4. The language of Section 1 of the 1941 Act requires appropriations for poor relief purposes to be made “in conformity with the provisions of the general statutes governing appropriations for other civil township purposes.” The general statute referred to is Section 65-311 Burns, etc., 1933, which requires of the trustee a “detailed and itemized statement in writing of his estimated expenditures for which appropriations are asked.” The statute requires particularly the number, salaries and days of employment of teachers, and school supplies and other expenses to be itemized, provides that the trustee shall submit to inquiries of advisory board members and taxpayers, and, at the request of the advisory board, he shall itemize any estimate not sufficiently itemized. The statute also requires the trustee to set out the names of persons who had received poor relief and the amount of relief received. It thus appears that an appropriation made “in conformity with the provisions of the general statutes for other civil township purposes” should only be made pursuant to an estimate setting forth the classes of poor relief expenditures to be made during the ensuing year, rather than a lump sum for all relief purposes.

ADJUTANT GENERAL: Stout Field: Authority of State to grant easement in property at Stout Field.

June 16, 1941.

Honorable J. D. Friday,
Acting Adjutant General,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of the 6th inst., wherein you request my opinion as to the authority of the state to grant an easement for the construction of a lateral tile drain across the southeast corner of Stout Field Airport to the National Defense Plant Corporation in charge of the erection and construction of the Bridgeport Brass Company plant on lands located immediately east of said airport.

At the outset I wish to say that I find the title to the real estate comprising Stout Field Airport in Trustees rather than
in the State of Indiana so that if such an easement were granted at this time it should be by the act of said Trustees.

Apart from this consideration, I find upon investigation, that title to said tract of land was vested in a Board of Trustees under a trust indenture dated November 27, 1928. The Trustees therein named were organized and constituted as a Board of Trustees at a meeting of the Armory Board of Indiana upon the same date, to wit, November 27, 1928.

To my knowledge there is no act of the legislature providing for the creation and establishment of this Board of Trustees so that the creation of same must be taken and held as a private organization. Moreover, the authority of these Trustees to grant the easement in question must be determined from the trust indenture itself.

The trust indenture, in substance, makes the State of Indiana in general the Armory Board of the State of Indiana in particular the beneficiaries of the trust so created; requires that the real estate conveyed to the Trustees is to be used as an airport or aviation training field for the National Guard of Indiana under such plans, rules, regulations and program as shall be agreeable to the Armory Board of the State of Indiana as now constituted and, to quote, "in such manner that said premises and said improvements now or hereafter to be located thereon shall be particularly adapted to the use of the National Guard of the State of Indiana for aviation drill purposes," and further, I quote, "and in such other manner as may be of use and benefit and service for the National Guard of Indiana and the Armory Board thereof and such other public use as may be deemed desirable."

By said trust indenture said Trustees are authorized and empowered to execute a lease not to exceed a period of twenty years to the Armory Board of Indiana at an annual rental of $12,000 and to issue bonds in the sum of $120,000 to pay for and acquire the fee simple title to said real estate; to execute mortgage deed of trust to the Peoples State Bank of Indianapolis, Indiana, as Trustee, to secure the payment of said bonds; to collect and receive the income arising from the use and exploitation of said trust property and to apply the same to the debts of said trust and when the bonds are retired to convey the fee simple title of said real estate to the State of Indiana at which time said trust shall cease and terminate.

The bonds are serialized and mature serially at stated periods, the last of which is May 15, 1942. Until this last men-
tioned date, therefore, the real estate in question is subject to the trust as the trust cannot be terminated prior to said date.

In the absence of any statute upon this subject the power of the Trustees to grant an easement across said real estate must be found, if at all, under the terms of the trust indenture above referred to.

While there are no specific inhibitions in said trust indenture against the granting of such an easement, the particular point of inquiry here is—has the power to grant such an easement been actually vested in said Trustees? As before said, that power must be found in the trust instrument itself without aid or reference to any other collateral or extrinsic agreement of any kind. I do not find any other instrument supplementing or modifying the original indenture.

