tionship with anyone but, on the other hand, is an officer charged with certain official duties. In addition to this, reference to Section 8 of the Act in defining the term "teacher" as used in the Act, clearly shows that the county superintendent is not a teacher within the meaning of that Act. Note the language of Section 8:

"The term 'teacher' as used in this act shall mean and include licensed public school teachers, librarians, supervisors and principals of all public school corporations, and licensed assistant superintendents and superintendents of such school corporations."


The answer to your first question is in the negative. The same is true of the second question. The statute sets up particular qualifications for the county superintendent of schools and I know of no Act which has changed those qualifications. If we assume that the wife of the county superintendent of schools who has been inducted into service, does not have the qualifications for appointment I think it must be self evident that she cannot serve as such officer.

Your second question is also answered in the negative.

INDIANA TAX BOARD: Taxation—Whether shares of stock in national banks or state banks which are located outside the State of Indiana are taxable intangibles under the Intangibles Tax Act when owned by others. Are shares of stock in building and loan associations taxable under the Intangibles Tax Act?

October 3, 1942.

Hon. Henry S. Murray, Chairman,
Indiana Tax Board,
Indianapolis, Ind.

Dear Mr. Murray:

I have before me your letter wherein you ask for an official opinion in answer to the following questions:
"1. Are shares of stock in national banks and/or state banks, such banks being located outside the State of Indiana taxable under the Intangibles Tax Act?

"2. Are shares of stock in building and loan associations taxable under the Intangibles Tax Act?"

In approaching these questions it should be pointed out that the Act which is ordinarily spoken of as the Intangibles Tax Act is Chapter 81 of the Acts of 1933 as amended. Acts of 1933, p. 523. At the same session two other companion measures were enacted, one having to do with the taxation of building and loan associations, including their shares, and the other having to do with taxation of banks including their deposits and shares. These companion measures took the numbers and are designated as Chapters 82 and 83 of the Acts of 1933. Acts of 1933, p. 541; Acts of 1933, p. 545. Section 1 of each of these Acts was devoted to the definition of terms as used therein. Acts of 1933, p. 523; Acts of 1933, p. 541; Acts of 1933, p. 545. The first section of each of these Acts has been amended and appears in the June, 1942, Cumulative Pocket Supplement of Burns’ Indiana Statutes Annotated (1933) as Sections 64-901, 64-822 and 64-801, respectively.

With this brief statement of the several Acts which have a bearing on your questions, in order to simplify the answer I desire to subdivide your question No. 1 into two parts, and to consider first, whether the shares of stock in national banks which are located outside the State of Indiana are taxable to the owners thereof who are located in the State of Indiana. I think it is clear that such shares would not be taxable under Chapter 83 of the Acts of 1933 as amended, the same being the Bank and Trust Company Intangibles Tax Act. I say this because Section 2 of Chapter 83 of the Acts of 1933, the same being Section 64-802 of Burns’ Indiana Statutes Annotated (1933)—the tax levying section except as to real estate, limits the application of said section to domestic banks and trust companies and banks organized under the laws of the United States and engaged in business in the State of Indiana. See Burns’ Indiana Statutes Annotated (1933), Section 64-802, and subdivision (a) of Section 64-801 of the June, 1942, Supplement, which provides that:
"The term 'bank' means any bank, bank of discount and deposit, private bank or savings bank organized under any law of this state, and any national banking association organized under the laws of the United States and engaged in business in the State of Indiana."

The shares of stock in national banks located outside the State of Indiana would, of course, not be taxable under the Building and Loan Act, Chapter 82 of the Acts of 1933 as amended. It remains to consider the question as to whether such shares are taxable under the General Intangibles Tax Act, Chapter 81 of the Acts of 1933 as amended. A consideration of the definitions as set out in Section 64-901 of the June, 1942, Supplement makes it very clear that such shares are not included under the terms of said Act. In defining the intangibles which are excluded from the General Intangibles Tax Act, among such excluded items is set out specifically: "The shares of stock in any national bank * * *." In addition to the express exclusion of such shares, it is doubtful whether the tax as applied to shares in national banks located outside the State would be valid. The congressional permit to tax national bank shares expressly provides that:

"The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; * * *:

Title 12, Section 548 United States Code Annotated.

I am of the opinion, therefore, that shares of stock in national banks located outside the State of Indiana where such stock is held by residents of Indiana are not taxable intangibles.

I shall now pass to the question as to what the rule is with respect to shares in state banks located outside the State of Indiana but which shares are held by Indiana residents. I think it must be held that such shares are taxable as intangibles under the General Intangibles Tax Act. It will be noted that Section 64-901 of the June, 1942, Supplement provides that:
"The term 'intangible' or 'intangibles' shall apply to, mean and include promissory notes, stocks in foreign corporations * * *."

It may be argued that in the exclusion paragraph of Section 64-901, supra, the term "intangible" or "intangibles" is held not to apply to "the shares of stock in any bank, building and loan association, rural loan and savings association, guaranty loan and savings association. * * *" But reference to subdivision (k) of the same section reveals the fact that:

"The term 'bank' or 'trust company' shall mean any bank of discount and deposit, loan and trust safe deposit company, private bank, savings bank, or trust company organized under any law of this state or any bank organized under any law of the United States."

Section 64-901, June, 1942, Suppl., Burns' Indiana Statutes Annotated (1933).

So that when earlier in the section shares of stock in any bank, building and loan association, etc., are referred to as excluded, such language clearly refers to banks and building and loan associations organized under the laws of the State of Indiana, which would be taxable under either Chapters 82 or 83 of the Acts of 1933 as amended, and therefore, should be excluded from taxation under the General Intangibles Tax Act. But this reasoning would not apply to out of state banks as to their shares owned by residents of Indiana. Such shares would be shares in foreign corporations and expressly taxable under the General Intangibles Tax Act.

The remaining part of your question No. 1 is, therefore, answered in the affirmative.

Your second question is not sufficiently limited to permit a categorical answer. If the shares of stock referred to are in a building and loan association organized under the laws of the State of Indiana they are included in and are taxable under Chapter 82 of the Acts of 1933 as amended. If such institution is outside the State of Indiana but some of its shares are held by residents of the State of Indiana, such shares would be taxable to the holder under the General Intangibles Tax Act under the same reasoning as applied to out of state banks.