the welfare and discipline of the pupils of the school is injuriously affected by the attendance of such pupil in such school.

In answer to your second and third questions, I wish to advise that under the provisions of Sec. 1 of Art. 8 of the Constitution of Indiana, supra, it is provided that "tuition shall be without charge," and if a pupil is eligible to attend such school, no tuition may be charged therefor.

STATE BOARD OF TAX COMMISSIONERS: TAXATION—Industrial Loan and Investment Companies not required to put intangible stamps upon their loans.

October 21, 1944.

Opinion No. 88

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

Dear Sir:

This will acknowledge receipt of your letter of August 18th, 1944 in which you state:

"* * * I would like for you to furnish me with an official opinion as to the liability of Industrial Loan and Investment Companies organized under, 'The Indiana Industrial Loan and Investment Act' for the payment of intangible tax upon their loans and for such an opinion to cover the loans of the 'issuer type' as well as the 'non-issuer type' of Industrial Loan and Investment Companies."

It is provided by Section 18-3123 Burns' R. S. 1933, 1943, Supplement, as follows:

"All industrial loan and investment companies subject to the provisions of this act shall be taxed in the same manner as banks and trust companies pursuant to chapter 83 (§§ 64-801—64-821) of the Acts of the General Assembly of the state of Indiana of 1933. (Acts 1935, ch. 181, § 21A, p. 897.)"
Section 64-802, Burns' R. S. 1933, 1943 Replacement, is as follows:

"From and after the first day of January, 1934, except as otherwise provided in Section nineteen (§ 64-819) of this act, all of the shares of the capital stock of every bank having a capital stock, and of every trust company, and the surplus and undivided profits of every savings bank, and all of the property of and all deposits in every bank and trust company, except as herein otherwise provided, shall be assessed for taxation and taxed in the manner and at the rate and value prescribed in this act and not otherwise. (Acts 1933, ch. 83, § 2, p. 545.)” (Our emphasis.)

Section 64-816, Burns' R. S. 1933, 1943 Replacement, is as follows:

"The taxes imposed by the provisions of this act shall be in lieu of all other taxes of every kind and character, except estate and inheritance and gross income taxes, upon the shares of stock, surplus, undivided profits, reserves, deposits and all other property of every bank or trust company, and in lieu of all other taxes of every kind and character, except estate and inheritance and gross income taxes, against the owners of such shares of stock and such deposits on account thereof. (Acts 1933, ch. 83, § 16, p. 545.)”

Statutes which adopt the provisions of a prior act have generally been held valid.

Sutherland Statutory Construction, 3rd Ed., Sec. 1925.

Having adopted the taxing provisions of Chapter 83 of the Acts of 1933 all of the provisions of that chapter relating to taxation of banks and trust companies are adopted. This would include the provisions that they are to be taxed in the manner prescribed in that act “and not otherwise” (Section 64-802) and the provision that the taxes therein provided for are “in lieu of all other taxes of every kind and character” (Section 64-816).

It is suggested that one of the persuasive reasons why intangibles owned by banks were excluded was the fact that
the deposits of such institutions were subject to taxation under the Bank Act and none of the Industrial Loan and Investment Companies are authorized to accept deposits in the sense that banks and trust companies accept the same (Section 18-3119). It has also been suggested that the certificates of indebtedness which are issued by the “issuer” type of Industrial Loan and Investment Companies are analogous to certificates of deposit. It is true that such certificates of indebtedness are in many respects analogous to certificates of deposit.

Whether they are to be considered as deposits for taxation under Chapter 83 of the Acts of 1933 is not necessary to decide in this opinion, for if they are to be so considered then they are taxed against the owner with the company given the option to elect to pay the tax. If they are not to be so considered as deposits for taxation under said Chapter 83 they are investments on which the owner would be required to place intangible stamps (unless otherwise exempt). Thus in either event the state would receive a tax thereon and the result would not be so unequal as to warrant holding the legislative classification invalid.

