arise under said act have been fully settled and the
sureties released pursuant to the terms of said statute
and on the authority of the Bolivar case. For this court
at this late date to repudiate the decision in the Bolivar
case and now hold the act unconstitutional would only
add confusion to the situation. This court could not
now be justified in holding the statute invalid without
the most convincing and unanswerable reasons there-
for. *We find no such overwhelming reasons for holding
this act unconstitutional.*” (Our italics.)

The principle announced in the above decisions, I think, is
equally applicable here, and while there was a vigorous dis-
senting opinion in each of two of the cases, it would seem that
the court is definitely committed to the principle upon which
the decisions are based. Applying the same reasoning to your
question, Chapter 41 of the Acts of 1941, as herein construed,
does not unconstitutionally impair the obligation of a con-
tract so far as concerns the State or its subdivisions.

The answer to your question is in the negative.

________________________

AUDITOR OF STATE: Distribution of gasoline tax to cities
and towns where town has been organized subsequent to a
decennial census.

April 21, 1941.

Mr. Richard T. James,
Auditor of State of Indiana,
State House,
Indianapolis Indiana.

Dear Sir:

Your letter of the 17th inst. relating to your inability to
determine if the Town of ............ of ............ County is entitled
to share in the distribution of gasoline tax monies under
Chapter 168 of the Acts of 1941, has had my attention.

Your letter points out that the Town of ............ in the
County of ............ was incorporated after the United States
Census had been taken in the year 1940. The Act above cited
makes distribution of these monies and funds to depend upon
the population of the towns, cities and counties involved, ac-
cording to the last United States census. You are unable to determine if there is a statutory basis by which you would be in a position to make distribution of said funds to said town. You submit the following questions:

“The question arises—Can the Auditor of State revise the population figures so as to include cities and towns incorporated between the regular United States Census?

“Second, If the town of Kingsbury should petition and have the Federal Census Bureau make a census of the town of Kingsbury would the same be construed as the last United States Census?”

I am not altogether clear upon the meaning to be placed upon your first question. You ask if the Auditor of State “can revise population figures, etc.” Ordinarily I would take this to have reference to the power of the Auditor of State to revise census records on file in his office, but as your letter states that you have no record of the census of this particular town this cannot be the interpretation to be placed upon your question.

Towns, cities, townships, counties, states and nations may take a census practically at any time except that the taking thereof must be officially authorized by ordinance or the Act of the legislative branch of the particular government in question. These records must be preserved as official records are preserved. I am unaware of any law, however, vesting any such power in the Auditor of State or any other State official. Though the Legislature in providing for the taking of the census might designate in the particular Act some State official, probably the Auditor of State, to supervise the taking of a census.

It appears however that the population of towns as fixed by the last United States Census is the basis for distribution, according to the provisions of the Act above cited. Accordingly no census other than the last United States Census can be accepted under the Acts cited for a basis of distribution.

Without positively deciding whether the Auditor of State has authority to take or revise the census of any town or city or other municipal corporation, it is my opinion that any revision of the census taken by him in his official capacity could not serve, under the Acts cited, as the basis for distri-
bution of gasoline tax funds to cities and towns. My answer to your first question is accordingly in the negative.

Your second question is evidently upon the assumption that a town or other municipal corporation may legally petition the United States Census Bureau to take a census. This I do not decide as it is a Federal question.

On the assumption that the United States Census could be taken of the town of ............ because of the failure to have taken same in the 1940 regular census, it is my opinion that the Auditor of State may use any such census, when and if completed, as the basis for determining the distribution of gasoline monies to the particular town involved. This would be the population of the town according to the last preceding United States Census within the meaning of the Acts cited.

Our Supreme Court so held in the case of City of Indianapolis v. Navin, 151 Indiana 139, using the following language, at page 146 of the Opinion:

"Counsel for appellant seem to understand that this court held in Mode v. Beasley, 143 Ind. 306, that the words "last preceding census," refer only to the last census taken before the passage of the act, and not to any census that may be taken after the act was passed. The rule is otherwise. Such words in a statute refer to the census last taken, whether before or after the passage of an act, unless the contrary appears in the act itself. So that, although a city or town may not have the required population when the act was passed, yet at any time in the future when any census taken after the passage of the act shows that the necessary population has been acquired, such city is governed by the provision of the act; that is, when a statute provides that all cities or towns of a named population "according to the United States census," or "according to the last preceding United States census," shall be governed by the provisions of the act, then all cities or towns, as they acquire the requisite population, as shown by any census thereafter taken, will be governed by the act, the same as if they had the required population as shown by the last preceding census when the law was enacted."

In answer to your second question, it is accordingly in the affirmative.