TAX BOARD: Taxation—the authority of the Board of Review to make an original assessment of omitted property; where exempt property is leased to a person or corporation which is not exempt, the lease-hold interest should be assessed as real estate. In arriving at the value of the lease-hold the value of the buildings may be considered.

March 4, 1942.

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

Dear Sir:

This will acknowledge receipt of your request for an official opinion on three questions arising out of an assessment by the Marion County Board of Review on a leasehold held by the Indianapolis Coliseum Corporation from the State of Indiana. From your letter and from the record of the appeal by the Indianapolis Coliseum Corporation to the Indiana Tax Board, it is apparent that the leasehold was assessed as personal property.

You ask three different questions and each one is taken up and discussed separately.

"1. Can the Board of Review make the original assessment?"

The authority of the Board of Review to add to the assessment lists any omitted property is found in Section 64-1201 of Burns' Indiana Statutes Annotated 1933, which reads in part:

"In all cases where the county board deems it necessary to add omitted property, * * * such board may, at its option, cause to be served upon the person to whose list property should be added or the valuation of whose property is to be increased a written notice that it is proposed to revise or correct his list * * *. The board of review shall * * * of its own motion, or on sufficient cause being shown by any person, add to the assessment list the names of persons, the value of personal property and the description and value..."
of real estate liable to assessment and omitted on said list."

Under the authority of this section, the County Board of Review has authority to make an original assessment of any property omitted on the assessment lists.

"2. Can the Board of Review assess this property as a leasehold as personal property or should it have been assessed as real estate or improvements?"

Your attention is called to the former opinion of this office issued June 11, 1941 (Opinions of Attorney General, 1941, p. ___), concerning an assessment of the property of the same corporation in the amount of $75,000 upon the machinery and equipment as personal property. That opinion, in answering this question, set out the statute concerning leaseholds of property otherwise exempt from taxation. This section reads as follows:

"When real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate."

(Section 64-513, Burns’ Indiana Statutes Annotated 1933; Acts 1919, Chap. 59, Sec. 33.)

The leasehold estate of the Indianapolis Coliseum Corporation could be listed only as real estate, although the valuation must be based on the value of the leasehold interest.

"3. Can the Board of Review or our Board consider the value of improvements to the building which is state owned when arriving at the value of this leasehold?"

In placing a correct valuation on a leasehold many factors must be considered, and the value of the improvements to the building, insofar as they enhance the value of the leasehold, would be a factor in arriving at the value of the leasehold.
The Marion County Board of Review has a right to add any omitted property, but the manner of the assessment was improper since the leasehold could be taxed only as real property. The value of the improvements to the building should be considered only as it affects the value of the leasehold.

BUREAU OF MOTOR VEHICLES: Whether the taxing provisions of Chapter 79 of the Acts of 1941 apply to parochial and private schools.

March 6, 1942.

Mr. R. Lowell McDaniel,
Director Bureau of Motor Vehicles,
Indianapolis, Indiana.

Dear Mr. McDaniel:

This is in reply to your request for an opinion as to whether or not busses used by parochial and private schools for the exclusive purpose of transporting school children, are school busses within the meaning of Chapter 79 of the Acts of 1941.

Section 1 of such statute is as follows:

"The term 'school bus' shall be construed to mean any bus, hack, automobile, conveyance, motor vehicle, or other vehicle of any kind which is used to transport school children to and from school, and/or from school athletic games or contests or other school functions, which vehicle or conveyance is operated exclusively under, and by virtue of, a contract with the public school authorities of the State of Indiana."

It is clear that the provisions of this law apply only to busses transporting school children for the public schools of the state. The legislature has not enacted any special statute governing the registration and licensing of parochial and private school busses, and your office will have to follow the general statute on the subject of registration and licensing of motor vehicles.