BANKING DEPARTMENT: Gross income tax as applied to banks and national banks doing business under Indiana laws. July 1, 1933.

Hon. Richard A. McKinley,
Bank Commissioner of Indiana,
Indianapolis, Indiana.

Honorable Sir:
I have before me your request for an official opinion upon two matters, the first of which is:

"Is the tax imposed by the Gross Income Tax Act of 1933 upon the gross earnings of banks doing business in the State of Indiana to be levied and collected from national banks located and doing business in the State of Indiana?"

As national banks are agencies or instrumentalities of the government of the United States, in accordance with the principle that it is not within the power of a state to lay a tax on such agencies or instrumentalities, the State of Indiana has no power to subject a national bank or its property to taxation either directly or indirectly, except insofar as it is permitted by act of Congress.

First Nat. Bank v. City of Hartford, 273 U. S. 548;
Des Moines Nat. Bank v. Fairweather, 263 U. S. 103;

The grant of the Congress of the right of taxing national banks in the certain specific ways to the several state governments is to be found in section 548 of Title 12 of the code of laws of the United States of America in force December 7, 1925, as amended in 1926, 44 Stat. at Large, p. 223, which reads:

"548. State taxation. The legislature of each state may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several states may (1) tax said shares, or (2) include dividends derived therefrom in the tax-
able income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, * * * ."


Therefore, I must respond to your first inquiry in the negative. The tax imposed by chapter 50, Acts of 1933, not being consistent with any of the four methods specified by the grant of the power to tax national banks made by Congress, it follows that this tax cannot be levied and collected from national banks doing business in Indiana.

II

Your second inquiry is:

"Whether the one per cent tax on gross earnings will, nevertheless be assessed and levied against banks doing business under and pursuant to the law of the State of Indiana, and if so, whether such attempted levying of assessment would be violative of the Constitution of this state?"

State banks are to be taxed upon their respective gross earnings under this law, and the taxing of such state banks is not violative of the provisions of the Fourteenth Amendment to the Federal Constitution or of section 23, Article 1 of the Constitution of the State of Indiana. Such institutions are so different as to warrant placing them in different categories for the purpose of taxation.


LIBRARY BUILDING COMMISSION: Method of procedure when bids for designs and commercial fixtures have been decided upon.

July 3, 1933.

Indiana State Library Building Commission,
Hon. Louis J. Bailey, Secretary,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you advise that the commission has decided to accept the designs and bid of Wal-