ACCOUNTS, STATE BOARD OF: Public depositories closed prior to 1939 amendment, whether governed by 1937 or 1939 provisions as regards charging off loss by counties.

August 24, 1939.

Hon. E. P. Brennan, State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of August 15, 1939, submitting certain questions with respect to chapter 114 of the Acts of 1939. Acts of 1939, page 565. This Act is an amendment of section 1 of chapter 32 of the Acts of 1937. The section, as amended, reads as follows:

"That whenever a public depository which became a closed depository and the authority appointed to liquidate the assets has paid the final dividend from such liquidation, the proper fiduciary officer of any municipal corporation which has money on deposit, which was not protected by the State Sinking Fund when such depository became a closed depository, and which was not entirely repaid by liquidation, shall file a petition with the Department of Inspection and Supervision of Public Officers for permission to have the proper appropriation made from the general fund of the municipality to allow an appropriate entry on his records eliminating such amount from the records. The Department of Inspection and Supervision of Public Offices shall grant such permission if the facts set out above are found, by investigation, to be true. The loss sustained by such action shall be borne by the general fund of any county, civil city or civil town or civil township, and the special school fund of any school city, city or school town or school township. Such appropriate entry shall be made at the close of a fiscal year: Provided, however, That in any county where a depository became a closed depository and had on deposit taxes being collected for the several municipalities of the county and the State of Indiana the loss sustained by the liquidation of said depository shall be proportionately distributed to each unit of government herein named and shall be deducted and adjusted at the next succeeding
settlement of taxes collected, said distribution to be approved by the Department of Inspection and Supervision of Public Offices before being entered upon said settlement.” (Our italics.)


The amendment consists in the adding to the original section the proviso shown by the italic portion, supra. Calling attention to the proviso, you submit the following question:

“Does this apply to counties where a loss was sustained by a county and such loss had been charged off the records under the Act of 1937 prior to the amendment of the Act of 1939?”

It is a general rule of statutory construction, as applied to amendments, that an Act after amendment as to cases arising subsequent to the amendment is to be treated as if the Act, as amended, had been enacted at the date of the amendment.

Given v. State, 160 Ind. 552, at p. 557.

Adhering to the above rule, I think the statute, as amended, should be given a prospective operation. This does not necessarily require, however, that your question be answered in the negative. It is true that your question assumes that proceedings had been had under the 1937 Act as originally enacted and that pursuant thereto the records had been so adjusted as to balance the loss out of the account. The proceeding contemplated, however, was in the nature of an accounting procedure to effect a closing of the account. It did not operate to actually pay the loss; and so the language of the proviso, it seems to me, applies with equal force to counties where the 1937 procedure had taken place as it applies to those counties where it had not yet taken place. In other words, the language:

“* * * in any county where a depository became a closed depository and had on deposit taxes being collected for the several municipalities of the county and the State * * *.”

correctly describes a county where that was true even though the accounts have been adjusted under the 1937 procedure,—describes such a county as fully and accurately as it describes a county where the procedure had not yet taken place.
It is my conclusion, therefore, that the proviso applies to counties where a loss was sustained by a county and where such loss had been charged off the records under the Act of 1937 prior to the amendment of the 1939 Act. Your question is answered in the affirmative.

You call attention further to the fact that a county may have been using more than one depository and that only one such depository was closed. Since money once deposited loses its identity, you submit the further question as to whether it would be proper to assume that the funds in the closed depository consisting of undistributed taxes were in the same ratio as to other moneys as the total undistributed taxes in all the depositories is to other moneys in all the depositories on the day such depository closed. I doubt whether this can be laid down as an inflexible rule. So far as deposits are concerned I think the rule would apply; but it occurs to me that the withdrawals might conceivably be such as would make the use of the above rule wholly inapplicable. The problem, however, is an accounting problem rather than a legal question, and I think it will have to be worked out in that way, that is, as an accounting problem.

PUBLIC INSTRUCTION, DEPARTMENT OF: Legal notices, publication of as required by chapter 84, Acts of 1939, construed as regards township trustees.

August 28, 1939.

Mr. Floyd I. McMurray,
State Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion upon the following questions:

"1. Is section 2, chapter 84, Acts of 1939, p. 476, applicable to the publication of legal notices by a township trustee?

"2. Must the requirement contained in section 1, of the above Act be met by a newspaper in which a township trustee may publish legal notices?

"3. Has the township trustee any discretion in causing a legal notice to be published in or withheld from