Mr. Dean E. Walker,
State Superintendent of
Public Instruction,
227 State House,
Indianapolis, Indiana.

Dear Mr. Walker:

Your letter of May 9, 1950, has been received and reads as follows:

“In the distribution of state funds to local school corporations under the provisions of Chapter 247 of the Acts of 1949, it was found that the number of pupils and the other factors used in determining the distributions vary from one semester to another. For example, the February, 1950, distribution was approximately $26,600,000.00 or $100,000.00 more than half of the $53,000,000.00, while the August, 1949, distribution because of different factors, amount to only $25,800,000.00.

“Question 1. Is the distribution of the $53,000,000.00 appropriation in semi-annual installments of different amounts permissible under the terms of the law so long as the total does not exceed the $53,000,000.00 appropriation for the year?

“Question 2. If it should develop that the $53,000,000.00 appropriation would be insufficient to pay to all school corporations one hundred percent of their allotment on the formula provided in the law, would the correct legal procedure then be to pro-rate on a percentage basis the final distribution for the year?”

These questions are controlled by the provisions of Chapter 247 of the Acts of 1949, same being Section 28-1021, et seq. Burns 1949 Supplement. The Section on appropriation is Section 6½ of said Act, same being Section 28-1027, Burns 1949 Supplement and reads as follows:
There is hereby appropriated for the fiscal year 1949-50 and for each fiscal year thereafter from the general fund of the state of Indiana and from the state school tuition fund the sum of fifty-three million dollars ($53,000,000) and also all funds receivable in each fiscal year hereafter from payments to be made by the federal government which may be eligible for expenditure for school purposes as comprehended in this act. This provision shall be deemed to constitute a prescription of the manner of distribution to local school jurisdictions of any such funds that may be receivable from the federal government. The general commission of the state board of education on or before July 1 of each year, on the basis of available data on enrollments and assessed valuations shall make estimates and may adjust the local foundation tax rates provided herein for tuition, special, and transportation purposes respectively upward or downward in like percentage of change for the ensuing year and/or may adjust the definition of a teaching unit so that when receipts from said taxes are added to funds available from the appropriations herein there shall be guaranteed to the local school jurisdictions as determined herein the funds required to finance the minimum foundation program of education as described herein. If at any time after the February 1 distribution in any fiscal year there shall remain a balance of one hundred thousand dollars ($100,000) or more of the funds appropriated herein, then within thirty (30) days the same shall be distributed to the various school jurisdictions of the state in amounts which in each case shall bear the same percentage ratio to the undistributed balance that the total previous distributions to each local jurisdiction of the said fiscal year bore to the total amount previously distributed in said year. If the undistributed balance shall be less than one hundred thousand dollars ($100,000) it shall be added to the appropriation of the succeeding year. The said $53,000,000 appropriated herein shall include all of the funds from state sources heretofore appropriated to the state school tuition fund and shall not be in addition thereto."
The provision regarding distribution for State teacher's salaries is Section 2 of said Act which reads as follows:

"The minimum foundation program shall be financed as follows: Subject to the provisions of sections 5 (§ 28-1025) and 6 1/2 (§ 28-1027) hereof, whenever any local school corporation shall levy a local tuition property tax levy and rate equivalent to fifteen cents (15¢) on each one hundred dollars ($100) of adjusted assessed valuation, then to such levy there shall be added from the state school tuition fund an amount sufficient to provide one hundred per cent (100%) of the average minimum salaries of instructors in each school corporation computed as follows:

"For every unit in grades one (1) to twelve (12), as determined by the commission on general education, provided at least one (1) legally licensed instructor is employed and engaged in the work of instruction in such grades, the employing school corporation shall be paid over and above the amount of the minimum tuition property levy when divided equally among the various units an amount sufficient when added to the said local tuition tax levy to equal the average minimum salary of the instructors of such corporation computed upon the basis of a nine months' term, as determined by chapter 231 of the Acts of 1945 (§§ 28-4332—28-4335) and acts amendatory thereof and supplemental thereto, and in accordance with the provisions of this act (§§ 28-1021—28-1028). The number of units for which each corporation qualifies under this act and the average minimum salary of the instructors of each such corporation shall be certified by the state superintendent of public instruction to the auditor of state on or before the first day of January and the first day of July of each year from the records of the office of the state superintendent of public instruction.

"Distributions to school corporations as provided for herein shall be made by the auditor on or before February 1 and August 1 of each year: Provided, however, that the first distribution under this act (§§ 28-1021—28-1028) shall be made on or before August 1,
1949, and shall be calculated on the average daily attendance, instructors, and number of units for the half school year starting February 1, 1949 without regard to tax rates levied prior thereto. Each semi-annual distribution made thereafter shall be calculated on information and data for the preceding half school year.

"Nothing in this act (§§ 28-1021—28-1028) shall be construed to limit the authority of the school authorities of any school corporation to levy a levy and rate in addition hereto for the purpose of defraying expenditures for teachers' salaries in addition to the minimum foundation program of education.

"The auditor of the state shall transfer semiannually, upon the order of the state board of finance, from the general fund of the state treasury to the state school tuition fund, such amount of money as may be necessary for the distribution provided for in this act (§§ 28-1021—28-1028), and such required amount of money shall be a lien upon the general fund of the state treasury of the state." (Our emphasis.)

