capped children, and special laws authorizing health officers to exclude children from attending school in certain cases, are not intended to be covered in this opinion.

STATE BOARD OF TAX COMMISSIONERS: Intangibles Tax—Business situs of notes received from sales allocable to Indiana business location of foreign corporation which transmits such note to corporate domicile.

December 18, 1944.

Opinion No. 105

Hon. Charles H. Bedwell, Chairman
State Board of Tax Commissioners,
Room 231 State House,
Indianapolis 4, Indiana,

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated November 22nd, 1944, which reads as follows:

"We would appreciate it if you would furnish us an official opinion concerning the taxability under the Intangibles Tax Laws of this State of the notes and trade acceptances of the W. B. Conkey Company.

"We are sending herewith and attaching hereto a brief filed by the taxpayer which states the facts concerning the business of the company and the only question involved is whether the W. B. Conkey Company has a business situs in the State of Indiana so that the intangibles which arise from its manufacturing business are subject to our intangibles tax."

Your letter refers to a brief filed by the taxpayer stating the facts in connection with the business of the W. B. Conkey Company. The facts as stated in this brief are as follows:

"The business of the taxpayer was established by Mr. W. B. Conkey in Chicago in 1877. He incorporated under the laws of Illinois in 1895. He continued operations there until he moved his plant to Hammond, Indiana in 1898 and the corporation was at that time
admitted to Indiana. The Home Office has always been in Chicago. The directors almost invariably meet there. All stockholders' meetings are held there. Two directors reside in Chicago, two in Indiana, and one in Connecticut. The president resides in Chicago. All manufacturing operations are carried on in Indiana. Sales are made from Hammond, Chicago, or New York offices, or elsewhere. The corporate ledgers and similar records are kept in Indiana. The principal bank accounts are in Chicago. For convenience, a relatively small payroll and petty cash account are carried in Indiana.

“When notes or trade acceptances are taken from customers, they may be mailed to any Company office, in New York, Chicago, or Hammond. As a rule, they first come to Hammond. They are there recorded, as any other account would be, and immediately, usually the same day, sent to the Chicago office. During the greater part of the time involved in this inquiry, such intangibles were recorded in the Chicago office and placed in a safety deposit vault. When or about the time they became due, they were taken from the vault and delivered to the Continental Illinois National Bank and Trust Company of Chicago for collection, and credited to the Company's account there. Recently, they have been deposited with the Continental Bank immediately instead of going into a safety deposit vault. But the collection and credit plan has not been modified in any other respect. Physically, the intangibles do not come to rest in the Hammond office, but are there only long enough to make the proper records and never with the intention of keeping them there. A spot check of the intangibles that the Company holds by way of notes and trade acceptances shows that on the average, more than half of them are from Illinois customers, so that both the debtor and the creditor reside in that state.”

The taxpayer then sums up its position to be “that inasmuch as the intangibles are actually and physically in the state of domicile of the company, they are not taxable in Indiana.”
This position was urged in Metropolitan Life Ins. Co. v. New Orleans (1907), 205 U. S. 395, where notes evidencing policy loans negotiated in Louisiana by plaintiff’s local agents upon policies held by residents of Louisiana were transmitted to plaintiff’s home office in New York. The court held that the notes were taxable in Louisiana where they had a business situs and in doing so made the broad statement that a non-resident doing business in the state cannot escape taxation upon its capital employed in the state by removing from it the evidences of credits in the form of notes.

In Liverpool, etc. Insurance Co. v. Orleans Assessors (1911), 221 U. S. 346, the court had occasion to comment upon that case and it is evident from the opinion that the basis upon which the tax was sustained was that the notes arose from business transacted within the state, disregarding the location of the notes.

Again, in Blodgett v. Silberman (1927), 277 U. S. 1, the court states as a settled rule that there is no analogy between tangible personal property, taxable at its physical location, and bonds, notes, or other specialties, which are mere evidences of debt and choses in action as to which physical location is not a controlling factor. See also 2 Cooley Taxation (4th ed., 1924), § 465, 466, pp. 1031-1042.

Consonant with these decisions, the Indiana Intangibles Tax Law, Section 2 (Burns’ Indiana Statutes, Sec. 64-902) provided that

"* * * every person" (defined in section 1 d to include corporations) "residing in and/or domiciled in this state, shall pay a tax to the state * * *

and further that

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

(a) Owned by any taxpayer except his intangibles having an actual business situs outside the state of Indiana.

(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."
The mere fact that the intangibles may be also physically located at the domicile of the owner where they may again be taxed would appear to be not material, there being no prohibition against multiple taxation of intangibles. Curry v. McCanless (1939), 307 U. S. 357; Utah v. Aldrich (1942), 316 U. S. 174, 123 A. L. R. 185 n.

It appears to be inferentially admitted by the taxpayer that, except for this argument founded upon their physical location, the intangibles had a business situs in Indiana and arose out of the business conducted in Indiana. Such physical absence from the state is by decision and statute denied a controlling effect and the extension of this opinion by a discussion of the various factors which establish such business situs, in the absence of a complete disclosure and examination of all the facts involved would be unavailing. See Opinions of Attorney General, 1941, page 395.

It is, therefore, my opinion that, upon the facts submitted, the notes and trade acceptances involved are taxable under the Indiana Intangibles Tax Act.

HOUSE OF REPRESENTATIVES: STATUTES—Construction of words "at the convening of the next regular session."

December 18, 1944.

Opinion No. 106

Hon. Alpha Hoesel, Chairman,
Study Commission, Hospital for
Crippled Children,
Kewanna, Indiana.

Dear Sir:

I have your letter of December 12th in which you inquire as to when the report of your committee should be made.

Your committee was established by Chapter 279 of the Acts of 1943, page 785 (22-3801, et seq, Burns' R. S. 1933, Pamphlet Part). By Section 2 of the Act your committee is authorized and empowered to recommend a suitable site in any county in northern Indiana upon which to study and investigate the feasibility and necessity for such a hospital and if found feasible and necessary, to recommend the establishment