It seems to me that there would be no basis for a refund of taxes voluntarily paid on the basis of income from non-military sources. The Act does not make such income exempt from the tax, and when such tax from such income has been paid, it has been paid in discharge of an existing liability.

PUBLIC INSTRUCTION: Whether Mayor of second class city may appoint school board. April 7, 1943.

Hon. Clement T. Malan, Superintendent,
Department of Education,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 2, 1943, received as follows:

"May we have your official opinion in regard to the following question on chapter 274, Acts of 1943?

"Does the mayor of second class cities have the authority to appoint the members of the school board?"

It is my opinion that the above Act does not give the mayor of second class cities the right to appoint members of the school board. An examination of the Act in question reveals that the intent of the legislature was to provide for appointment of officers and employees of the civil city and not the school city. The school city being a distinct municipal corporation for school purposes under the provisions of Section 28-2402, Burns' Revised Statutes 1933, same being Acts of 1865, Ch. 1, Sec. 4, p. 3.

Attention is further called to the decision of the Supreme Court of Indiana in the case of State ex rel. Osborn v. Eddington, 208 Ind. 160 at 164, 165, to-wit:

"The people of Indiana have translated into a fundamental constitutional postulate the belief that the general diffusion of knowledge and learning throughout a community is essential to the preservation of free government. And in harmony with this constitutional
postulate the Constitution recognizes that the business of education is a governmental function and makes public education a function of state government as distinguished from local government. Sec. 1, Art. VIII, Indiana Constitution. ‘It was evidently the intention of the framers of the Constitution to place the common school system under the direct control and supervision of the state, and make it a quasi-department of the state government’; (Greencastle Twp. v. Black (1854), 5 Ind. 557, 563) ‘a centralized and not a localized form of school government.’ State ex rel. v. Ogan (1902), 159 Ind. 119, 121, 63 N. E. 227.

"Under the legislative act of 1852 (Sections 4 and 32, ch. 98, p. 439, R. S. 1852, Vol. I) the civil townships, towns and cities were made school districts. By later legislative enactment civil townships and incorporated towns and cities were made ‘distinct municipal corporations for school purposes’ (Sec. 28-2402, Burns’, etc., 1933, Acts 1865, ch. I, p. 3, Sec. 4) and thus the school government of the state was separated from civil government. Consequently school corporations and school officers, as such, do not act as agents of civil municipal corporations or civil administrative units. * * *"

In view of the foregoing authorities, the legislature could have only intended to deal with the civil cities and not the school cities.

BOARD OF ACCOUNTS: Whether Chapter 88 of the Acts 1915 (since repealed) may be used to authorize assessments as to drain established under the 1915 Act.

April 7, 1943.

Hon. Otto K. Jensen, State Examiner,
Department of Inspection and Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I am in receipt of your letter dated April 2, 1943 stating that in Dubois County, Indiana a drainage ditch association