Chapter 48 of the Acts of 1939 (47-1825, Burns' 1940 Replacement) provides that the requirements of the traffic laws shall be applicable to drivers of vehicles owned by the United States, this state or any county, city, town, district or other political subdivision, subject to specific exceptions as to emergency vehicles. Section 59 of the same Act (47-2008, Burns' 1940 Replacement) exempts emergency vehicles from prima facie speed limits, but expressly provides: "This provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street, nor shall it protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others." Section 81 of the same Act (47-2030, Burns' 1940 Replacement) provides in subsection (c): "This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway." The liability of the public employee is like that of a private operator. No basis is afforded to except him from a remedial statute founded upon that liability, common to all.

Since there is no express exception in the Safety-Responsibility Act as to the operators mentioned in your inquiry, nor is there an ambiguity in the Act which would justify the creation of such an exception by construction, I am therefore of the opinion that the Act as it now reads applies to the operators of state, county or city owned vehicles.

STATE BOARD OF TAX COMMISSIONERS: Taxation—Intangibles tax—religious, charitable and educational institutions not exempt.

January 29, 1944.

Opinion No. 9

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated January 19th, 1944, which reads as follows:

"We would appreciate the receipt, at your earliest convenience, of an official opinion concerning the taxability under the Intangible Tax Law of certain intangibles that grew out of the following transactions:

"On the 23rd day of May, 1931, one Christine Reitz of Evansville, Indiana, entered into a Trust Agreement with the National City Bank of Evansville, Indiana, as Trustee, under the terms of which she sold, assigned and delivered to such Trustee $200,000, the net income of which trust fund was during the life time of Christine Reitz to be paid to her semi-annually. After her death, the net income of such trust estate was to be paid to the Reitz Memorial Catholic High School of Evansville, but in the event such high school ceased to be operated and maintained as a Catholic high school or as a Catholic elementary school or as a Catholic college, then the trust should terminate and a corpus or principal of the trust estate should revert to the grantor, Christine Reitz or her successors in interest. Under the terms of the Trust Agreement, the Trustee was authorized to pay out of income received from the trust estate any and all taxes which might be properly issued against the trust estate or any beneficiary thereof. A short time after the making of such Trust Agreement, Christine Reitz died testate, and by the terms of her last will she confirmed such Trust Agreement but provided that her residuary estate should be divided in equal shares between nine named Catholic churches located in the city of Evansville, Indiana.

"After the death of Christine Reitz, and on the 30th day of November, 1935, the Trustee and the pastors of the Catholic churches named as residuary legatees entered into an agreement with Joseph B. Ritter, Roman Catholic Bishop of Indianapolis, in his official capacity, under the terms of which such Trustee was authorized to convert all of the aforesaid trust estate to Joseph B. Ritter, Roman Catholic Bishop of Indianapolis, and take in return his promissory notes in the aggregate amount of such loan, payable to the National City Bank of Evansville, Indiana, as Trustee and secured by a first mortgage on the property of the

Reitz Memorial Catholic High School. This agreement specifies the terms of the notes, dates of repayment, etc. Following the agreement of November 30, 1935, the National City Bank, as Trustee, in carrying out the terms of such agreement, turned over to Joseph B. Ritter, Roman Catholic Bishop of Indianapolis, the sum of $234,000 and took as a part of the trust estate his promissory notes. It now holds, as Trustee, promissory notes executed by the Roman Catholic Bishop of Indianapolis, under the conditions heretofore set forth, and has been paying Intangible Tax thereon. Tax has been paid for the years 1940, 1941, 1942 and 1943, but the question has been raised as to whether these particular notes are subject to the payment of Intangible Tax, and we would appreciate, at your earliest convenience, your opinion concerning the taxability thereof. We might mention that under the provisions of Regulation 16, adopted by this Board on June 30, 1937, we have not since such date taxed Intangibles that are held by religious, charitable, fraternal or educational organizations as owners, but the National City Bank of Evansville points out that these particular notes are not held by any religious, charitable, fraternal or educational organization, but is held by it as Trustee; that it has the equitable title thereto and religious organizations are merely beneficiaries of the trust. So the question really is, whether or not notes held by a Trustee as a part of a trust estate, where a religious organization is the beneficiary of the trust are taxable under the Intangible Tax Law."

