Constitution of the State of Indiana in Article 15, Section 8, which is as follows:

"No lottery shall be authorized; nor shall the sale of lottery tickets be allowed."

Observations on this particular section of the Constitution will be found in the citations we are submitting.

While technically the language of the Act may serve in a certain sense to intend a circumvention of the exact provision of the Constitution, it is our opinion that, if the bill were enacted in its present form, it certainly would be in violation of the spirit of the Constitution.

We feel that the theory of the law in Indiana is volubly expressed in its decision in the Lynch v. Rosenthal case reported at page 86 in volume 144 of the Indiana Reports. In that case the court said:

"The argument is not made that contracts tainted with the vice of lottery schemes are enforcible. That such contracts are against public policy and that those who have entered into them shall have no relief, in the courts, to enforce those that are executory or to recover that which has passed under such as have been executed, is without doubt."

A further pointed expression of the law of Indiana is reported at page 404 in volume 10 of the Indiana Reports in the case of Whitney v. The State with reference to the sale of lottery tickets.

"In this state the sale of all lottery tickets is prohibited, as no lotteries are authorized by statute. Hence, tickets in numerous of the schemes gotten up to aid schools and churches, and gift exhibitions, being disguised lotteries, are illegal articles. The schemes
themselves are but attempts to obtain funds by means detrimental to public morals and the people’s virtue. A resort to these means may be prohibited by statute. A statute having such operation, is not the inhibition of a free sale of property, but of a mode of swindling in disposing of it.”

We respectfully direct you to the following cases for a further review:

Riggs v. Adams (1859), 12 Ind. 199;
Summer v. Union Trust Co. of Indianapolis (1946), 116 Ind. App. 684;

The consideration of the bill in an abbreviated form, as to its validity after certain inclusions or deletions of certain sections or amendments, becomes a physical impossibility within the few hours remaining until the compulsory adjournment of the General Assembly.

Therefore, in conclusion, the bill, considered in its original form without the amendatory language, may have some question as to constitutionality or validity because of the unusual features which are in character innovations in the field of law, but for absolute determination it must be submitted to the court. However, without precedent law to govern, it is my opinion that the right of the legislature to enact such a law would presume its constitutionality. The bill, construed with its amendatory features, is clearly unconstitutional.

OFFICIAL OPINION NO. 21

March 8, 1951.

Mr. Robinson L. Hitchcock,
Adjutant-General,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion concerning the liability, if any, of the State of Indiana to Mr. G. E. Mitchell,