Therefore, in my opinion, members of the active militia who did not receive pay from the United States Government during the time specified are entitled to the exemption provided by the 1923 Act.

OFFICIAL OPINION NO. 28

April 27, 1950.

Honorable Kenneth M. Kunkel,
Director, Indiana Department Conservation,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion concerning the proper disposition of money in the Oil, Gas and Geology fund. The following facts are pertinent:

Chapter 278 of the Acts of 1947 imposed a petroleum severance tax of one percent and provided in Section 27 as follows:

“The monies received by reason of this Act shall be paid by the department into a special fund of the State to be kept by the Treasurer of State and will be known as the Oil, Gas and Geology fund. All monies so paid into said fund shall be devoted to the following purposes upon appropriation made thereof to-wit:

1. To the expenses of administering this Act.

2. To the Oil and Gas Division of the Indiana Department of Conservation.

3. To the Geology Division of the Indiana Department of Conservation for operating expense and research.

“For the biennium beginning July 1, 1947, there is hereby appropriated out of said special fund, to the department the sum of twenty-five thousand dollars for the collection of tax herein provided. For the biennium beginning July 1, 1947, there is hereby appropriated out of said special fund, to the Division of
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Geology of the Indiana Department of Conservation the sum of one hundred twenty thousand dollars. Such appropriation shall be available monthly upon the first of the month following the month in which the tax is collected."

Section 2 (e), Chapter 257, Acts of 1949, contains certain specific appropriations for the current biennium and provides "that in the event that the Severance Tax brings in revenue in excess of appropriations hereby made to the Department of Revenue and the Department of Conservation, that such excess is hereby appropriated to the Oil and Gas Division of the Department of Conservation."

On June 1, 1949, there remained in the Oil, Gas and Geology Fund a balance of $149,013.52 after satisfying appropriations for the 1947-49 biennium. Monies to satisfy the appropriations for the current fiscal year have been made available monthly upon the first of the month following the month in which the tax was collected, and the amount of $149,013.52 is still carried on the books of the Auditor of State as a balance from the previous biennium which is still intact. You have requested answers to the following questions:

1. Should the said balance of $149,013.52 be allocated to the Division of Oil and Gas of the Department of Conservation?

2. If Question No. 1 is answered affirmatively would any unused portion of said sum revert to the Oil, Gas and Geology Fund at the close of the fiscal year?

3. If Question No. 1 is answered affirmatively and Question No. 2 is answered negatively would any unused portion of said sum go into and become a part of the State General Fund at the close of the fiscal year?

4. If Question No. 1 is answered negatively should said sum remain in the Oil, Gas and Geology Fund or should it go into and become a part of the State General Fund?

5. If Question No. 1 is answered negatively what administrative disposition, if any should be made of said balance?

In answer to the first question it is my opinion that the above quoted portion of Section 2 (e), Chapter 257, Acts of 1949 is inapplicable to revenue collected during the 1947-1949
biennium and, therefore, does not affect the balance of $149,013.52 remaining in the fund on June 1, 1949. The language of the 1949 Act indicates that the Legislature was looking to the future and did not intend that the surplus accumulated during the biennium ending on June 30, 1949 be appropriated in its entirety to the Oil and Gas Division. While the verb phrase "brings in" in Section 2 (c) of the 1949 Act is in the present tense, the words "in the event" denote a contingency. The pertinent question is whether this contingency was envisaged as an event which might result or occur at the very moment the Act became effective or whether the language should be interpreted as if it were written on the date on which the Act became effective with the contingency being one which might later result. It is my opinion that the latter interpretation is correct. Though the Act contains an emergency clause, it did not by its terms become effective until the beginning of the current fiscal biennium. Concerning the tense of verbs in statutes, the following appears in Section 4930 of Sutherland on Statutory Construction (Third Edition):

"Statutes should always be drafted in the present tense for the statute is applied not as of the date of enactment but as of the date of enforcement. . . ."