Answering your letter we find that Burns' Replacement Volume 1943, Section 64-901 (which is Section 1 of Chapter 81, Acts 1933, as amended by Section 1, Chapter 134, Acts 1943), defines an intangible within the meaning of the act as follows:

"As used in this act, and unless a different meaning appears from the context:

"(a) Property Covered. The term 'intangible' and/or 'intangibles' shall apply to, mean, and include promissory notes, * * * and/or other evidences of indebtedness issued to any person * * *; written instru-

ments evidencing and/or securing a debt not otherwise evidenced, including mortgages, * * *; certificates or other instruments evidencing an interest in property and/or rights whether held in trust or otherwise, for the benefit of the holders of such certificates or other instruments.

"(b) Property Excluded. The term 'intangible' or 'intangibles' shall not apply to, mean nor include any intangible having an actual business situs outside the state of Indiana; * * *; nor intangibles owned, *other than those owned as a fiduciary* by any bank, trust company, building and loan association, rural loan and savings association, guaranty loan and savings association, insurance company or association, either foreign or domestic; * * *; nor obligations of the state of Indiana, or of any county, township, municipality, taxing units or public improvement assessment district expressly exempted from taxation by the laws of this state; nor obligations exempted from state taxation by any law of the United States.

"* * *

"(d) The term 'person' shall include a fiduciary and a firm, partnership, company, association, corporation and/or any and every multiple group that may have the capacity to own or hold property or the custody thereof.

"(e) The term 'fiduciary' shall mean and include an executor, administrator, guardian, receiver, trustee, agent, attorney in fact, and any person, group or association of persons acting in any trust capacity in the control, management and/or operation of any property.

"* * *

"(k) The term 'bank' or 'trust company' shall mean any bank of discount and deposit, loan and trust safe deposit company, private bank, savings bank, or trust company organized under any law of this state or any bank organized under any law of the United States."

Section 64-902, which is Section 2 of Chapter 81, Acts 1933, the original intangible stamp act, reads as follows:

"On and after the passage of this act, every person residing in and/or domiciled in this state, shall pay a

tax to the state of Indiana at the rate and in the manner provided in this act, for the right to exercise any one (1) or more of the following privileges:

"(a) Signing, executing and issuing intangibles;

"* * *

"(c) Receiving the income, increase, issues and profits of intangibles.

"Such tax at the rate provided in this act shall be measured by intangibles, wherever located.

"* * *

"(b) Controlled by any person and/or fiduciary and having a business situs in this state and in the possession of or under the control and/or management of any such person and/or fiduciary."

Section 64-931, being Section 31 of Chapter 81, Acts 1933, reads as follows:

"The tax hereby imposed shall be in lieu of all other taxes except estate and/or inheritance and gross income taxes which might have been or might be imposed upon intangibles or against the owners or holders thereof by virtue of the provisions of any law of this state enacted prior to the passage of this act. No tax except gross income, inheritance and estate taxes shall be imposed upon any intangibles on account of which a tax is imposed by the provisions of this act by virtue of the provisions of any other law of this state enacted prior to the passage of this act. Whenever the capital stock of any corporation or any part thereof is invested in intangibles on account of which a tax has been actually paid under the provisions of this act, such capital stock shall not be assessed to the extent that it is so invested."

Section 64-920, which is Section 20, Chapter 81, Acts 1933, reads in part as follows:

"The commission is hereby charged with the duty of enforcing and/or causing this act to be enforced and administered, * * *, and shall make, promulgate and enforce such rules of procedure and regulations in any matter connected with the enforcement and administra-

tion of this act which may be necessary fully to carry out the provisions thereof."

It clearly appears from the explicit language contained in Section 64-902, *supra,* that the Intangibles Tax Law imposes an excise tax and not a property tax, and for this reason the provisions of the general tax law, Section 64-103, defining that all property within the jurisdiction of the state of Indiana, not expressly exempted, shall be subject to a property tax, and Section 64-201, exempting real and personal property owned by any educational, religious or charitable institution within the state, or property devoted to such use, shall be exempt from the payment of the property tax imposed by Section 64-103, are not applicable to the question here involved as to whether or not such property is subject to an excise or privilege tax under the provisions of the Intangibles Tax Act. The constitutionality of Chapter 81, Acts 1933, was upheld by the Supreme Court of Indiana in the case of Lutz v. Arnold, 208 Ind. 480. On page 494, the court says:

> "We think the tax imposed under the act in question is an excise tax and not a property tax. It has the incidents of an excise tax. We think this construction of the act is compatible with its meaning and effect. * * *."