Under the first quoted section of the statute it is observed that a maximum appropriation of $53,000,000.00 is made. Provision is made for the distribution of any surplus in excess of $100,000.00 remaining in such appropriation after the February first distribution. It is equally apparent the Act does not specify that such semi-annual distributions are to be in equal amounts.

From the second quoted section of the statute it is clear that the Legislature contemplated that such appropriations would not necessarily be in equal amounts as a different basis is provided for distribution, the basis being the information and data available for the preceding one-half school year. This section requires the Auditor of State upon order of the State Board of Finance to transfer from the General Fund of the State to the State School Tuition Fund, such amount of money as may be necessary for the distribution provided for in said Act.

Section 3 of said Act, same being Section 28-1023, Burns 1949 Supplement, provides a system of computing distribution from the State Equalization Fund for current operating
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expenditures of the schools. Section 4 of said Act, same being Section 28-1024, Burns 1949 Supplement, likewise makes provision for the State’s contribution from the Equalization Fund for the expenses of distribution in the school system.

Each of said sections of said statutes grant rather broad powers to the State Board of Education and the State Superintendent of Public Instruction in carrying out the provisions of said Act.

Among other things it is provided by Section 6 of said Act, same being Section 28-1026, Burns 1949 Supplement:

"* * * The method of determining the average daily attendance and the instances in which additional emergency units or fractions thereof for tuition or special purposes may be granted shall be prescribed by the commission on general education and shall be uniform throughout the state."

The last referred to section also prescribed rather broad discretionary powers to the State Board of Education and the State Superintendent of Public Instruction in the administration of the provisions of said statutes.

Section 1 of said Act, same being Section 28-1021 Burns 1949 Supplement, declares the purposes of said Act and reads as follows:

"It shall be the purpose of this act (§§ 28-1021—28-1028), in accordance with the constitution of Indiana, to promote the best interests of all the children of this state by distributing to local school corporations certain amounts of money to aid in financing a program of education to be known as the minimum foundation program of education. It shall be the established policy of the state of Indiana to assist local school corporations in making it possible for every child within such local school corporations to have access to such minimum foundation program.

"It shall be the duty of the state superintendent of public instruction to make recommendations concerning the provisions of this act (§§ 28-1021—28-1028), and such recommendations shall be acted upon by the state board of education in all matters to which such recom-
mendations pertain, and such action shall take the form of approval, rejection, or amendment by said board. The state superintendent of public instruction shall be the administrator of the provisions of this act, subject in all cases to the provisions hereof.”

In construing any statute the primary purpose is to determine the legislative intent and courts will look to the general purpose and scope of a statute to determine such legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567;

When the foregoing provisions of the statute under consideration is considered with the rules announced in the foregoing cases it is apparent that the legislature placed a great deal of discretion and authority on the State Superintendent of Public Instruction and the State Board of Education, acting through the Commission on General Education to administer such act in such a way that the declared purposes as set out in Section 1 of the Act are accomplished in a practical and efficient manner. (Also see 1949 O. A. G. Official Opinion No. 13). The Act itself by making provision for distribution of a possible surplus toward the end of the school year clearly indicates the money is not to be distributed equally semiannually. By using the data available from enrollment of the last half of a school year as the basis for computation in making distribution for the succeeding half school year, it is at once apparent that an equal distribution semiannually was not required as the purpose of the act is to, among other things, if possible, pay 100% of the tuition support for teachers. To add to the appropriation section a construction that it must be equally distributed semiannually would be to add language to that section of the Act which the Legislature has not seen fit to include in its provisions.

It might be that in a one-half school year expenses would be heavier than anticipated with no facilities available for taking care of them whereas facilities for taking care of expenses in the succeeding one-half school year might be avail-
able. In this connection it has been pointed out that since this is a new law making distribution upon an entirely different basis and theory and unforeseen complications may arise. In the coming one-half school year for 1950-51, I am advised there will be a substantial increase in pupil enrollment and that there will be considerable expense to some school corporations for tuition transfers for the preceding school year which must be paid before January 1, 1951, which latter condition would not exist in the second half of the school year. Such matters might result in a considerable shortage in funds with which to operate the schools during the first half of the school year, 1950-51, as the tax rate and budget for that period is already fixed. On the other hand the budget compiled the first of August, 1950 for the purpose of a tax rate for the calendar year 1951 could make allowances for any deficiency in distribution which might be made by the State to the schools on February 1, 1951, in the event it is found necessary to distribute more than 50% of the appropriation of $53,000,000.00 to the schools during the first half of the 1950-51 school year.

Since the Legislature has not seen fit to require the distribution to be made in equal amounts semi-annually, and since the purpose of the act might in some instances be better served by an unequal semi-annual distribution of State funds, I am of the opinion the answer to your first question is that it is permissible to make unequal distributions semi-annually of the State funds to the local school corporations under the provisions of Chapter 247 of the Acts of 1949 provided the total distribution does not exceed the appropriation of $53,000,000.00 in any one school year.

In answer to your question numbered 2, I am of the opinion that if more than one-half of the $53,000,000.00 is distributed to the local schools during the first half of the school year 1950-51, that the second distribution for February 1, 1951, should be made by pro-rating the balance of appropriation available among the schools, according to their allotment under the provisions of the statute.