of Commissioner of Agriculture, it follows that with respect to further bond issues, the authority to borrow money, mortgage the State's property and issue bonds, must first be authorized by the Governor, after which the execution of the instruments and the issuing agency may be placed jointly in the Commissioner of Agriculture and the Indiana State Fair Board.

INDIANA TAX BOARD: Construction of Chapter 91 of the Acts of 1941 with reference to exemption of highways, etc., from assessment to adjacent property owner.

February 2, 1942.

Hon. Henry S. Murray,
Chairman, Indiana Tax Board,
State House,
Indianapolis, Indiana.

Dear Mr. Murray:

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

"1. Do the provisions of Chapter 91, Acts of 1941, apply to land last assessed at the regular assessment made in 1932?

2. The law in effect on March 1, 1932, (Section 64-1010, Burns' 1933) provided that 'All officers engaged in the assessment of property for taxation are prohibited from assessing for taxation, as against any adjacent property holder, the real estate occupied by any railroad or public highway, etc.' When does this provision apply?

3. To what properties should the attached form No. 91 be applicable?"

Rather than take up each one of the several questions separately, I think it is desirable in this case to first examine Chapter 91 of the Acts of 1941 as an entirety and to consider the history of the legislation.
Chapter 91 of the Acts of 1941 is an amendment of Section 143 of the General Tax Act of 1919 as said section was amended in 1939. As originally enacted the section provided as follows:

“All officers engaged in the assessment of property for taxation are prohibited from assessing for taxation, against any adjacent property holder, the real estate occupied by any railroad, interurban or street railway, or by any public highway, and no part of the land so belonging to such property holder shall be assessed against him for taxation except the portion beyond the lines of the right of way of the railroad, interurban or street car company or the right of way used and occupied as such public highway; Provided, That if the assessor and the land owner shall fail to agree on the amount of land contained in such railroad, interurban or street car right of way or such public highway, then such land owner, to receive the benefit of such exemption, shall determine the amount of land in dispute by actual survey and shall bear all expenses of the same; Provided, further, however, That where the right of way of railroads or the lands occupied by highways, have not been transferred by deed, the full acreage of said land shall be assessed to the owner of such adjacent land, and a pro rata deduction given to the owner of the land in land assessment value for such much thereof as may be occupied as aforesaid.”


The concluding proviso of the above section made it the duty of the assessing officer in cases where the rights of way referred to therein were not transferred by deed, to assess the full acreage of the land, including such rights of way, to the owner of the adjacent land and to thereafter make a pro rata déduction to the owner of the land for so much of said land as was occupied as earlier set out in the statute. In other words, if the right of way had been transferred by deed as a matter of course, the land so transferred would not be assessed against the adjacent property owner. If it were otherwise transferred, however, the provision of the statute
would eliminate the value of such right of way in the assessment against the owner by assessing the entire tract to the owner and thereafter making the pro rata deduction. This same provision was reenacted in the several amendments of 1939 and 1941, making applicable the rule that so much of a section as is not changed by amendment is to be considered as remaining in the section without change.

Thompson v. Mossburg, 193 Ind. 566, at p. 574; Huff v. Fetch, 194 Ind. 570, at p. 577.

I desire to pass now to a consideration of the various amendments of Section 143, supra, so as to show just what took place by such amendments,—first, as to the effect of the 1939 amendment. This amendment simply added to the several categories of property which were not to be assessed to the adjacent owner the additional category of levees, and so we find that from that time forward a new type of right of way is to be excluded from the assessment valuation of the property owner whose land lies adjacent to such levee.

Chapter 91 adds another category which is to be excluded, the same being "any public drainage ditch". However, the method of deduction as already pointed out remained the same except for the fact that whereas in the 1919 and the 1939 Acts the cost of a survey was to be borne by the property owner, in the 1941 Act the cost of a survey, in the case of disagreement is to be borne by the county.

Having made these preliminary observations I desire now to take up your questions for the purpose of applying those observations to the questions which you have submitted. It should be noted in answer to your first question that, strictly speaking, the act makes no provisions for deducting the values represented by any of the rights of way mentioned in the act except when an assessment of the entire tract is made. This would have special application, it seems to me, in the case of the deduction of values represented in the rights of way which were in the statute at the time the last assessment was made. In the absence of timely objection the presumption would be that the assessing officer had done his duty and, except as to new rights of way, there could be no deduction without a revaluation of the entire tract. In other words, I think the provisions of Chapter 91 of the Acts of 1941 and the Acts of
1939 apply only when re-assessments are made except as to the two added categories of levees and drainage ditches, the first of which came into the act in 1939 and the second of which came in in 1941; that is, when the earlier assessments were made presumably all other categories were taken into account and deducted. I think this answers both your first and second questions.

As to the third question, it seems to me that this form is made for the purpose of enabling the taxpayer to take advantage of these provisions insofar as advantage has not already been taken of them. The form would be applicable in the case of public drainage ditches and in the case of levees except as to such as had already been taken into account in previous assessments. It could not, in my opinion, have any relation or have any application to the categories which had been in the act since its enactment in 1919, except as to such as were obtained from the previous owner at a date subsequent to the last assessment of such property.

PERSONNEL DIRECTOR, STATE: As to whether State Personnel Board may by rule and regulation provide a standard of wages including over-time for state employees within the Act.

February 3, 1942.

Mr. W. Leonard Johnson,
State Personnel Director,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Johnson:

I have before me your request for an official opinion relative to the payment of additional compensation to employees under the State Personnel Act who are required to work beyond their regular shift and also the right to deduct from the salary or compensation of the employee whose duties are performed by the person working overtime in order to compensate such person for his additional services. You state:

"** Cases will undoubtedly occur in which the occupant of one of these positions will fail to appear