ten dollars shall be paid to the secretary of state upon the registration or reregistration of such school bus.

"Owners and Operators—Exemption From Payment of Additional License Fees for Operation.

"SEC. 3. Owners and operators of school busses shall be and are hereby specifically exempted from the payment of any additional license fee for the operation of such school bus other than as herein provided.

"Repeal.

"SEC. 4. All laws and parts of laws in conflict herewith are hereby repealed."

I am of the opinion, after an examination of the above act, that a motor vehicle that is used for purposes other than transporting school children, part of the time, or for purposes not contemplated under the above definition of school busses, but which does have a contract with the public school authorities of Indiana and does transport school children, cannot be registered as a school bus as provided for in the act above quoted.

TAX BOARD: Taxability of out of state deposits under Intangibles Tax Act; business situs, division of.

Hon. Judson H. West,

Intangibles Tax Administrator,
Indiana Tax Board,
Indianapolis, Indiana.

November 28, 1941.

Dear Sir:

I have before me your request for an official opinion in answer to certain questions which I will refer to in the order of their consideration. The first question is as follows:

"1. For the purposes of the Intangibles Tax Act of 1933, with particular reference to the clause in subsection (b) of Section 1 thereof reading, ‘the term “intangible” or “Intangibles” shall not apply to, mean nor include any intangible having an actual business situs outside the State of Indiana,’ how should the term ‘actual business situs’ be defined?"
The language referred to in your question is as follows:

"The term 'intangible' or 'intangibles' shall not apply to, mean nor include any intangible having an actual business situs outside the State of Indiana; * * *"


The same language occurs in Section 2 of the Intangibles Tax Act, where it is said that:

"Such tax at the rate provided in this act shall be measured by intangibles, wherever located:

"(a) Owned by any taxpayer except his intangibles having an actual business situs outside the State of Indiana. * * *"

The definition of "actual business situs" therefore, is important. There are a number of cases on this subject but, I think two will be sufficient to indicate the meaning of the term as used in the Act. One of these cases is a decision of our own Supreme Court and the other is from another jurisdiction. Both have been selected because of the simplicity with which the definition is stated.

The first case is the case of Miami Coal Company v. Fox, Treasurer, 205 Ind. 99. In that case it was stipulated that the Miami Coal Company is a corporation organized under the laws of the State of Indiana and engaged in the mining, production and sale of coal. It had complied with the Illinois law authorizing it to transact business in that State pursuant to its laws and maintained an office in Chicago, Illinois, where all the books of account for the sale of coal were kept and where all contracts for the sale of coal were made and where all accounts were due and payable. It was stipulated that the corporation had never had an agent or office in Indiana authorized to sell coal or collect accounts and that the price of coal was fixed by the secretary of the corporation in Chicago. It was also stipulated that no funds of the corporation entered Indiana except money transmitted from the Chicago office for payment of the miners' payrolls. The officers' salaries were paid at the Chicago office. Shipments of coal were made from the mines direct to the purchasers upon the orders issued from the Chicago office and reports of shipments were made to the Chicago office from the mines. The court said, on page 110:
“From the current of judicial opinion and judgments resulting therefrom as applied to the record in this case, we hold that the property in question, which is the foundation of the assessment made, has a business situs in the State of Illinois.”

The other case to which I desire to call attention is an Oklahoma case reported in 35 Pac. (2d), beginning at page 454. In that case—Grieves v. State ex rel. County Attorney et al., the court said, on page 456:

“* * * In order to constitute a business situs, where intangible property is taxable other than the owner’s domicile, it must be shown that possession and control of the property has been localized in some independent business or investment away from the owner’s domicile so that its substantial use and value primarily attach to and become an asset of the outside business. * * *”

The court said:

“In order to constitute a business situs, it is insufficient to show a mere transitory presence of the property for temporary or isolated transactions or for safekeeping or collection; * * *”

Many other cases could be cited of the same general tenor. See for a list of such cases Vol. 5, Words and Phrases, Permanent Edition, page 1046.

Your second question is as follows:

“2. Would an Indiana Corporation, incorporated under the laws of the State of Indiana and having its principal place of business in Indiana, be liable for taxes on deposits in out-of-state banks of a branch of the corporation operating outside Indiana as a semi-independent unit, where such deposits were composed exclusively of funds received and utilized by the out-of-state branch of the Indiana Corporation in its out-of-state business operations?”

Applying the definitions as set out in the answer to your first question, I think your second question should be answered in the negative.

