It is, therefore, my opinion that gasoline purchased and used as herein set out is subject to the payment of the tax and not subject to refund.

PROBATION, DIRECTOR OF: Probation officers; tenure in Marion county; authority of director to give examination.

December 21, 1933.

Hon. Francis D. McCabe,
Director of Probation,
State of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue in response to the following specific inquiries:

"Inasmuch as it requires three judges of the Municipal Court, Marion County, to make an order appointing any probation officer or officers to serve in such court, in your opinion would probation officers in Marion County hold their office at the will of such judges and their term of office expire at the end of each year when a new judge is appointed."

"At the last monthly meeting of the State Probation Commission that body empowered the Director of Probation to 'prepare and give a written examination in cases where necessity arises; but that certification of such persons passing the examination be brought before the Commission for oral examination at the next regular meeting.' The director of probation has decided that 'an emergency has arisen' in that a new judge is to be appointed to the Municipal Court of Marion County and should the judges of that court determine to make a change in the personnel of the probation department they would have no basis for the appointment since there is at present no list of 'persons eligible for appointment' pursuant to Section 4 of Chapter 260 of the Acts of 1933. In view of the above may the written examination be given?"

In response to your first question, it is important to note that the statute authorizing the appointment of local proba-
tion officers does not fix any specific term, and that therefore, under the provisions of Article 15 (Section 2 thereof) of the Constitution of the State of Indiana, such officer holds his place at and during the pleasure of the authority making the appointment. Applying this general rule to the instant case, I am of the opinion, that the term of probation officers in Marion County terminates, not at the end of each year, but at any time when a majority of the judges of the Marion Municipal bench desire to end such employment and take the necessary steps so to do.

In response to your second inquiry, please permit me to direct your attention to Section 4, Chapter 260, Acts of 1933, page 1156 at 1158, which is as follows:

"Conduct Examinations—Probation Officers—Eligibility—Certification. Sec. 4. The state probation department shall from time to time conduct competitive examinations to establish lists of persons eligible for appointment as probation officers; shall prescribe the qualifications for entrance to such examinations and shall establish rules for the conduct of such examinations and for the eligibility of candidates for appointment. No person shall hereafter be appointed as a probation officer in any court in this state who has not been certified by the department in pursuance of such rules and examinations. The department may recommend to the proper authority the discharge of any probation officer."

(Acts 1933, p. 1158.)

In view of the section set forth above, together with facts reflected in your second inquiry, I am of the opinion that the director of probation may give the written examination in question.