ACCOUNTS, STATE BOARD OF: Transfer tuition costs, whether computed under Acts 1935, ch. 279, or Acts 1939, ch. 146.

April 5, 1939.

Hon. E. P. Brennan,
State Examiner,
Division of Accounting and Statistics,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of March 9, 1939, wherein you request an official opinion upon the following:

"In the last session of the General Assembly, House Bill No. 86 (ch. 146, Acts of 1939) was passed, which changes the method of determining transfer tuition costs.

"The following question now arises and I would like to have your official opinion concerning same:

"Should the transfer for a pupil who was legally transferred to another school corporation for the school year 1938-1939 be computed according to the provisions of Sec. 1, chap. 279, Acts of 1935, or chap. 146, Acts of 1939?"

The decision of the question here presented depends entirely upon the provisions of the 1939 Act as that Act is an amendment of the 1935 Act of which you speak. An examination of the pertinent provisions of the 1935 Act read as follows:

"Section 1. Be it enacted by the General Assembly of the State of Indiana, (a) That whenever children are transferred from one public school corporation in this State to another school corporation in this State, under the provisions of any law authorizing or requiring such transfers, the corporation receiving such transfers shall, on or before the thirty-first day of July of each year, file with the debtor corporation a verified statement showing the name of the debtor corporation, the names of all children so transferred by the debtor corporation, the respective periods of attendance of such children during the school year, the kind of school attended by each child, the annual per capita costs of
maintaining the school or schools of the creditor corporation attended by such transferred child or children, and the amounts claimed as owing from the debtor corporation to the creditor corporation on account of such transfers and attendance.

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(b) The annual per capita costs shall be computed from the average daily attendance and the total expenditures of the current school year, as set out in the classified budget forms prescribed by the State Board of Accounts, excluding fixed charges, capital outlay, debt service, and cost of transportation, and shall be separately computed for the (1) elementary schools, excluding kindergartens, (2) junior high schools and (3) senior high schools of the creditor corporation."

The provisions of the 1939 Act do not change any part of the old Act except that under clause (b) which now reads as follows:

"(b) The annual per capita costs shall be computed from the average monthly enrollment and the total expenditures of the current school year, as set out in the classified budget forms prescribed by the State Board of Accounts, excluding fixed charges other than those for interest on temporary loans, capital outlay, debt service, and cost of transportation, and shall be separately computed for the (1) elementary schools, excluding kindergartens, (2) junior high schools and (3) senior high schools of the creditor corporation. The average monthly enrollment shall be determined by adding together the total enrollment in each such school as the same appears on the first day of each school month in the school year, and dividing such total by the number of school months so added together."

By a reading of the foregoing provisions it is clear that the only effect of the new statute is to change the method of assessing the per capita or pupil cost upon such transfer. The 1935 Act governed and determined the cost as of the beginning of this school year of 1938-1939, and since the 1939 Act carries no emergency clause, will be in effect during this school year as it is improbable that the Acts will be distributed
and proclaimed prior to the first of June when most school years are completed. A consideration of the foregoing consequently narrows the question to whether the reports to be filed prior to the 31st of July will be governed by the statute in force and effect when the debt was created or one which becomes effective subsequent to the creation of such debt. This requires a consideration of the statute with the end in mind of determining whether the legislature intended the 1939 Act to be retrospective or to govern only the future transactions in which this debtor-creditor relation is concerned.

As a general rule it is safe to say that statutes which go into effect at a future day act prospectively and should never be allowed a retrospective operation where such is not required by express command, or by necessary and unavoidable implication. There is no such mandatory language contained in this statute as would require the retrospective operation of the Act, but to the contrary, the total absence of any language making provision for the payment of obligations already accrued leads me to believe that the legislature intended the Act to act prospectively only and in no wise affect or reassess obligations that accrued under the statute in effect at the time the debt was incurred. The provisions of the 1935 Act for the method of determining the amount of the tuition debt, once they have operated, establish a right to the payment of such debt, a substantive matter in my opinion, which the legislature will not seek to change without express language.

Since the only statute the debtor school may operate under prior to the effective date of the 1939 Act is the 1935 Act, it is my opinion that debts created thereunder must be paid in accordance with that schedule. To give any other effect to the amendment would be to consider the accrued debt to be less than a substantive right and consider the change wrought by the amendment to be one of procedure only. Therefore, an interpretation of the amendment which imparts only a prospective effect to it, is in accordance with the equities of the debtor and creditor relation established by the statute. Such a position is compatible with the canons of statutory construction applicable to this statute. It has been often held by our courts that where the language of a statute reasonably permits a construction which will avoid an unjust or unreasonable result, or one running counter to the obvious general
spirit and purpose thereof, the former construction will prevail. It follows that, considering the equities herein, the statute can only import evidence of the intention of the legislature that the Act operate prospectively.

Considering the foregoing, it is my opinion that the tuition charges for the school year 1938-1939, will be governed by the 1935 Act, and that beginning with the next school year, the amendment will be operative.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Retail Installment Sales Act, interpretation; whether retail seller may act as insurance seller, making benefits greater than the amount allowed by department.

April 6, 1939.

Hon. Ross H. Wallace, Director,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Mr. Wallace:

I have before me your letter which, in part, is as follows:

"Section 10 of the Retail Installment Sales Act provides in part that 'No licensee shall enter into any agreement with any retail seller regarding the purchase of any retail installment contract whereby the retail seller shall receive, directly or indirectly, any benefit from or part of any amount collected or received from any retail buyer, as a finance charge or as the cost of the insurance to the retail buyer, in excess of an amount fixed and determined by the department and no licensee shall directly or indirectly pay any part of the amount collected as a finance charge or retail buyer's cost of insurance to any retail seller on any retail installment contract purchased from him in excess of the amount so fixed; and the department shall fix such maximum amount which may be so paid * * *.' The Department of Financial Institutions, by General Order, has fixed the maximum benefit herein above referred to at 2 per cent of the principal balance on new merchandise and 5 per cent of the principal balance on used merchandise."