The question of the validity of excluding banks and trust companies from the payment of intangible tax was before the Supreme Court in the case of Lutz, Attorney General v. Arnold, etc., 208 Ind. 480, and the court said at page 500:

"It is contended that the classification as provided for in said act is arbitrary and unreasonable because there is no real or natural reason why banks, trust companies, building and loan companies, and certain other corporations are not taxed under said act. This contention cannot be sustained for the reason that chapters 82 and 83 both have to do with taxation and take care of the situation complained of. Chapters 81, 82 and 83 must be construed together as parts of one body of law and as together expressing the legislative will. These three chapters were enacted by the same legislature and approved on the same day. (Holle v. Drudge (1920), 190 Ind. 520, 129 N. E. 229; Cummins v. Pence (1909), 174 Ind. 115, 91 N. E. 529. As said in the case of State ex rel. Baker v. Grange (1928), 200 Ind. 506, 509, 165 N. E. 239:

"'Statutes which relate to the same thing, or to the same subject, person or object are in pari materia and
it is presumed that such acts are imbued with the same
spirit and actuated by the same policy, * * * and they
should be construed together as if parts of the same
act, * * * to determine their affect. * * * This ap-
plies with peculiar force to statutes passed at the same
session of the legislature * * *.

"So construing the three chapters, we find that the
objections raised as to the classification cannot be sus-
tained. The classification is not purely arbitrary, but
rests upon a reasonable distinction, and this is sufficient
for the purpose of classification. State Board of Tax.
Comm. v. Jackson, supra."

It is to be noted that building and loan companies do not
have deposits in the sense of bank deposits, but their exemp-
tion from other taxes such as the intangible tax was held
valid. A trust company might legally exist without any de-
posits, but it would nevertheless not be subject to intangible
tax.

If it be determined that the method of levying the tax is
lawful, then the fact that one type of institution within the
classification may pay more taxes than another does not make
it invalid. As the Supreme Court said in the case of Stewart
Dry Goods Company v. Lewis, 294 U. S. 550, 563:

"* * * Once the lawfulness of the method of levy-
ing the tax is affirmed, the judicial function ceases.
* * *"

It has also been suggested that for a classification for taxa-
tion to be valid there must be equality and uniformity within
the class and this rule is violated by the fact that banks pay
taxes on deposits but the loan and investment company has
no deposits on which to pay taxes. Under Chapter 83 of the
Acts of 1933 the bank, etc., has an election as to whether it
will pay the tax on its deposits and if it does not so elect the
tax must be paid by the owner of the deposit. If a certificate
of indebtedness is an investment (O. A. G. 1934, p. 57) and
not a deposit so as to give the option to the loan and invest-
ment company, then the intangible tax would have to be paid
by the owner and the same practical result reached as though
a bank did not elect to pay on its deposits.
As to the "non-issuer" type of loan and investment company, a company organizing under the 1935 Act may elect to qualify as an "issuer" or not (O. A. G. 1944, p. ———). In 51 Am. Jur. Taxation, Section 180, p. 241, it is said:

"Another principle relating to classification for tax purposes which has authority in its support is that where a classification is such that the individual taxpayer has some control over his inclusion or exclusion therefrom, it cannot be considered unconstitutionally discriminatory. * * *

As pointed out, if the "non-issuer" does business on its capital alone and without availing itself of the privilege of issuing certificates of indebtedness its shares of capital stock would be taxable under Chapter 83 of the Acts of 1933. If it borrows money for operation the notes representing the same are subject to intangible tax by the owner unless it is exempt under some statute. Thus we see the result will work out about the same as in case of a bank or trust company and there would be no such inequality in ultimate results as would justify declaring the statute invalid.

In my opinion an Industrial Loan and Investment Company organized under "The Indiana Loan and Investment Act" of 1935 is not liable for the payment of intangible tax upon loans made by it. That is applied both to the "non-issuer type" and to the "issuer type" of such Industrial Loan and Investment Companies.

DEPARTMENT OF INSURANCE: Insurance—Municipal corporations' use of public funds to pay premium on group policies.

October 24, 1944.

Opinion No. 89

Hon. Frank J. Viehmann, Commissioner,
Department of Insurance,
State of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have your letter of October 16th, in which you request an opinion whether or not cities, counties, townships, school