In my opinion, if a taxpayer has availed himself of the moratorium provided by chapter 30 of the Acts of 1933, and has elected to pay certain delinquent taxes in twenty equal installments as therein provided, he is not required to submit to a deduction therefrom of moneys due him from the taxing unit until and unless there is money due from him for taxes under the terms of the moratorium and then only to the extent of the amount due. A taxpayer's right to avail himself of the moratorium as provided in said chapter 233, does not depend upon his ability to pay or upon the existence or non-existence of debts due him from the taxing unit.

WORLD WAR COMMISSION: Validity of contract entered into by War Memorial Board and Moynahan Investment Company.

August 22, 1933.

Mr. Frank H. Henley,
Secretary, Indiana World War Commission,
Indianapolis, Indiana.

Dear Sir:

1. I have before me, your request for an opinion concerning the validity of a contract entered into by the War Memorial Board and the Moynahan Investment Company and T. A. Moynahan.

2. Secondly, what rights exist to the contractor, architect and other interested parties, and the validity of an assignment of such rights as security for a loan from the Federal Government for the purpose of the immediate completion of the project.

The legislature in the Special Session of 1920 by section 50 of the acts of such special session authorized the trustees of the Indiana War Memorial by section 7 of said act to enter into contract for the construction of the World War Memorial. It is my opinion, that the provisions of this act are sufficient to enter into the contract of September 15, 1931, for the completion of the World War Memorial.

Sections 14 and 15 of this act of 1920, were amended in 1925 and 1931, making appropriation of a certain tax levy for the payment of the construction of this memorial. The appropriation provided for in the act of 1930 as amended becomes a
part of this contract, as this is the method provided by the legislature for the payment of the improvements provided.

The Constitution of the United States provides that "no state shall * * * pass any * * * law impairing the obligation of contracts." (Article 1, section 10.) The Constitution of the State of Indiana provides that, "no * * * law impairing the obligations of contracts shall be passed." (Article 1, section 24.) It has been uniformly held that the governmental obligations have been lawfully incurred when express or implied taxing powers existed sufficient to insure their payment. In support of this view, we cite the cases of U. S., ex rel., Von Hoffman v. City of Quincy, 4 Wall 535, 18 Law. Ed. 403; State of Louisiana v. Mayor, etc., 215 U. S. 170, 54 Law Ed. 144; County Court, etc. v. U. S., etc., 105 U. S. 733, 26 Law Ed. 1220; U. S. ex rel., etc. v. Mayor, etc., 103 U. S. 358, 26 Law Ed. 395; County Court, etc. v. U. S., ex rel., 140 U. S. 41; 35 Law Ed. 351; Leonard v. Shrevesport, 28 Fed. 257; Fort Madison v. Fort Madison Water Company, 134 Fed. 214; Town of Samson v. Perry, 17 Fed. (2d) 1.

It is my opinion that the contract for the completion of this World War Memorial by the trustees thereof was legally entered into and that the tax levy as provided for in the Acts of 1931 and the appropriation of their proceeds to the memorial trustees to enable them to pay the obligation of the state incurred by them, became a part of this contract and that the levy cannot be repealed for the term for which it was created.

Paragraph No. 13577, Burns Revised Statutes of 1926, section 6, subsection 1, under the heading of "Powers of the board," provides as follows:

"To make and execute all contracts and other instrument and other instruments which may be required in connection with the erection and maintenance of a suitable structure or structures upon or within said memorial place."

The above set out section, clearly delegates to the board of trustees the authority to contract in the proper manner for the necessary cost of construction. It also authorizes them to execute other instruments in connection with the erection of the building to its ultimate conclusion. The board would have complete authority to pledge any funds not already
pledged by contract, providing, of course, that the expenditure of the same was handled in the manner provided by law.

It is therefore, my opinion:

(1) The act creating the World War Memorial Board and the state tax levy is binding upon the state.

(2) A contract properly let and executed between the board and a second party creates a vested interest in the second party in the tax levy to the extent of the contract and that such interest is a proper subject of assignment.

(3) Any residuary interest in the levy, remaining after the execution of contracts, may be pledged by the World War Memorial Board for the purpose of financing the completion of the structure.

LIEUTENANT-GOVERNOR: Liability of coal company for injuries of mine inspector; whether necessary for inspector to sign agreement to waive claims for injuries.

August 22, 1933.

Hon. M. Clifford Townsend,
Lieutenant Governor of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of August 21st enclosing a sample agreement upon the part of mine inspectors of the state to waive claims for injuries or death against the mine owners resulting from the inspection of their mines, which letter of yours asks the following questions:

(1) When the law on inspection is mandatory, is it necessary for a state inspector to sign any kind of a waiver?

(2) Would an inspector be eligible to receive compensation from the state if injured in his line of duty?

(3) Would the coal company be liable for any injury suffered by the inspector while on duty as an inspector?

In answer to the first question, there is no requirement that an inspector sign any such waiver, nor do I believe that an agreement to waive claims for injuries would be enforceable, since it has been the law for many years that an agreement waiving the right of action upon an injury in advance of the