Inasmuch as the answer to the first question is in the negative, it is unnecessary to consider the second and third questions as they relate to the $149,013.52 balance.

In answer to the fourth question it is my opinion that the balance accumulated during the 1947-49 biennium properly remained in the special Oil, Gas and Geology Fund and did not become a part of the General Fund.

Section 61-201 of Burns Annotated Indiana Statutes provides as follows:

"The general fund shall consist of:

"Fifth. All moneys paid into the treasury and not specifically appropriated to any other fund."

By negative implication, funds appropriated to the Oil, Gas and Geology Fund are not a part of the General Fund. Does Section 21 of the Financial Reorganization Act of 1947 (Burns Annotated Indiana Statutes 60-1821) authorize the
transfer of monies from the Oil, Gas and Geology Fund to the General Fund? On this question Attorney General’s Opinion No. 14 of 1948 construing said section is instructive. The following excerpt from that opinion is in point:

“Since (a) of said section uses the language ‘be returned to the general revenue fund’, it is indicated that the Legislature was referring to appropriations from the General Fund. Part of said section also provides: ‘the provisions of this section apply to every appropriation . . . made from the general revenue fund’, which is further indication that the section is to apply only to appropriations from the General Fund.”

The next sentence of that opinion might be paraphrased to fit the instant situation: If this interpretation be correct, then this Section would not apply to monies in the Oil, Gas and Geology Fund as said monies was not derived from the General Revenue Fund. There is no other statute or law authorizing the transfer of the funds in question to the general fund of the State.

In answer to the final question it is my opinion that the 1949 Legislature intended that the current specific appropriations from the Oil, Gas and Geology Fund consume not only current collections but also the balance remaining in said fund as of July 1, 1949, the date the 1949 Act became effective. Further, it must have been the legislative intent that the contingency appropriation of excess revenue to the Division of Oil and Gas be made available to said Division only after enough money has accumulated in the Oil, Gas and Geology Fund to satisfy specific appropriations from the fund for the current biennium.

The provision in the 1947 Act making appropriations available on the first of the month after the month in which the tax is collected was enacted at a time when funds from past collections were non-existent. The absence of a similar provision in the 1949 statute indicated the Legislature recognized that the Oil, Gas and Geology Fund might contain an unused balance at the time the 1949-51 appropriation Act became effective. With such funds existent, the Legislature doubtless intended that the first money in should be the first money available.
It must be assumed that the definite amounts appropriated from the fund in the 1949 Act for the Department of Revenue, the Division of Geology and the Division of Oil and Gas were deemed necessary for the proper functioning of these units of government. The Legislature could not be certain that revenue collections would exceed the amount of the specific appropriations for the current biennium. Surely the Legislature did not intend to appropriate excess funds to the Oil and Gas Division at the risk of creating a deficiency in the fund which would make it impossible to satisfy specific appropriations.

In conclusion, it is my opinion that no excess revenue should be allocated to the Oil and Gas Division under the 1949 Act until severance tax collections for the current biennium plus the balance remaining in the Oil, Gas and Geology Fund at the close of the past fiscal year shall equal the amount of the specific appropriations from said fund to the Department of Revenue, the Division of Geology and the Division of Oil and Gas for the current biennium. If and when this amount shall have accumulated, the entire excess, if any, should be allocated to the Division of Oil and Gas of the Department of Conservation. Any portion of such allocation which shall remain unused by the Division of Oil and Gas at the close of the current biennium will revert to the Oil, Gas and Geology Fund where it will remain until appropriated by a future Legislature.

OFFICIAL OPINION NO. 29

May 1, 1950.

Miss Florence M. Thimlar,
Executive Secretary,
State Board of Beauty Culturist Examiners,
301 State House,
Indianapolis, Indiana.

Dear Miss Thimlar:

Your letter of April 18, 1950, has been received requesting an official opinion as to whether or not a registered apprentice