STATE HIGHWAY COMMISSION: Highways taken by U. S. Government should be excluded in determining amount of gasoline fees distributed to counties.

January 22, 1943.

Mr. Samuel C. Hadden, Chairman,
State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion as to whether county highways within areas taken by the Federal Government as military reservations and which have been ceded to the Federal Government in compliance with the Indiana Statutes on the subject, should be included in determining the total mileage of county highways to enable you to comply with Chapter 168 of the Acts of 1941, in the distribution of funds derived from motor vehicle registration fees, drivers' and chauffeurs' license fees, gasoline taxes, and other fees set out in said Act. I think it is very evident that such highways should not be included. After such ceding by the State of Indiana to the Federal Government the several counties would have no right and no obligation to maintain such roads.

GENERAL ASSEMBLY: Whether Legislature may provide that members in the Armed Forces may vote by proxy.

Elections: Whether provision may be made for voting by proxy.

January 22, 1943.

Hon. J. Otto Lee,
Member, House of Representatives,
Secretary of House Committee on Elections,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following question:
"Could any person in the armed forces of the United States stationed in foreign shores or in any camp distant from his or her legal voting place under a war emergency act be permitted, under proper safeguards, to vote by proxy?"

Stated a little differently, your question evidently is as to whether the Legislature has the power to provide that persons in the armed forces of the United States stationed so as to make it impractical for them to personally cast their votes,—whether legislation can be legally adopted which would authorize them to vote by proxy. The only sections of the Constitution which, I think, have a bearing upon the question are Sections 1, 2, and 13 of Article II. Section 1, supra, provides that:

"All elections shall be free and equal."

Section 2 provides:

"In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside."

Section 13 provides that:

"All elections by the People shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be viva voce."

Elections are said to be free within the meaning of Section 1, supra, when the voter is not subjected to undue restraint so as to influence his action to such an extent as to prevent him from registering his personal wish. They are said to be equal when each voter's vote is equal in value to every other voter's vote.

Section 2, supra, secures to every citizen of the United States of the required age and who meets other qualifications,
the right to vote "in the township or precinct where he or she may reside."

Section 13, supra, provides, among other things, that "All elections by the People shall be by ballot".

The above Sections, I think, should be construed together for the purpose of determining the true intent of the provisions thereof, and when so construed, I think requires a negative answer to your question. I desire to call attention first to the nature of a proxy. A proxy is an authority based upon the right of some individual to vote but which is delegated to some other person. It is not a ballot nor could it, in the nature of the case, bind the holder to vote in any particular manner. And it seems to me, from the standpoint of the holder of the proxy, it might very well result in nothing more nor less than multiple voting. This, of course, would violate, in spirit at least, the provision that all elections shall be equal.

Moreover, in consideration of Section 2, supra, I think the right to vote therein granted should be considered as in the nature of a personal trust which no one could perform by conferring the duty upon someone else. In other words, I think the Section itself implies a non-delegable personal privilege and trust.

Section 13, supra, which provides, among other things, that all elections by the People shall be by ballot, I think clearly implies the voting by ballot personally by the one whose right to vote is involved.

In my opinion the Legislature does not have the power, under the Constitution, to confer the right to vote by proxy in elections by the People and that such legislation would be in violation of Section 1 of Article II of the Constitution.