After examining the printed copy of the by-laws of the corporation and the official membership certificate, both of which have been submitted, I am of the opinion that no one can examine the by-laws of the corporation and its official membership certificates without realizing that the plan there reflected is a subterfuge, and that the prospective members and members of the corporation doubtless will be led to believe that there is a contract of insurance between themselves and the corporation. The papers submitted are carefully and skillfully drafted to give the definite impression that members are insured. Further, there can be no doubt that if the representations made to the membership are carried out that the practical effect of this plan is to effect the insuring of the members. Under such circumstances, and in view of the patent subterfuge here utilized, I do not believe that the Secretary of State is required to close his eyes to what all practical men can see. Therefore, it is undoubtedly within the province of the Secretary of State to refuse to permit the filing of the Articles of Incorporation of this corporation.

STATE HOUSING BOARD OF INDIANA: Whether the gross receipts of housing authorities under Chapter 207 of the Acts of 1937 are taxable under the Gross Income Tax Act.

January 23, 1942.

Mr. Walter E. Stanton,
Executive Secretary,
State Housing Board of Indiana,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion upon the following questions contained in your letter:

"Are the public bodies corporate and politic known as housing authorities created and established pursuant to Chapter 207, Acts of 1937, approved March 11, 1937, which are exercising the public and essential governmental functions of clearing, replanning and reconstructing areas in which insanitary or unsafe
housing conditions exist and providing safe and sanitary dwelling accommodations for persons of low income and precluded by statute from deriving any profit whatsoever from the construction or operation of these housing projects, exempt from the payment of the tax exacted pursuant to the provisions of the Gross Income Tax Act of 1933, Chapter 50, Acts of 1933, as amended by Chapter 117, Acts of 1937, as being either (1) political subdivisions of the State of Indiana engaged solely in proper governmental activities and not in proprietary activities or business, or (2) public charities not operated for profit or private benefit, or both?"

The Indiana Housing Authorities Act (Chap. 207, Acts of 1937) created a “public body corporate and politic” in each city, town, and in each county of the state, to be known as the "housing authority of such cities, towns and counties." In addition to so designating housing authorities as public bodies, corporate and politic, the General Assembly also declared:

"An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, * * *"

Sec. 8, Chap. 207, Acts of 1937.

The Supreme Court of Indiana has said:

"From time to time boards and commissions have been created and authorized and vested with authority to carry out projects for the protection of the public. The name given to such an instrumentality is of no significance, nor do we find any limit upon the character or number of public corporations or bodies politic, which the legislature may authorize or create to accomplish such purposes."

Edward v. Housing Authority of City of Muncie (1939), 19 N. E. (2d) 741 at 744.

In view of these declarations of the General Assembly and the Supreme Court, there can be no doubt that a housing authority is a "political subdivision of the State."
The General Assembly, being unhampered by constitutional limitations, in the enactment of the Gross Income Tax Act, and amendments thereto, was free to select the persons and objects subject to the tax, as well as those exempt therefrom.

Miles et al v. Department of Treasury (1935), 209 Ind. 172, 199 N. E. 372.

The Gross Income Tax Act of 1933, as amended provides:

"(a) When used in this act the term 'person' or the term 'company' herein used interchangeably, means and includes * * * municipal corporation or any other political subdivision of the state engaged in private or proprietary acts or business * * *"

Sec. 1(a), Chap. 117, Acts of 1937.

It is, therefore, necessary to determine whether the activities of authorities created under the Indiana Housing Authorities Act are proprietary in character. The declarations of the General Assembly, while not conclusive, are entitled to great weight.

The legislature has declared that "An authority shall constitute a politic body corporation, exercising public and essential governmental functions * * *" (Sec. 8, Chap. 207, Indiana Acts of 1937, at p. 1041), and "that the construction of housing projects for persons of low income (as herein defined) would, therefore, not be competitive with ordinary operation of private enterprise, * * *" (Sec. 2(c), Chap. 207, Acts of 1937, at p. 1035).

Also, it is expressly stated in the Act that such housing authorities shall not be operated for profit.

The Congress of the United States, after hearings upon the subject, and the General Assembly of Indiana and the legislatures of most of the states of the nation, have enacted legislation authorizing the creation of such governmental agencies.

In view of the declaration of the legislature, the general purpose and manner of operation of the Housing Authorities Act, your first question is answered in the affirmative, for it does not appear that the income received by such housing authorities is within the purview of the Gross Income Tax.
Act, as amended, which makes the tax applicable to income received by political subdivisions engaged in private or proprietary activities or business, and, therefore, it is unnecessary to consider the further question as to whether such authorities are exempted by reason of their charitable aspects.

HIGHWAY COMMISSION, STATE: Whether streets in subdivisions located entirely outside of incorporated cities or towns may be considered as highways in determining the extent of highways in any given county; whether streets and alleys in unincorporated towns are to be considered as highways in the same manner; how should county-line highways be treated in the distribution of gasoline tax; what constitutes abandonment of highways?

January 26, 1942.

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

Dear Mr. Hadden:

"This will acknowledge receipt of your request of December 17, 1941, for an opinion on the following questions concerning the determination of the total mileage of county roads in the State of Indiana pursuant to the provision of Chapter 168, Section 3, of the Acts of the Indiana General Assembly of 1941, which provides as follows:

"Fifty-two and one-half per cent of the amount allocated to the counties to be divided on the basis of the ratio of actual miles of county roads in each county to the total mileage of county roads in this state; which shall be annually determined, accurately, by the State Highway Commission of Indiana and the county highway department."

Your questions are as follows:

"1. To what extent are streets in subdivisions, located entirely outside of any incorporated city or town, considered county highways? There appears