Corporation, who have overpaid their kerosene tax in the sum of $4,022.56 by reason of having failed to turn in and take credit for “certificates of use” in the past, it is the opinion of this department that they would have no right to deduct this amount from the general tax due the state, for the reason, as stated in your letter, that kerosene tax and gasoline tax are handled in two distinct accounts.

On the other hand, it would be improper for them to file an application for a refund, since they are not the ultimate consumers as required by section 5 of page 68 of the Acts of 1932, covering the tax on motor vehicle fuel.

At the present, the only method by which they could secure the return of its money would be by crediting these “certificates of use” against kerosene tax, which may be due during the coming months, but in view of the fact that the sale of kerosene as a fuel for motor vehicles is comparatively small and the amount of credit to which they are entitled, requiring over 100,000 gallons for this purpose, this plan would be rather impracticable.

The other remedy that this department could advise would be the preparation and passage of a special act of the legislature authorizing the return of this amount. Certainly, the State of Indiana has no desire to keep money which does not belong to it; yet the method of the return of that money can only be in accordance with the laws of the state and hence, the special act plan is the only practical one which suggests itself to me at this time.

BANKING DEPARTMENT: Whether building and loan associations are liable for tax provided by chapter 41, Acts 1932, when filing mortgages on real estate; whether said associations are liable to tax provided in said act on mortgages placed of record before January 1, 1933.

January 11, 1933.

Hon. H. J. Hanes,
Clerk, Building and Loan Division,
Banking Department,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter submitting the following questions:

"Are building and loan associations liable for the tax provided by chapter 41 of the Acts of 1932 when filing mortgages on real estate?"
"Are building and loan associations liable to the tax provided in said act on mortgages that were placed of record before January 1, 1933? In other words, if the building and loan associations of Indiana should not file statements of their mortgages placed of record before January 1, 1933, with the recorder of the county, as provided in section 5 of the act, will these mortgages be taxed under said act?"

The answer to the first question is in the affirmative as to real estate mortgages recorded on or after January 1, 1933. Section 4 of the act specifically provides that:

"A tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state recorded on or after the first day of January, 1933, is hereby imposed on each such mortgage, and shall be collected and paid as provided in this act. If the principal debt or obligation which is or by any contingency may be secured by such mortgage recorded on or after the first day of January, 1933, is less than one hundred dollars, a tax of fifty cents is hereby imposed on such mortgage, and shall be collected and paid as provided in this act." (Our italics.)


Section 3 of the act likewise specifically provides that:

"No mortgage of real property situated within this state shall be exempt, and no person or corporation owning any debt or obligation secured by mortgage of real property situated within this state shall be exempt, from the taxes imposed by this act by reason of anything contained in any other act, or by reason of any provision in any private act or charter which is subject to amendment or repeal by the general assembly, or by reason of nonresidence within this state or for any other cause." (Our italics.)

The act does not apply, however, to mortgages of real estate recorded prior to January 1, 1933, unless the mortgagee elects to have it apply by complying with the provisions of section 5 of said act with reference to such mortgages.


The second and third questions are both answered in the negative.

PUBLIC INSTRUCTION, DEPARTMENT OF: Whether a county superintendent may legally teach a two hour course in Goshen College.

January 12, 1933.

Department of Public Instruction,
Administrative Division,
State House,
Indianapolis, Indiana.

Gentlemen:
We are in receipt of your request for an official opinion under date of January 12, 1933, which request is as follows:

"According to chapter 69 of the Acts of 1901, may a county superintendent legally teach a two hour course in Goshen College? Goshen College is accredited in its normal department by the State Board of Education."

It is expressly provided by section 6522, Burns Annotated Statutes, Revision of 1926, as follows:

"No county superintendent shall conduct or assist in the conducting of any private or county normal school in this state, or receive any pay or emolument from the management of such school."

Section 6523, Burns Annotated Statutes, Revision of 1926, provides the following penalty for violation of the foregoing section:

"Any person violating the provisions of this act shall be fined in any sum not exceeding one hundred dollars, and shall be removed from office."

It is, therefore, evident that the legislature intended to not only prohibit a county superintendent from teaching in a nor-