On page 496 of 208 Ind. the court says:

> "It will be conceded that the power of taxation is a sovereign power and belongs exclusively to the legislative department of government and that the power of the legislature over the subject of taxation admits no limitations except where specifically imposed by the Constitution itself.
>
> "The plan of taxation is with the legislature alone, subject only to constitutional provisions. * * *.
>
> "Having determined that the tax imposed is an excise tax, then under a uniform holding of the courts, the state may classify for the purpose of imposing an excise tax. * * *."

Again on page 499 of 208 Ind., the court further states:

> "The State of Indiana is not prohibited from imposing different taxes on tangible and intangible, real and

> personal property by the federal Constitution, * * *; and the power of the state to classify under section 23 of article 1 of the Indiana Constitution must be conceded. (Cases cited.)."

On page 501 of 208 Ind., the court says:

> "We do not think the classification as made in chapter 81 of the Acts of 1933, is invidious, capricious, or arbitrary and therefore does not violate any provision of the state or federal constitution."

In discussing the validity of the exemption clauses contained in Chapter 81, Acts 1933, with reference to the constitutional provisions of the Indiana State Constitution, to-wit: Article 10 of Section 1, the court on page 503 of 208 Ind. says:

> "It must be remembered that this section has no application to an excise tax, and that neither the federal, nor the Indiana Constitution limits the General Assembly to any particular form of taxation, nor prevents the imposition of any form of excise tax. (Cases cited.)."

On page 512 of 208 Ind., the court states its conclusion as follows:

> "We do not think the acts in question violate section 23 of article 1 of the State Constitution, nor the 14th Amendment to the United States Constitution. Nor do we believe the acts or any sections thereof violate any provisions of the state or federal Constitution."

As heretofore stated, the provisions of the general tax act of Indiana, providing for the levy and collection of property taxes, are not applicable or controlling upon the question as to whether or not the intangible referred to in your letter is exempt from the provisions of the Intangibles Tax Act, which question must be determined from the language contained in the Intangibles Tax Act itself.

I am unable to find any language in Section 64-901, *supra*, or in any other section of the Intangibles Tax Act, which expressly and specifically exempts intangibles owned or held for the use and benefit of any literary, scientific, benevolent, religious or charitable institution, from the payment of the

excise or privilege tax imposed by the Act, and in the absence of such an exemption the provisions of the Act are applicable for the reason that the language contained in Section 64-901, *supra,* applies to every intangible except those mentioned in the section under clause B, as being excluded.

It is a well settled rule of statutory construction that where the language contained in a statute is plain, definite and unambiguous, the courts cannot enlarge upon or take from the meaning of the statute and the statute must be construed to mean what it plainly says.

Rogers v. Calumet, etc., 213 Ind. 576;
Cheney v. State, 165 Ind. 121 on 125;
Pabst, etc. v. Schuster, 55 Ind. App. 375.

Your letter states that in 1937 regulation 16 was adopted by the State Tax Board and that under the provisions of said regulation 16 intangibles held by religious, charitable, fraternal or educational organizations as owners, have not been held to be subject to the provisions of the Act. I call your attention to the well settled rule that unless an intangible is exempt from taxation under the express language contained in the Intangibles Tax Act the State Tax Board has no right, power or authority to adopt a regulation which would render such intangibles exempt from the provisions of the Act. The law is contained in the language of the statute and the State Tax Board has no power or authority to change or modify the language of the statute.

Blumberg v. Smith, 138 Fed. (2d) 956.

In conclusion, it is my opinion that until the Legislature amends the provisions of the Intangibles Tax Act and specifically exempts intangibles owned by or held by a trustee for the use and benefit of an educational, religious or charitable institution in the same manner as contained in the exemption provisions of the general property tax laws of the state of Indiana, intangibles such as described in your letter must be held to be subject to the provisions of the Intangibles Tax Act.