PUBLIC INSTRUCTION, DEPARTMENT OF: Whether school corporation with tuition levy of $1.20, but no poll levy may receive assistance from school relief funds.

February 16, 1933.

Hon. C. R. Hertenstein,
Director of State School Relief,
Department of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your inquiry of February 15th, as follows:

> "Please inform me as to whether a school corporation that has a total special and tuition school levy of $1.20 only, but has no poll levy, is eligible to receive assistance out of state school relief funds consistently with the provisions of the 1931 state school relief law (Acts 1931, pages 566 to 572)."

Under the provisions of section 6, chapter 163, of the Acts of 1931, there is a specific limitation against the distribution of funds provided for, unless the school authorities have "levied local tuition tax and special school tax for current operating expenses in such amount that the total of both levies shall be not less than one hundred twenty cents on each one hundred dollars of taxable property *and twenty-five cents on each taxable poll in such township or school town or city.*"

It is my opinion, that this proviso excludes a school corporation which has only levied $1.20 as the aggregate school levy without levying any poll tax from receiving aid under the relief provisions of the act of 1931.

TAX COMMISSION: Distinction between withdrawal of grain on account and sales; whether subject to store license tax law.

February 16, 1933.

Hon. L. C. Johnson,
Administrator, State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

Your letter of February 15th has been referred to me, in which you submit the following statement of facts:

> "The Farmers National Grain Corporation has a contract with the Central States Elevator Corporation to receive, handle, store and ship grain received on account of the Farmers National Grain Corporation, for a stipulated amount per bushel received. Apparent authority is given to the Central States Elevator Corporation by the Farmers National Grain Corporation, to take from the stock of grain on hand at any of the points in question such amounts as are needed by the Central States Grain Corporation in conducting a retail business at these points, a report of such withdrawals being made twice each month by the Central States Elevator Corporation to the Farmers National Grain Corporation."

Upon this statement of facts, you have submitted to us the following question:

> "Do the withdrawals, as above mentioned, constitute sales of merchandise and subject the Farmers National Grain Corporation to the provisions of the store license law?"

It is my opinion, upon the statement of facts set out in your letter and the supplemental statement of facts as given in the attached letter, which your office has received from Mr. Harry W. Foote of the Farmers National Grain Association, that the withdrawals referred to do not constitute sales of merchandise under the meaning of the store license law nor is the Farmers National Grain Corporation owning, operating, maintaining or controlling a store as contemplated by the provisions of said law, at said points.

Section 1, of the law in question, being chapter 207 of the Acts of 1929, reads as follows:

> "That from and after the first day of July, 1929, it shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to *operate, maintain, open or establish* any store in this state without first having obtained a license so to do from the state board of tax commissioners, as hereinafter provided."

You will note that the liability of any person, firm, corporation, etc., is based upon the condition that they do in fact,

"operate, maintain, own or establish" such a store as is defined in section 8 of the same act.

Section 8 reads as follows:

> "The term 'store' as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are *owned, operated, maintained or controlled* by the same person, firm, corporation, copartnership or association, either domestic or foreign, in which goods, wares or merchandise of any kind are sold, either at retail or wholesale."

You will note also, that section 8 uses the language, "owned, operated, maintained or controlled, etc."

From the statement of facts which you give us, and the additional information secured from the attached letter above referred to, it seems to be clear that the Farmers National Grain Corporation neither owns, operates, maintains, nor controls the elevators at the various points referred to, since no one in the active management of said elevators or in the employ of the managers of said elevators are on the payroll of the Farmers National Grain Corporation. For this reason, it is my opinion, that the Farmers National Grain Corporation is not liable as the owner or operator of the various elevators in question, without consideration of the question of whether or not each or any of said elevators are "stores" within the meaning of the act.

You will note that section 8, as above set out, uses the language "in which goods, wares or merchandise of any kind are *sold*, either at retail or wholesale." From the attached letter of the Farmers National Grain Corporation, we gather the information that "the price to the grain association (referring to the withdrawals as set out in your statement of facts) is *about* cost, plus the handling charge which we have to pay the Central States Elevator Corporation."

This statement is rather vague, but we assume that the writer intended to say that the price paid to the Farmers National Grain Corporation for each such withdrawal was the actual gross cost incurred by the Farmers National Grain Corporation in the purchase and handling of such grain as near as the said total gross cost could be ascertained. Under this interpretation of the information given, it would appear

that the withdrawal in question would not be in fact a sale for profit as we interpret the 1929 Store License Act to contemplate, but would merely be a privilege extended to the Central States Grain Association. Of course, if the word "about" means in fact that an additional charge is made over and above the actual cost of purchase and handling, sufficient to give the Farmers National Grain Corporation a profit in the transaction, then we would have to say that such transaction would actually constitute a sale within the meaninig of the act.

It seems to us, however, that this question may very easily be disposed of on the ground that the Central States Grain Association is the concern which is actually conducting a retail business at each of the elevator points in question, and that said association would clearly be liable for a store tax at each point. This being true, we do not understand the law to contemplate that two taxes should be paid on each store, or even that two persons, firms or corporations should pay a tax upon the same store, as the result would be double taxation as applied to such store. Therefore, it seems clear to me that even if the withdrawals of grain at the various elevators should be construed to be *sales* coming under the provisions of the Store License Act, that the ultimate sale to the general public at the same point is conducted by the Central States Grain Association, and the latter association alone would be liable for the fee prescribed by the said act.

BLIND, SCHOOL FOR: Disposition of $2.00 per car paid by carrier under contract with the institution.

February 18, 1933.

George S. Wilson, Superintendent,
Indiana School for the Blind,
Indianapolis, Indiana.

Dear Sir:

I have before me your inquiry of February 16, 1933, inquiring what should be done with the $2.00 per car paid by the carrier under a contract entered into between the carrier and your institution at the time the spur track was built into the grounds of the institution to supply your power house with rail facilities.