Your third question is as follows:
"3. Would an Indiana Corporation, incorporated under the laws of the State of Indiana but having its home offices and principal place of business outside the State of Indiana, be liable for Intangibles Taxes on its deposits in out-of-state banks where such deposits represented funds received and utilized as an integral part of business transactions carried on outside the State of Indiana?"

Applying the principles announced in answer to your first question, I think your third question should also be answered in the negative.

Your fourth question is as follows:

"4. Would an Indiana Corporation, incorporated under the laws of the State of Indiana, and having its principal place of business in Indiana, be taxable on deposits in an out-of-state bank when such deposits represent receipts of an established sales outlet in another state from sales of commodities outside of the State of Indiana and which deposits were periodically transferred to the credit of the Indiana Corporation? Would the status of such deposits as to taxability be affected by the question of whether or not the expenses of operating the out-of-state sales outlet were met with checks drawn against the deposits in the out-of-state banks and the subsequent periodical transfers of deposits to the home office of the Indiana Corporation, therefore, represented net receipts from sales of commodities after deduction of operating expense of the out-of-state sales establishment, or whether the gross receipts of the sales outlet were transferred periodically? These questions are intended to refer only to the taxability of the deposits in the out-of-state banks during the period prior to transfer to the credit of the home office of the corporation."

This question really contains two branches. As to the first branch, it seems to me that the facts upon which the question is based are insufficient to give such out-of-state deposits an out-of-state business situs. As I understand it, there is no utilization of the deposits in the out-of-state transactions. The deposits are more for safe-keeping until finally transferred to the home office of the company, which apparently does not meet
the requirements of an out-of-state business situs as contained in the answer to your first question defining out-of-state business situs.

As to the second branch of this question, the fact that the deposits were in part used to pay operating expenses of the out-of-state agency would not, in my opinion, necessarily affect the question so long as the deposit was under the control of the Indiana Corporation and the checks upon the deposit were drawn by such corporation. In other words, in such a case the deposit, after all, is merely a matter of convenience and wholly fails to meet the requirement that its possession and control have been localized in an independent business or investment away from the domicile of the owner.

Your fifth question is as follows:

"5. Would an Indiana Corporation, incorporated under the laws of the State of Indiana, and having its principal place of business in Indiana, be liable for taxes on deposits in out-of-state banks, when such deposits represent funds of the corporation deposited by the home office of the corporation in out-of-state banks to be utilized by the corporation in purchasing materials and meeting the payrolls outside the State of Indiana?"

This question is not sufficiently definite to enable me to answer the same without reservations. I do not think that the mere fact that the deposits were to be used in purchasing materials or even meeting the payrolls outside the State of Indiana would be sufficient to justify the holding that such deposits have an out-of-state business situs. In order to establish an out-of-state business situs, as respects such deposits, it would be necessary to establish the fact that possession and control of the deposits have been localized in some dependent business or investment away from the domicile of the owner. The mere establishing of deposits in an out-of-state bank upon which checks could be drawn by the Home Office to pay salesmen or to pay for material which was bought near or in such out-of-state community, would not, in my judgment, be sufficient to meet that requirement.

Your sixth question is as follows:

"6. A foreign corporation authorized to do business in the State of Indiana and having its offices and principal place of business, including the factories located
within the State of Indiana, maintains an out-of-state bank deposit. Would this deposit be taxable under the Intangibles Tax Act of 1933?"

Upon the bare statement made in this question, the deposit, in my opinion, would be taxable.

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**TAX BOARD: Duty of Tax Board in connection with exemptions of farm land occupied by highways and ditches, et cetera.**

November 28, 1941.

Mr. Edward D. Koenemann, Secy.,
Indiana State Tax Board,
231 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion concerning certain provisions of Chapter 91 of the Acts of 1941, which provides as follows:

"Be it enacted by the General Assembly of the State of Indiana, That Section 1 of the above entitled act be amended to read as follows: Section 1. That Sec. 143 of the above entitled act be amended to read as follows: Sec. 143. 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, interurban or street railway, by any public highway, by any levee which shall have been constructed and maintained by any levee association or constructed and maintained pursuant to and by virtue of the provisions of Chapter 223 of the Acts of the General Assembly of 1907 and all acts amendatory thereof and supplemental thereto, or by any public drainage ditch and no part of the land so belonging to such property holder shall be assessed against him for taxation except that portion beyond the lines of right of way of the railroad, interurban or street railway, or the right of way used and occupied as such public highway, the line of any such levee, or used..."