sale carried out under the other applicable provisions of Chapter 156, Acts of 1941.

Section 5 of this law provides as follows:

"The auditor of state shall keep a record of all such sales, and all monies received from such sales, after payment of the expenses of advertising, shall be credited to the funds from which such property was purchased."

It is clear, I think, that this section contemplates that all monies received from the sales of articles coming within the purview of the first part of Section 1 of the act shall be credited to the funds from which such property was purchased, and, to answer your second question specifically, it is only necessary to point out that equipment for the industrial operation of our institutions is originally purchased from the several rotary funds which have been created from time to time by the laws of the state including the appropriation laws. To return to the example cited above, if a tractor was purchased by the Indiana State Prison from its rotary fund for the operation of its farm program, the sale of such a tractor as obsolete equipment would be made through the Auditor of State but the proceeds thereof would be credited to the rotary fund from which the tractor in the first instance was purchased.

INDIANA TAX BOARD: Intangibles—Whether "compensating balances" retained in connection with loans made by banks are taxable as an intangible to the owners of such balances.

July 8, 1942.

Mr. Judson H. West, Administrator,
Intangible Tax Division,
Indiana Tax Board,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion as to the taxability of so-called "compensating balances" under Chapter 81 of the Acts of 1933 as amended. In the considera-
tion of this question it is, of course, necessary to obtain a clear conception of what is meant by the term "compensating balances." This conception is more readily obtained from assumed illustrative instances rather than by attempts at definition. I am advised that typical of all such cases is the following assumed case, to-wit:

A borrower desiring to make a series of loans from a banking institution, which series is to extend over an indeterminate period and a banking institution willing to make such loans under a plan which requires a compensating balance, agrees in substance:

That the banking institution will extend to the borrower a so-called "line of credit" in a maximum amount fixed in dollars (for example, $100,000.00) on the condition that the borrower from the so-called "proceeds" of the first loan of such series makes a so-called "deposit" in the banking institution of a certain percent (for example, 20%) of the amount of the so-called "line of credit" (in the example this amount would be $20,000.00) which so-called "deposit" under the agreement is not subject to withdrawal, assignment, transfer or any other use by the borrower as long as the banking institution maintains the so-called "line of credit" for and with the borrower and is at all times subject to use by the borrower as a set-off against any existing loan from the banking institution to the borrower;

That the banking institution shall receive and collect interest at a so-called 'fixed rate' (for example, 3%) upon the so-called 'amount loaned' during all of the time the borrower is in the banking institution's so-called 'debt' including that part of the proceeds of the first loan held by the banking institution as a so-called 'deposit';

That no interest is promised or paid by the banking institution to the borrower on the so-called 'deposit';

That the borrower must be out of debt to the banking institution for a continuous period of time (for example, sixty days) during a continuous period of each twelve months following the first borrowing by
the borrower from the banking institution under such a line of credit agreement.

The applicable section of the Act under which it is claimed that tax liability accrues is Section 1 of Chapter 81 of the Acts of 1933 as amended in 1935, the same being Section 64-901 of the December, 1941, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated 1933. The particular language involved is found in sub-division (a) of the above section, which provides as follows:

"(a) Property Covered. The term 'intangible' and/or 'intangibles' shall apply to, mean and include promissory notes, stocks in foreign corporations, bonds, debentures, final judgments from their date of finality, postal savings certificates, excepting postal savings bonds, certificates and/or other evidences of indebtedness issued to any person other than certificates of deposit in any bank or trust company in this state; brokerage and/or other trading accounts with brokers and all accounts arising out of transactions involving deposits or loans of money, excepting deposits in any bank or trust company with its place of business in the State of Indiana; all instruments, however, termed with interest coupons or in registered form, known generally as corporate securities, and evidencing a debt; written instruments evidencing and/or securing a debt not otherwise evidenced, including mortgages, chattel mortgages, bills of sale, conditional sales contracts; written instruments evidencing an exchange of goods or property where the intent of the parties is the ultimate transfer of title excepting contracts for the sale of real estate or leases or real estate with option to purchase; written contracts for the payment of money, excepting contracts for personal services and/or for manufacturing or processing merchandise; certificates or other instruments evidencing an interest in property and/or rights whether held in trust or otherwise, for the benefit of the holders of such certificates or other instruments." (Our italics.)
I have italicized the language having particular application to the question involved. It has been claimed that the word "deposits" as used above comprehends only deposits as the term is defined in Section 1 of Chapter 83 of the Acts of 1933, as amended, which is a companion measure with Chapter 81, supra. The language referred to in Section 1 of Chapter 83, supra, is as follows:

“As used in this act and unless a different meaning appears from the context: * * *

(c) The term ‘deposits’ means deposits in any bank or trust company which the person owning, holding in trust or having the beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account, certificate of deposit, savings account, pass book or otherwise.”

December, 1941, Cumulative Pocket Supplement, Burns’ Indiana Statutes. Annotated 1933, Section 64-801.

It is claimed first that this definition should be read back into Section 1 (a) of Chapter 81, supra, and that when that is done the term “deposits” as used in said Chapter 81 does not embrace these particular so-called “compensating balances” because, under the agreement as detailed in the assumed illustrative case, the owner of the balance does not have the right to withdraw it. I think the weakness of this argument grows out of the failure to observe that the language of Chapter 81 defining the particular intangible embraced within the italicized language supra, is not limited to deposits in any bank or trust company except those doing business in the State of Indiana. The intangible defined by such language is “accounts arising out of transactions involving deposits or loans of money,” etc. (Our italics.)

Assuming, for the purpose of the argument, that the account is not a deposit in the terms of the definition already referred to, it seems to me that it is inescapable that if it is not a deposit it, at least, is an “account arising out of transactions involving a loan” and while standing on the books of the bank in the name of the borrower, to the extent
to which it cannot be withdrawn, permission to use it is given to the bank by the borrower, which is the very essence of a loan. It matters not that the bank does not pay interest on this deposit. It pays its interest in effect by the reduced rate of interest charged against the borrower. As I see it, it makes very little difference in the ultimate result, as to whether the term "deposits" as used in the underlined language quoted from Section 1(a) of Chapter 81 is to be given the meaning of "deposits" as that term is used in Chapter 83 or whether it is to be given a more general meaning since, by adhering to the definition of the term as set out in Chapter 83 supra, we immediately create an "account arising out of a transaction involving a loan."

In my opinion the account is an intangible as defined in Section 1(a) of Chapter 81 supra as amended, and as such is liable to taxation when owned by an Indiana resident unless such intangible has an actual business situs outside of the state.

PUBLIC INSTRUCTION, STATE SUPERINTENDENT:

Whether commissioned high schools may be maintained out of state aid for a minimum term prescribed for holding a commission.

July 11, 1942.

Hon. Clément T. Malan,
State Superintendent, Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Malan:

I have before me your letter requesting an official opinion in answer to the following question:

"When and if a school corporation otherwise entitled to state aid complies with all the requirements for a commissioned high school, is it then the duty of the State Department of Education to recommend and of the Auditor of State to make payment to said school corporation out of the State Relief Fund of a sufficient amount of money to maintain such commissioned high school, in accordance with the statutes and the