ever, such persons have only administrative duties to perform and the teaching function is only incidental and more or less irregular, in my opinion, your question should be answered in the negative.

PUBLIC INSTRUCTION, DEPT. OF: School funds—whether collections from state common school levy of 1932 must be paid in to state treasury.

June 2, 1933.

Hon. George C. Cole,
State Superintendent,
Department of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter as follows:

"In the light of the general statutory provisions for making tax levies for specific purposes and in the light of the language of chapter 167 of section 1 of the Acts of 1933, I wish to secure your official opinion as to an interpretation of the following question:

"'Shall all the funds derived from the seven cent levy and the fifty cent poll tax, as levied in the year 1932, to be collected in 1933, be paid into the state treasury to be used as a common school relief fund or shall the provision of the 1931 school relief law determine the distribution?'"

Section 1 of chapter 167 of the Acts of 1933 provides that:

"There shall be, in the year 1933, and annually thereafter, assessed and collected, as state and county revenues are collected, seven cents on each one hundred dollars worth of taxable property, real or personal, in this state, and in addition thereto a poll tax of fifty cents upon each taxable poll in the state, which money, when collected, shall be paid into the state treasury for a common school relief fund and shall be apportioned to the several school taxing units in the state in the manner hereinafter provided in this act."

Section 2 of said act provides, in part that:

"During the calendar year ending December 31, 1933, and during each calendar year thereafter, the total amount collected under the levy provided for in section 1 of this act shall be a relief fund to be distributed to the several school taxing units of the State of Indiana under regulations and orders to be promulgated from time to time by the board of department of education."


Section 12 of said act repeals chapter 163 of the Acts of 1931, which is an act entitled "An act providing for the levy of a tax to support the common schools of the state, providing for apportionment and distribution of the money so raised, repealing all laws in conflict therewith, and providing a penalty", and which is the act pursuant to which the seven cent levy in the year 1932, referred to in your question, was made. The 1931 act also provided the method of distribution of the fund raised by the levy.

I call your attention to the fact that the express language of section 2 of chapter 167 of the Acts of 1933 limits its provisions to "the total amount collected under the levy provided for in section 1 of this act." There will be no collections in 1933 under the levy provided for in section 1 of said chapter 167; the collections in 1933 being on account of the levy made in 1932 pursuant to the act of 1931 above referred to.

Giving effect therefore, to the precise language of the various sections of chapter 167, supra, referred to above, section 2 constitutes the collections under the levy provided for in section 1, a relief fund to be distributed according to the terms of that act. So far as 1933 collections are concerned, there will be no such collections. Section 2, therefore, giving effect to its precise language, does not operate upon any fund which will be collected in 1933. Section 12 on the other hand, repeals the act of 1931, which made provision for the distribution of the seven cent levy made in 1932 and collected in 1933. The effect of this, is to leave on the statute books no provision for the distribution of the seven cent common school levy of 1932, which will be collected in 1933.

I am persuaded that such was not the intention of the legis-
lature and resort must therefore be had to interpretation in an effort to overcome this ambiguity.

As already stated, it is apparent, I think, that the language of section 2 of chapter 167 does very definitely limit the fund upon which it operates during 1933 to "the total amount collected under the levy provided for in section 1" of the act. But it is equally apparent that the legislature had in mind the purpose of putting the act into effect immediately, clearly evidenced by the emergency clause of the act, so that it would seem that there was an intention in the minds of the legislature to make the act applicable to the collections for the year 1933, although the precise language used was not entirely appropriate. In other words, the legislature knew the law of the state and knew that there was a levy which would be collected during the year 1933. I think this intention is further evidenced by the fact that the act of 1931 was in its entirety expressly repealed.

In my opinion, therefore, the legislature had in mind the setting up of a new plan which would be operative, so far as the 1933 collections are concerned at once, and although there is an ambiguity arising out of the use of the language "the total amount collected under the levy provided for in section 1," I think the legislature must have had in mind the previous levy of 1932 as well as the levies which were to be made in subsequent years pursuant to said section 1. (Our italics.)

I am aware of the fact that since school corporations outside of the state aid territory made their budgets relying upon their portion of the 1933 collections, as provided in the act of 1931, supra, the loss of such anticipated revenue may mean a hardship to such corporations. I do not think, however, that this result must necessarily follow.

It will be noted that section 2 of the Acts of 1933, puts all of the collections from the seven cent levy into a relief fund but it does not follow from that fact that the present state aid territory is entitled to all of this fund. The board of department of education has been given very broad powers by chapter 167 of the Acts of 1933. It is provided therein, that this relief fund is "to be distributed to the several school taxing units of the State of Indiana under regulations and orders to be promulgated from time to time by the board of department of education."
Section 6 of the act provides, that:

"The board of department of education shall have and is hereby given full power and authority to promulgate regulations and issue its orders from time to time defining and setting forth the terms and conditions upon which the various school taxing units of the state may avail themselves of any portion of said relief fund."

Section 5 of the act provides, that:

"The said board of department of education shall thereupon", (that is, after certain preliminary matters have been complied with), "under and pursuant to the regulations heretofore promulgated by such board of department of education, as in this act provided, determine the amount of such relief fund which shall be allocated to the said school taxing unit and shall thereupon certify the said determination to the auditor of state."

Under these broad powers, I think the board of department of education is authorized to promulgate such rules and regulations applicable to the 1933 collections as will meet the emergency above indicated and secure to non-state-aid corporations the substantial benefits of the 1931 act without violating the act of 1933. In other words, there is nothing in the act of 1933 which provides that all of this money shall be distributed to present state-aid corporations. The board of department of education is required to make rules and regulations on this subject, so as to secure the benefits of the levy to the various school units upon a basis which is equitable and just.

Your question is double and cannot, therefore, be answered either in the affirmative or the negative. I think sufficient has been said, however, to indicate that in my opinion, the collections of the state common school levy of 1932, which are collected in 1933, should be paid into the state treasury and should be distributed under such rules and regulations as may be promulgated from time to time by the board of department of education.