thereof, shall be fined not less than fifty dollars ($50.00) for the first offense, and not less than one hundred dollars ($100) for each subsequent offense. The state chemist is hereby empowered to prescribe and enforce such rules and regulations relating to fertilizers as he may deem necessary to carry into effect the full intent and meaning of this act."

No express provision is made for the exchange of tags or labels. Apparently, however, these fees belong to the Professor of Agricultural Chemistry at Purdue University who, by the Act, is constituted the State Chemist of Indiana. It seems to me that upon that basis, the State Chemist, or his employer, Purdue University, would have the right to make reasonable regulations providing for refunds on tags sold to commercial fertilizer companies, but which can no longer be used in Indiana, owing to controlling Federal orders and regulations which exclude from sale in the State of Indiana grades and analyses of the product on which such tags could be legally used.


PUBLIC INSTRUCTION: Distribution of school funds.

May 19, 1943.

Hon. Richard T. James,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. James:

I am in receipt of your letter dated May 12, 1943, requesting my official opinion as to the proper interpretation to be placed upon the following language contained in Section 3 of House Bill 50, which will be Chapter 263, Acts of 1943, to-wit:

"Provided, however, That on or before June first preceding any year in which distributions under this
act shall be made, the state board of finance may estimate the anticipated revenue receipts and disbursements for such succeeding year and, if in its judgment, sufficient funds can be made available for such distributions from all sources, may fix, with the approval of the budget committee the distribution for such succeeding year at a percentage of the state minimum salaries of such instructors, but in no case less than eighty per cent.”

Your specific questions are as follows:

“Can the Board of Finance fix a rate of distribution for the school year 1943-44 other than eighty per cent? "If the answer to this question is in the negative, then the following question should be answered:

“Will the distribution for the year beginning August 1, 1943, be eighty per cent under the terms of the Act?”

Before proceeding to answer your specific questions we will examine the provisions of Sections 1, 2 and 3 of said Chapter 263, Acts of 1943.

The title of this Act reads “An act creating the state school tuition fund, providing for the securing of revenues therefor, prescribing the manner of their distribution, setting forth the powers and duties of the state board of education, the state budget committee and the state board of finance in relating thereto, providing penalties and repealing all laws or parts of laws in conflict herewith.” Section 1 of the Act creates a fund to be known as the State School Tuition Fund, from which there shall be apportioned to the several school taxing units in the state in the manner hereinafter provided, sufficient amounts of money to achieve the purposes of the Act. Section 2 provides that for the year 1944, and annually thereafter, there shall be assessed and collected as state and county revenues are collected, seven cents on each $100.00 worth of taxable property in the state and in addition a poll tax of fifty cents upon each taxable poll in the state, which money, when collected, shall be paid into the State Treasury for the State School Tuition Fund, except the amounts received from the several counties at the June settlement of
taxes in 1943, shall be credited to the common school relief fund for payment of claims accruing prior to the end of 1942-1943 school year; the balance remaining in the common school relief fund as created by Chapter 167 of the Acts of 1933 and Acts amendatory and supplemental thereto, after all claims for the school year ending July 31, 1943, have been paid, shall be transferred to the State School Tuition Fund, prior to December 31, 1943. In addition to the amounts provided by the tax levy, as above set out, the funds accruing in the State Treasury as such after December 1, 1943, to the excise fund, common school interest, common school revenue, intangible tax, and the dog fund, which are for distribution to the school, shall be credited to the State School Tuition Fund.

That "Beginning on January 15, 1944, the auditor of state shall transfer, semi-annually, upon the order of the state board of finance, from the general fund of the state treasury to the state school tuition fund, such amount of money, computed as hereafter provided, as may be necessary for the distribution provided for in this act and such required amount of money shall be a lien upon the general fund of the state treasurer of the state."

Section 3 provides that for every unit in grades one to twelve, as declared by the State Board of Education, provided at least one legally licensed instructor as employed and engaged in the work of instruction in such grades, the employing school corporation shall be paid an amount equal to eighty percent, the average minimum salary of the instructors of such corporation computed upon the basis of an eight months' term as declared by Chapter 41, Acts of 1941, and Acts amendatory thereof and supplemental thereto, and in accordance with such provisions of this Act. Then follows the proviso quoted in your letter and heretofore set forth in this opinion. Immediately following this language Section 3 further provides:

"* * * Failure of the state board of finance to so act shall be deemed to constitute an order to the auditor of state to proceed under section 2 of this act."
This quoted language refers to the italicized language heretofore quoted from Section 2 of Chapter 263, as aforesaid. Section 3 further provides that distributions to school townships and school cities and towns, as provided for herein, shall be made by the auditor on or before February 1st and August 1st of each year. The first distribution under the act shall be made on or before February 1, 1944, and shall be calculated on the average daily attendance, instructors and units for the half school year starting August 1, 1943. Each semi-annual distribution made thereafter shall be calculated on information for the preceding half year. The last distribution of tuition fund as provided for in Chapter 96 of Acts of 1933, as amended, shall be made July 15, 1943.

As stated in your letter, Chapter 263 does not contain an emergency clause and your letter further states that inquiry at the office of the Secretary of State discloses that the Acts of 1943 probably will not be distributed until after June 1, 1943.

