tract binds the latter to pay all state or local taxes imposed by law on the contractor. The United States government does not sell or buy the gasoline and is not a party to this litigation. If the gasoline sold under the contract is not exempt from the tax, appellant will be forced to collect it from the contractor, who in turn will be reimbursed by the United States. In view of the agreement by the United States to pay the tax as the contract provides, appellees urge that the United States took the position that it was ruled by the cases relied on by them.”

From the foregoing considerations I have reached the conclusion that the imposition of the motor vehicle fuel tax directly upon the duly constituted agency of the United States government would be a burden directly interfering with the proper functioning of that agency and for these reasons would be unlawful.

CORPORATION LAW: Incorporation of hospitals under The Indiana General Not for Profit Corporation Act.

March 3, 1941.

Honorable Fred E. Shick,
Chief Corporation Counsel,
Office of Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your favor of the 1st inst. in which you submit the following question:

“The question upon which this office desires your official opinion is whether the provisions of the 1935 General Not For Profit Corporation Act are available to persons desiring to associate themselves to own, maintain and operate hospitals in the State of Indiana or whether such persons must incorporate as provided in Chapter 84, Acts of 1923.”
Your letter sets out the purposes of the contemplated corporation as follows: "The purpose of said proposed corporation shall be to acquire, own, equip, carry on, manage, maintain, operate, control, finance a hospital, medical and surgical for treatment of sick, injured, deformed people and maternity patients and for alleviating human suffering and developing and promoting medical science and conducting research work for and on behalf of humanity and administering to the health and well-being of all peoples; to further and promote religious, educational, charitable, financial, property, and eleemosynary interests of such hospital and in connection with the hospital to carry on a school for nurses; all under the friendly auspices of the Methodist Church."

In view of the fact that your letter states that the incorporators seek incorporation under the Indiana General Not For Profit Corporation Act of 1935, it is presumed that the articles of incorporation submitted carry no provision for capital stock and that the corporation, if and when incorporated, will be operated as a not for profit corporation.

The answer to your question depends upon the availability of the above Act for the incorporation contemplated. Section 3 of said Act makes the following provision: "Corporations may be organized or reorganized for not for profit under this act for any lawful purpose or purposes, if no other act is available which specifically provides for the incorporation of a corporation for the purposes sought to be accomplished by the incorporators."

The underlined condition above quoted makes it apparent that the Act is unavailable if there is in existence any other corporation act under which a corporation of the kind and type indicated could be legally incorporated. Chapter 84, Acts of 1923, being Section 25-3501, Burns' Revised Statutes 1933, is such an Act. This Act is sufficiently broad to cover any and all purposes indicated in the purpose clause of the articles submitted and for that reason is available for incorporation of this particular type of corporation if it has not been repealed.

A search of the records of legislation upon corporations in this State fails to reveal that this Act of 1923 has ever been specifically repealed or repealed by implication.

It is accordingly my opinion that the incorporators must seek incorporation under the Act of 1923, being Chapter 84, page 255 of the Acts of 1923 and that the Indiana General Not For Profit Corporation Act of 1935 is unavailable for such purposes.