payments made in good faith under an improper construction of the law applicable to the compensation of the county auditor. I do not think that Chapter 236 *supra* has that effect. The language of that Act, it is true, is somewhat ambiguous, but when construed in connection with the title of the Act, which I am authorized to do under the rules of statutory construction, the meaning of the Act becomes clear. It intends to relieve from liability where an officer's salary has been *increased* by some law or order during his term of office contrary to the constitutional provision in that particular, which prior to the decision in the case of In Re Todd was supposed not to be a part of the constitution.

GROSS INCOME TAX AND STORE LICENSE DIVISION: Taxation—National banks not subject to gross income tax.

March 26, 1936.

Mr. John T. Sexton,
Gross Income Tax Division,
Department of Treasury,
Indianapolis, Indiana.

Dear Sir:

I have before me your communication presenting the following request:

> "We are referring to you the case of State Tax Commissioners vs. Baltimore National Bank, 180 Atl. 260. A certified Public Accountant has written us to the effect that this case would give us a basis for taxing gross income of national banks.
>
> "May we have your comments?"

National banks are instrumentalities of the government of the United States.

> Davis v. Elmira Savings Bank, 161 U. S. 275, 16 S. Ct. 502.

In conformity with the principle that it is not within the power of a state to impose a tax upon an agency or instrumentality of the federal government, the State of Indiana

has no power to levy a tax upon a national bank or its property, either directly or indirectly, except insofar as permission to do so has been specifically granted by an act of the Congress.

First National Bank v. City of Hartford, 273 U. S. 548;
First National Bank of Guthrie Center v. Anderson, 269 U. S. 341;
Des Moines National Bank v. Fairweather, 263 U. S. 103;
Clark v. First National Bank, 224 N. Y. S. 10, 130 Misc. 352.

The Congress of the United States has granted permission to the several state governments to impose taxes upon national banks in certain specific manners as set forth 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 is:

> "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 taxable 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, * * * ."

U. S. C. A. 1932 Cumulative, Title 12, page 45.

The tax authorized by the provisions of Chapter 50 of the Acts of 1933 (11 Burns Indiana Statutes, 1933 Edition, Sections 64-2601 to 64-2629; Baldwin's Indiana Statutes, 1934 Edition, Sections 15981 to 16010) is imposed upon the receipt of gross income;

Section 2, Chapter 50, Acts of 1933, page 390;
11 Burns Indiana Statutes, 1933 Edition, Section 64-2602;
Baldwin's Indiana Statutes, 1934 Edition, Section 16011;
Miles v. Department of Treasury, ...Ind....., 193 N. E. 855.

it is not a tax consistent with any of the four methods specified by the grant by the Congress to the states of the privilege to tax national banks; it follows, therefore, that this tax is not to be imposed upon the gross income of a national bank. Since the General Assembly had no jurisdiction to impose a tax upon national banks through the agency of a tax upon the receipt of gross income, it will not be held to have intended something clearly beyond its authority.

Burton v. Union Pacific Coal Co., 112 Pac. (Wyo.) 841.

It is significant that the General Assembly at the same legislative session which passed Chapter 50 of the Acts of 1933 imposed a tax upon national banks in a manner consistent with Section 548 of Title 12, U. S. C. A., 1933 Cumulative, page 87, through the provisions of Chapter 83 of the Acts of 1933, page 545 (11 Burns Indiana Statutes, 1933 Edition, Sections 64-901 to 64-940; Baldwin's Indiana Statutes, 1934 Edition, Sections 15582 to 15602); and since by the election of the method of taxation adopted by said Chapter 83 the legislature precluded itself from taxing national banks in any other manner, it cannot be held to have intended to tax national banks under the Gross Income Tax Act.

It should be noted that the case of State Tax Commission of Maryland vs. Baltimore National Bank, 180 Atl. 260, does not relate to the taxation of national banks by state governments. For this reason the case is not an authority upon the subject of our discussion.

The case cited deals with the taxation by a state of the Reconstruction Finance Corporation which is an agency of the Federal Government, and the case is authoritative in establishing the proposition that the immunity of an agency of the Federal Government from taxation depends upon the nature of the activities in which the specific agency is engaged. Immunity from state taxes does not attach to property merely because the property is owned by an agency or instrumentality of the Federal Government or because the property is used in the furtherance of the business of such agency; this for the reason that not all of the activities of agencies of the Federal Government are confined to the performance of governmental functions but many of the activities are private or proprietary in character.

It may be urged that since this case permitted the taxation of certain property in the hands of a governmental agency that it would permit the taxation of governmental agencies generally. However, this distinction should be noted: the case turns upon the proposition that the activities of the agency in question were "engaging in business which constitute a departure from usual governmental functions."

National banks have been repeatedly held to be instrumentalities of the government of the United States in the providing of a national currency and in the control of the regulation of such currency.

> Davis v. Elmira Savings Bank, 161 U. S. 275, 16 S. Ct. 502.

In view of the provisions of Section 8 of Article 1 of the Constitution of the United States the power to coin money and to regulate its value is a prerogative of sovereignty vested exclusively in the Congress;

> Ling Su Fan vs. United States, 218 U. S. 302, 31 S. Ct. 21,

and hence national banks are agencies actively engaged in a governmental function and do not come within the rule laid down in the case cited in your inquiry.

The considerations heretofore set forth and the uniformity of the decisions of the Supreme Court of the United States and of courts of last resort of many states over a long period of years lead me to conclude: (first) that the gross income of national banks is not subject to the tax imposed by Chapter 50 of the Acts of 1933; (second) that the opinion in State Tax Commission of Maryland vs. Baltimore National Bank, 180 Atl. 260, is not authority for the proposition that state governments possess the inherent right to tax national banks; and (third) that case does not give the State of Indiana a basis for the taxation of the gross income of national banks.