was accomplished by the following portion of Section 3 (Burns 9-2211) which reads as follows:

> "* * * At any time within the maximum period for which the defendant might originally have been committed, but in no case to exceed five (5) years, the court may issue a warrant and cause the defendant to be arrested and brought before the court. If it shall appear that the defendant has violated the terms of his probation or had committed another offense, the court may revoke the probation or the suspension of sentence and may impose any sentence which might originally have been imposed."

In answer to your problem then it is my opinion that at any time within the maximum period of the original sentence (but not exceeding five years) the court may revoke the suspension of sentence and impose any sentence which might originally have been imposed and the sentence so imposed should begin to run at the time of its imposition.

The 1935 Official Opinion referred to above is, insofar as it conflicts with this conclusion, hereby expressly overruled.

OFFICIAL OPINION NO. 61

September 28, 1950.

W. A. Bottorff, Director,
Gross Income Tax Division,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your request of September 6, 1950, which reads as follows:

> "We wish to call your attention to an official opinion rendered by Attorney General Lutz May 29, 1936, on the following subject.
>
> > 'TAXATION—Vendors to Federal government not exempt from payment of gross income tax' (Page 205, 1936 Opinions).

"You will note that this opinion states that there is no bar against the imposition of this tax on sales to the Federal Government.

"However for some reason tax has not been assessed on such sales during the past few years.

"It seems to us that several decisions of the United States Supreme Court rendered since this opinion would fortify rather than weaken it but as we now are considering the imposition of tax in such cases we wish to be informed as to whether you would affirm or abrogate the former opinion or would wish to re-state it."

Since 1819, when Chief Justice Marshall in the case of McCulloch v. Maryland, 4 Wheat 316, 376, expounded the principle that properties, functions and instrumentalities of the Federated Government are immune from taxation by its constituent parts, the Supreme Court of the United States never has departed from that basic doctrine or waivered its application. In the course of time it held that even without explicit congressional action immunities had become communicated to the income or property or transactions of others because they in some manner dealt with or acted for the Government. In recent years the Supreme Court of the United States has curtailed sharply the doctrine of implied delegated immunity. But unshaken, rarely questioned, is the principle that possessions, institutions and activities of the Federal Government itself in the absence of express congressional consent are not subject to any form of state taxation.

The trend of recent decisions has been to withdraw private property and profits from the shelter of governmental immunity but without impairing the immunity of the State or nation itself. Benefits which a contractor receives from dealings with the Government are subject to State income taxation.

James v. Dravo Contracting Company (1937), 302 U. S. 194.

Salaries received from it may be taxed.

Graves v. New York *ex rel.* O'Keefe (1938), 306 U. S. 466.

The fact that materials are destined to be furnished to the Government does not exempt them from sales taxes imposed on the contractor's vendor.

Alabama v. King & Boozer (1941), 314 U. S. 1.

But in all these cases what the Court denied is immunity for the contractor's own property, profits or purchases. The Court has never held that the Government could be taxed or its contractors taxed because property of the Government was in their hands.

See: United States v. Allegheny County (1943), 322 U. S. 174 at 186.

In the case of James v. Dravo Contracting Company, *supra*, at the insistence of the United States, the Court held that a State gross receipts tax upon payments by the United States to a contractor for erecting structures on United States property was valid because the tax was not laid upon the state, the government, its property, its officers, or its instrumentalities, but was laid upon an independent contractor and was nondiscriminatory. Although admitting that the payment of the tax imposed a burden upon the activities of the United States because it inevitably increased the cost of exercise of its functions, the Court nevertheless sustained the exaction. In the opinion of Justice Roberts this decision overruled a century of precedents in this Court.

In 1941 in the case of Alabama v. King & Boozer, *supra*, the Government insisted that a state sales tax upon a purchase of building materials by a contractor who was to incorporate them into a Government project, and where, upon delivery, inspection and acceptance they became the property of the Government, were so direct a tax on the Government to infringe its constitutional immunity. The Supreme Court of the United States, however, held otherwise and followed the decision in Dravo, *supra*, and expressly overruled earlier decisions inconsistent with Dravo and King & Boozer. The Court said so far as a different view has prevailed, (See: Panhandle Oil Co. v. Knox, (1927), 277 U. S. 218 and Graves v. Texas Co. (1935), 298 U. S. 393) we think it no longer tenable.

In the case of Panhandle Oil Company, *supra*, a state tax had been imposed on dealers in gasoline for the privilege of

selling, and measured at so many cents per gallon of gasoline sold. The State of Mississippi sought to recover taxes claimed on account of sale to the United States for the use of its Coast Guard Fleet and its Veterans' Hospital. The Supreme Court of Mississippi held the exaction a valid privilege tax measured by the number of gallons sold; that it was not a tax upon instrumentalities of the Federal Government and that the United States was not entitled to buy such gasoline without payment of the taxes charged a dealer. The Supreme Court of the United States in reversing this case held otherwise that the substance and legal effect was to tax the sale, and thus burden and tax the United States, exacting tribute on its transaction for the support of the State. That such an exaction infringes the right of the dealer to have the constitutional independence of the United States in respect of such purchases remain untrammeled. It is here likewise to be noted that in this case strong dissents were written by Mr. Justice Holmes and Mr. Justice Brandeis and Mr. Justice McReynolds and Mr. Justice Stone agreed with the dissent.

The case of Graves v. Texas Company, *supra,* likewise dealt with an excise tax on gasoline. Suit was brought to restrain the State of Alabama from collecting the taxes in respect to gasoline sold to the United States and used by it in performing governmental functions. Here the Court followed the ruling in the case of Panhandle Oil Company, *supra,* and sustained the Lower Court ruling which had granted a permanent injunction. In this case Mr. Justice Cardozo wrote a dissent in which Justice Brandeis joined.

In view of the opinions rendered in these recent cases, Alabama v. King & Boozer, *supra,* James v. Dravo Contracting Co., *supra,* and Graves v. New York, *supra,* and the approval of these decisions in the case of United States v. Allegheny County by the United States Supreme Court in 1943, I concur in the Official Opinion rendered by Attorney General Lutz, May 29, 1936, to-wit: the State of Indiana may through the Department of Treasury impose and collect gross income tax from vendors upon their receipts or sales to either or both the Federal governments' regular Departments or its emergency agencies.