determine, and, in the discretion of said respective trustees, said bonds may be sold either privately or at public letting, but shall not be sold for less than the par value thereof. Said bonds and the pledge or mortgage securing the same, shall be issued and made in the name, and on behalf of such respective corporations by such officer or officers as said trustees shall respectively designate."

It is urged that if chapter 33 of the Acts of 1932, be held to be applicable to the funds last above described, it would be unconstitutional because the mandatory diversion of a part of the interest on said funds to the state sinking fund, supra, would impair the obligation of the contract with the bondholders. It should be noted, however, that it is only "net income" which may be pledged pursuant to the above statute and it appears to me that the proper security of the fund is of such vital importance to it, that the cost of the same may be a legitimate charge against the fund to be taken out before the income is reduced to a "net income." I think these funds are public funds within the meaning of section 12629 of Burns Annotated Indiana Statutes of 1926, which is section 19 of the Public Depository Act as amended in 1909. There is no express exemption of such funds from the State Sinking Fund Act of 1932, supra. It is my opinion, therefore, that said act of 1932, supra, must be held to apply to them.

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AUDITOR OF STATE: Situations arising under amendatory act of 1932 for collection of gasoline tax and licensing of gasoline dealers.

Hon. Floyd E. Williamson,
Auditor of State,
Indianapolis, Indiana.

January 18, 1933.

Dear Sir:

I have before me your letter requesting an opinion relative to various situations arising under the amendatory act of 1932, for the collection of gasoline tax and the licensing of gasoline dealers. The act referred to constitutes chapter 68 of the Acts of 1932. It will be noted that section 1 provides, among other things, "that a license fee of four cents per gallon or
fraction of a gallon, is hereby imposed on the use of all motor vehicle fuel used in this state for any purpose whatsoever." (Our italics.) Acts of 1932, page 250. Said section further provides that, "the license fee hereby provided for, unless such fee shall have been previously paid, shall be collected by the dealer selling motor vehicle fuel to purchasers who purchase for purposes other than resale, and shall be paid by the purchaser to the dealer and by such dealer to the Auditor of State in the manner and within the time" specified in the act. (Our italics.)

I call attention particularly to the terms "motor vehicle fuel" and "dealer" as used above. These terms are defined very explicitly by section 7 of the act, and in those definitions I think, is found the answer to most of your questions. I desire to refer you to the following language from section 7, supra:

"The following words, terms and phrases used in this act shall, for the purposes hereof, be defined as follows:

"MOTOR VEHICLE FUEL."

(a) "Motor vehicle fuel," as used in this act, shall mean and include any inflammable liquid, by whatsoever name such liquid may be known or sold, which is used or usable in motor vehicles, either alone or when mixed or compounded, for the propulsion thereof upon the public highways, including (but the following enumeration shall be without prejudice to the generality of the foregoing definition) gasoline, kerosene, benzol and all kinds of naphthas.

"DEALER."

(b) The term "dealer," as used in this act, shall be construed to include any person, firm, corporation, association or partnership who imports, or causes to be imported, motor vehicle fuel for use, distribution, sale or delivery in, and after the same reaches the State of Indiana and has become mingled with the other property thereof; also any person, firm, corporation, association or partnership who produces, refines, manufactures or compounds motor vehicle fuel in the State of Indiana for use, distribution, sale or delivery in this state; and
also any person, firm, corporation, association or partnership who sells or uses motor vehicle fuel in this state however and wherever such motor vehicle fuel may have been obtained. ANY DEALER WHO USES MOTOR VEHICLE FUEL FROM HIS OWN SUPPLY SHALL BE DEEMED A PURCHASER OF HIMSELF AND SHALL PAY THE LICENSE FEE ON EACH GALLON OF MOTOR VEHICLE FUEL SO USED AS HE WOULD HAVE DONE HAD HE PURCHASED THE MOTOR VEHICLE FUEL FROM SOME OTHER DEALER.” (Our italics and capitals.)

Your first question is as to whether you shall accept the motor vehicle fuel tax on naphtha from a cleaning establishment purchasing same from an out state dealer or refiner who is not licensed or bonded to transact business in the State of Indiana and who has not paid the tax. The above quoted provisions of the statute can lead to but one conclusion, and that is that you should collect the tax. The statute imposes the tax on all “motor vehicle fuel” used in the state, “for any purpose whatsoever.” The statute expressly includes naphtha within the meaning of the term “motor vehicle fuel.” A “dealer,” under the act, is any person who imports “motor vehicle fuel” for use in and after it reaches Indiana. “Any dealer who uses motor vehicle fuel from his own supply shall be deemed a purchaser of himself AND SHALL PAY THE LICENSE FEE ON EACH GALLON of motor vehicle fuel so used as he would have done had he purchased the motor vehicle fuel from some other dealer.” (Our italics and capitals.) In my opinion, under the conditions stated in your letter, you should collect the tax from the corporation referred to.

Your second question is as follows:

“In the event that purchases of kerosene, distillate or fuel oil are made, by a non-licensed company, from a non-licensed dealer or refiner, should said company be required to furnish us with certificates of use, or should the dealer or refiner send these to us, or some report of such transactions, or should the company be required to take out a license and bond to operate?”

The portion of the statute above quoted makes the answer to this question very clear. The importer of “motor vehicle
fuel" as defined in the act for use in and after it reaches Indiana is a dealer within the meaning of the act. Section 8 of the 1932 Act, makes it unlawful "to receive, use, sell or distribute any motor fuel * * * unless such dealer is the holder of an uncanceled license issued by the auditor of state to engage in such business." Acts of 1932, page 259. Section 12 of the Act of 1932, makes the violation of the above section a misdemeanor, punishable by a fine of not less than twenty-five nor more than one thousand dollars.

Acts of 1932, page 266.

ADJUTANT GENERAL: Legal right of armory board to contract for the adjutant general's office under authority of statute. January 19, 1933.

Hon. Elmer F. Straub,
Adjutant General,
Indianapolis, Indiana.

Dear Sir:

I have your request of the 18th for an opinion as to the legal right of the armory board, as listed in your armory, to contract for the adjutant general's office of the State of Indiana under the authority of the statute.

The armory board, as listed by you as appointed by Governor Harry G. Leslie of October 19, 1929, designates only one of the individuals, to wit: D. Wray DePrez, as an officer of the Indiana National Guard, the other appointments being presumably civilians.

The statute on the appointment of the armory board is section 9926 of Burns Revised Statutes of Indiana, 1926, and is section 1 of the Acts of 1907, page 307 as follows:

"There shall be appointed within the State of Indiana an armory board, to consist of the governor, the adjutant-general, and five persons to be appointed by the governor, of whom three shall be officers of the national guard, whose duty it shall be to provide, manage and care for armories, for the use of the national guard of Indiana."

It appears, therefore, that the statute has not been followed in the appointment of the board inasmuch as there are not