The situation presented is not unlike the charter of a private corporation organized under a general corporation act. The corporation has no power and the Trustees have no power or authority to do or perform any act or thing except that authorized by the charter or the trust or that may be incidental to the carrying out of the main purpose stated in the charter or in the trust instrument.

Everything to be done under this trust must be conducive to the use of this land as an aviation training field for the National Guard of Indiana and while the granting of the easement in question might not necessarily interfere with such use, it remains that such an easement is not conducive to the use of such land as specified in such trust indenture.

Nor would the granting of such an easement constitute a public use. While the National Defense Plant Corporation is a federal agency the easement here in question must be held as private in view of the fact that the drain which it is contemplated to construct, would be and is for the use and benefit of a private corporation.

From the foregoing considerations I draw the following conclusions: 1. That the real estate involved is now held in trust and the right to grant an easement thereon must rest in the Trustees named in said deed of trust and that such right can only be determined from the trust instrument itself;

2. Said Trustees have no right to grant such an easement unless such power is vested in them by said trust and unless the granting thereof would be conducive to the use of said real estate as specified in said trust;
3. That said trust does not specifically vest such power in said Trustees and the execution of such an easement would not be incidental to carrying out the main purpose of the trust as specified therein.

By reason of these conclusions that I have reached it is accordingly my opinion that the answer to the question submitted as to the power of the state to grant such an easement must be in the negative. Moreover, the state has no authority to grant and dispose of interests in real estate owned by it except by authority of the legislature found in some general act thereof authorizing such procedure. Obviously there is no such act in effect at this time as the Trustees in question are a private organization and not created by any act of the legislature.

Your letter further states that it is proposed to construct this drain to and into the Neeld Ditch, which I find to be a public drain in Marion County. While you are not interested in this phase of the question, it would seem to be pertinent to pass upon the right to tap said Neeld Ditch by said drain contemplated to be constructed by the National Defense Plant Corporation as, if no such right exists, then there would be no necessity of procuring a right of way for same over the real estate of Stout Field Airport.

The decided cases on this question seem to base the right to construct lateral drains or aqueducts into a public ditch upon the inclusion of the land so sought to be drained in the original assessment for the public drain.

Young v. Gentis, 7 Ind. App. 199, states the rule as follows:

"It may be conceded that water falling or flowing by natural means upon lands assessed for construction of a public ditch may be conducted into such ditch by means of lateral aqueducts but this does not extend to lands not so assessed."

Williams v. Osborne, 181 Indiana 670, held that after a public drain is constructed it is impressed with private rights in the nature of a perpetual easement as to the lands assessed for its construction.

There are other decisions of like import to establish the rule above maintained.

Consequently it should be ascertained if the lands upon which the National Defense Corporation is now constructing a plant
for the Bridgeport Brass Company were included within the original assessment for the construction of the Neeld Ditch. If not, then there would be no right to construct such a drain into same and accordingly there would be no necessity of granting an easement over any portion of Stout Field Airport for such purpose.

PUBLIC INSTRUCTION: Whether notice under Chapter 77 of the Acts of 1939 must be served personally by the trustee.

June 24, 1941.

Hon. Clement T. Malan,
State Supt. 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:

"Is a written notice to terminate a teacher's contract, signed by the trustee, attached to the pay check, and delivered to the teacher by an employee of the trustee prior to May 1, 1941, a valid notification under the Acts of 1939, Chapter 77, page 457?"

Under the provisions of Chapter 77 of the Acts of 1939 referred to by you, it is provided that each contract of employment thereafter made by and between a teacher and a school corporation, except contracts with permanent teachers as provided in Chapter 97 of the Acts of 1927 and Acts amendatory therof, shall be renewed and continue in force on the same terms and for the same wages, unless increased by the provisions of the Teachers' Minimum Wage Law, for the school year next succeeding the date of termination fixed therein

"unless on or before the date fixed for the termination of said term of school, but in no case later than the first day of May, the teacher shall be notified by the school corporation in writing delivered in person or mailed to him or her at last and usual known address by registered mail that such contract will not be renewed for such succeeding year. * * *"