Senate Bill No. 211, Acts of 1937, page 435, Sec. 1 provides:

"Section 1. Be it enacted by the General Assembly of the State of Indiana, That any administrator, executor, guardian, trustee or other fiduciary may, in such capacity, acquire and hold shares in any insured savings and loan association of this State, or in the shares issued by any federal savings and loan association chartered within this State, and shall have the same rights and be subject to the same obligations and limitations as other shareholders."

Section 12 of Art. 11, Indiana Constitution provides:

"The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association."

It is my opinion that the foregoing Constitutional provision is not controlling here and does not inhibit the trustees investing trust funds pursuant to section 1 of the Acts of 1937. Said investment is not in conflict with the Constitutional provisions "* * * nor shall the State hereafter become a stockholder in any corporation or association" for the reason that in such investment by the trustees, the State does not become a stockholder in any corporation or association.

In my opinion the trustees may legally invest trust funds in building and loan associations pursuant to the Acts of 1937, supra.

AUDITOR OF STATE: City and towns, newly incorporated; right to share in Motor Vehicle Highway Account funds; meaning of "last preceding United States census."

July 3, 1939.

Mr. Frank G. Thompson,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

Receipt is acknowledged of your letter of recent date as follows:
"Enclosed, herewith, is copy of a letter from the newly incorporated town of Wynndale, Indiana, requesting that said town share in the funds distributed to cities and towns from the motor vehicle highway account.

"In view of the fact that the statute governing the distribution of funds to cities and towns from this account specifically sets out that the allocations to cities and towns from this account shall be upon the basis that the population of each city or town bears to the total population of all the cities and towns at the last preceding United States census, we question our authority to distribute funds from this account to any city or town for which no United States census has been taken.

"Will you please, therefore, advise this office if, while operating under the present governing statute, we can legally allocate funds from the motor vehicle highway account to cities or towns that have incorporated since the last United States census was made.

"In the event that your answer to the above question is in the affirmative, will you please advise us what proof of the census of such cities and towns we should require."

The statute to which you refer is paragraph (a), section 3, chapter 135, Acts of 1937, (Sec. 36-2803 (a) Burns Indiana Statutes Annotated 1933 Supplement), which recites as follows:

"(a) Of the net amount in the motor vehicle highway account, one million two hundred fifty thousand dollars ($1,250,000) shall be transferred to the State General Fund by the Auditor of State on the first day of April of each year, and the Auditor of State shall annually set aside for the cities and towns of the State the sum of two million dollars ($2,000,000). This sum shall be allocated to the cities and towns upon the basis that the population of each city or town bears to the total population of all the cities and towns at the last preceding United States census. One-fourth (1/4) thereof shall be distributed by the Auditor of State
on the first day of April in each year and one-fourth
\(\frac{1}{4}\) quarterly thereafter."

Your attention is directed to the case of City of Indianapolis v. Navin (1898), 151 Ind. 139, 47 N. E. 525, 51 N. E. 80, 41 L. R. A. 337, in which an analogous question was presented. In construing the meaning of words similar to the ones used in the statute here under consideration, the court said on page 146:

"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." (Our italics.)

This construction was approved in the case of Vandalia Railroad Company v. Stillwell (1914), 181 Ind. 267, 277.

From the reasoning of the court in this case, it is not a difficult step to apply it to your situation. When the 1930 census was taken, the town of Wynndale was non-existent and, therefore, did not come within the provisions of the Act. However, when it attained the status of a town, it did acquire the qualifications necessary to bring it within the terms of the statute. The answer to your first question is, therefore, in the affirmative.
With regard to your second question, I call your attention to section 1, chapter 88, Acts of 1913, (Sec. 48-102 Burns Indiana Statutes Annotated, 1933), which recites:

"Such persons shall also cause an accurate census to be taken of the resident population of such territory, as it may be on some day not more than thirty (30) days previous to the time of the presenting of such application to the board of commissioners as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to such family and the name of each real estate owner residing within such territory and owning real estate therein; and the census shall be verified by the affidavit of the person taking the same."

According to the communication from the Clerk-Treasurer of the town of Wynndale, which accompanies your letter, he states:

"* * * I transmit to you herewith a certified copy of the final order of incorporation, filed in the office of the Auditor of Marion County, Indiana, on the 3rd day of April, 1939, together with a duly verified duplicate of the original census of resident population of said town, as said census was filed in the office of the Auditor of Marion County, Indiana, as an incident to said incorporation, on the 6th day of March, 1939."

Since this is a census both authorized and required by statute, it is my opinion that the only proof of the census needed by your office is the verified duplicate of the original census, which you now possess.

"The court will take notice of the census or other enumeration made under the authority of the State, or of the United States." (Our italics.)

Denney, Clerk, et al. v. State, ex rel., Basler, 144 Ind. 503, 525, 31 L. R. A. 726;
The City of Huntington v. Cast, et al., 149 Ind. 255, 258.