Honorale James M. Propst,  
Auditor of State,  
238 State House,  
Indianapolis, Indiana.

Dear Mr. Propst:

I have your letter of June 7th which asks my Official Opinion of the following questions:

"1. Is the certificate submitted by the town of Homecroft sufficient to entitle them to participate in the Distribution of Motor Vehicle Funds for the period April 1st to June 30, 1950, which will be made early in July 1950?

"2. If it is not sufficient, what are the defects that the Town of Homecroft should have corrected to enable it to participate."

The attached certificate is as follows:


I HEREBY CERTIFY, That according to the preliminary count of the returns of the Seventeenth Census of the United States, the population of the town of Homecroft, County of Marion, State of Indiana, as of April 1, 1950, was six hundred and fifty-eight (658). This figure is provisional and subject to revision when the final processing of the returns has been completed. (Signed) Roy V. Peel, Director of the Census."

The statute under which you distribute gasoline tax funds is Burns 1949 Supplement, Section 36-2817, same being Section 1 of Chapter 270 of the Acts of 1949. It provides in part:

"* * * This sum shall be allocated to the cities and towns upon the basis that the population of each city and town bears to the total population of all the cities and towns at the last preceding United States"
census, and shall be used for the construction or reconstruction and maintenance of streets and alleys and shall be annually budgeted as now provided by law:
* * *"

There seems to be no direct authority as to what constitutes "the last preceding United States Census." However, in the case of Groves v. Board of Commissioners of Lake County (1935), 209 Ind. 371, 376, the court said:

"The court takes judicial knowledge of the Federal Census of the population of cities and counties in the state. It is a settled proposition that a statute which classifies counties or cities to be governed by its provisions according to the population of the last United States Census, will be held to apply to all other counties and cities which under a future census may pass into that class. The phrase 'last United States Census' applies to each succeeding census as it occurs. * * *"

It has been held by a number of courts that a census is the finding of the people of an official nature or an official enumeration for people and a public record of such enumeration and incidental information.


In 1941 the Auditor of State requested an opinion from the Attorney General on a somewhat similar question to the one that you now present.

1941 O. A. G. 110, 111, 112.

In that opinion the Attorney General said, in part:

"Towns, cities, townships, counties, states and nations may take a census practically at any time except that the taking thereof must be officially authorized by ordinance or the Act of the legislative branch of the particular government in question. These records must be preserved as official records are preserved. I am
unaware of any law, however, vesting any such power in the Auditor of State or any other State official. Though the Legislature in providing for the taking of the census might designate in the particular Act some State official, probably the Auditor of State, to supervise the taking of a census.

"It appears however that the population of towns as fixed by the last United States Census is the basis for distribution, according to the provisions of the Act above cited. Accordingly no census other than the last United States Census can be accepted under the Acts cited for a basis of distribution."

"* * * On the assumption that the United States Census could be taken of the town of _________ because of the failure to have taken same in the 1940 regular census, it is my opinion that the Auditor of State may use any such census, when and if completed, as the basis for determining the distribution of gasoline monies to the particular town involved. This would be the population of the town according to the last preceding United States Census within the meaning of the Acts cited."

In the cases dealing with censuses there is a recurrence of the words “official”, “complete” and “public record.” The certificate tendered to you is made by the public official charged with taking the census for the United States. However, he does not certify to you complete or official census but merely to some preliminary data from which the final public record will be compiled. It is, therefore, my opinion that the certificate is not sufficient to entitle the town of Homecroft to participate in the distribution of Motor Vehicle Funds.

As you know, there have been special censuses taken and accepted for Motor Vehicle Fund distribution. I would suggest that inasmuch as a considerable period of time may elapse before the 1950 United States Census becomes official that it might be advantageous to the town of Homecroft to contact the United States Census Bureau in regard to the possibility of that agency’s taking a special census of the town of Homecroft.