Section 28 of Article 4 of the Indiana State Constitution expressly provides that:

"No act shall take effect, until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body, of the law."

Therefore Chapter 263 will not become effective until the published Acts of 1943 have been duly distributed and declared to be in full force and effect by the Governor's proclamation.

Referring to the specific questions, a correct answer to each of your questions requires and necessitates a determination as to the validity and legal effect of any action taken by either the State Board of Finance or the Budget Committee prior to the effective date of Chapter 263. The law applicable to this question is well stated in Corpus Juris in the following language:

"* * * The general rule is that a statute speaks from the time it goes into effect and not otherwise, whether that time be the day of its enactment or some future day to which the power enacting the statute has postponed the time of its taking effect.


* * * While a statute may have potential existence, although it will not go into operation until a future time, until the time arrives when it is to take effect and be enforced, a statute which has been passed by both houses of the legislature and approved by the executive has no force whatever for any purpose. Before that time no rights may be acquired under it and no one is bound to regulate his conduct according to its terms, and all acts purporting to have been done under it prior to that time are void.”

59 Corpus Juris, paragraph 673, pages 1137-1138; Smith v. Thomas, 317 Ill. 150; 147 N. E. 788; Dunne v. County of Rock Island, 283 Ill. 628; 119 N. E. 1103; People v. Rose, 166 Ill. 422; 47 N. E. 64; Price v. Hopkins, 13 Mich. 318.

In addition to the above the Supreme Court of Indiana has declared the rule as to when an Act of the Legislature becomes effective in the following language:

“We think the law must be construed to speak from the time it took effect, as a will speaks from the time of the death of the testator; * * *.”

Evansville etc. R. R. Co. v. Barbee, 59 Ind. 592 on 593.

Again the Supreme Court says:

“* * * The act took effect July 2d, 1877. The question is, is this law to be construed as speaking from the time of its approval or from the time it took effect? The question has been settled by this court, in a case between the parties to this suit. The Evansville etc. R. R. Co. v. Barbee, 59 Ind. 592. Worden J., says: ‘We think the law must be construed to speak from the time it took effect, as a will speaks from the time of the death of the testator; and that the words “hereafter and heretofore” have reference to that time.’”

The Evansville etc. R. R. Co. v. Barbee, 74 Ind. 169 on 171.
Finally Judge Elliott, speaking for the court in the case of McCalment v. Estate, 77 Ind., p. 250, again states the rule as follows:

"* * * The statute of 1881 did not have any effect whatever, either as a repealing act or otherwise, until it went into force, on the 19th of September. Until that date, the statutes which had been previously enacted were in full force."

Under the above rule of law it is my opinion that the language contained in the proviso of Section 3 of Chapter 263, Acts of 1943, reading:

"Provided, however, That on or before June first preceding any year in which distributions under this shall be made, * * *"

must be construed as having reference to June 1 of any calendar year after Chapter 263, Acts of 1943 becomes effective and that such language cannot legally be construed as to include or refer to June 1 of a calendar year prior to the time that Chapter 263 becomes effective as a valid law. The fact that the Legislature failed to include an emergency clause in Chapter 263 and that they must be presumed to have known and anticipated that there was a possibility that the Acts of 1943 would not be printed, published, distributed and proclaimed to be in full force and effect prior to June 1, 1943, is an additional reason for construing the words June 1 as having reference only to a calendar year after the Act becomes effective. Otherwise the Legislature could very easily have inserted an emergency clause in Chapter 263, or otherwise indicated by specific language that June 1, 1943, should be included within the provisions of the Act.

Therefore, it is my opinion that prior to the effective date of Chapter 263 neither the State Board of Finance nor the State Budget Committee can legally take any action under and pursuant to the provisions of Chapter 263, Acts of 1943, and assuming that Chapter 263 will not become effective until a date subsequent to June 1, 1943, it is my opinion that the proper answer to your first question is in the negative.

With reference to your second question, it is my opinion that in the absence of any authority for the State Board of
Finance to fix a rate of distribution prior to the effect date of said act, the act fixes a minimum of eighty per cent (80\%) as the rate of distribution for the school year beginning August 1, 1943, and therefore the proper answer to your said question is in the affirmative.

---

SECURITIES COMMISSIONER: Exemption, whether described certificate is exempt under the Securities Act.

May 19, 1943.

Hon. Warren Day,
Securities Commissioner,
State House,
Indianapolis, Indiana.

Dear Sir:

You call attention to an official opinion issued by this department on May 10, 1943, in which I held that a certain certificate proposed to be issued by the Indiana Mutual Life Insurance Company of Elkhart pursuant to Section 97 of the Indiana Insurance Law of 1935 is a security within the meaning of the Indiana Securities Law. See Opinions of the Attorney General, 1943, page —.

You now submit the following additional question:

"Is this security proposed to be issued by the Indiana Mutual Life Insurance Company, exempt from registration as provided by the Indiana Securities Law, by reason of section 4(c) of said Act, being Chapter 120, Acts of 1937, as amended by Chapter 30, Acts of 1941?"

The section referred to reads as follows:

"Except as hereinafter otherwise expressly provided, the provisions of this act shall not apply to any of the following classes of securities:

"* * *

"(c) Any security issued by the duly constituted authority of any religious communion or by a corporation organized under the laws of this state, exclusively