PUBLIC INSTRUCTION, OFFICE OF SUPT. OF: High schools—Power of township trustee to abandon on petition of taxpayers.

August 26, 1936.

Hon. C. R. Hertenstein,
Director of State School Relief,
Department of Education,
State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your letter of August 24, 1936, enclosing data concerning the Union Township high school, Perry County, Indiana, and requesting an official opinion, as follows:

"Please advise the State Department of Education as to whether the current operating costs of the Union Township high school in Perry County the year 1936-1937 should be approved on state school relief. The attached material bears on this case and we shall be pleased to state such other related facts on inquiry as have come to our attention."

The data attached to the above request consists of a certain petition filed with the township trustee of Union Township, Perry County, Indiana, filed under and by virtue of the provisions of Chapter 27 of the Acts of the Indiana General Assembly, Special Session of 1932, Section 1 of said Chapter reading as follows:

"Section 1. Be it enacted by the general assembly of the State of Indiana, that whenever sixty per cent of the resident taxpayers of any school township or school corporation shall petition the trustee or board of trustees of such school township or school corporation for the abandonment of any high school or high schools within such school township or school corporation, it shall be the duty of the trustee of such school township or the board of trustees of such school corporation to comply with such petition and to abandon such high school or high schools of such school township or school corporation, and to provide for the education and transportation of the pupils entitled to
high school privileges, living within such school town-
ship or school corporation, in other high schools in
such township or school corporation, or in the high
schools of other townships or other school corpora-
tions."

The petition, together with the other data filed, shows upon
the filing of said petition that the township trustee, the officer
with whom said petition was filed, upon the examination
thereof determined that said petition did not contain and
was not signed by a number of persons equal to sixty per
cent (60%) of the resident taxpayers of said school town-
ship.

Under the above Act, this fact and the determination there-
of rested entirely with the township trustee of Union Town-
ship and it was his duty to determine whether or not said
petition was in fact signed by sixty per cent of the resident
taxpayers of said school township. His judgment and de-
termination so far as the Department of Education is con-
cerned is final unless further steps are taken which would
alter his opinion.

There seems to be no question as to the ruling of the town-
ship trustee, which is set forth in said data as follows:

"This is notice to you that the undersigned as trus-
tee of Union Township, Perry County, Indiana, has
this date turned down the petition as presented to me
and filed on June 25, 1936, at 7:30 p.m., and I am,
therefore, taking no action whatsoever on said peti-
tion until further proof is presented to me that the
petition as filed on June 25, 1936, contains 60% of the
resident taxpayers of Union Township, Perry County,
Indiana. I further wish to state that after a survey
of the taxpayers of Perry County, Indiana, that I am
of the opinion that said petition does not contain 60%
of the resident taxpayers of said Township and as
heretofore stated, I am therefore taking no action, but
am demanding and requesting that said Township High
School shall continue as heretofore.

Yours truly,

CURT YORk, Trustee,
Union Township, Perry County,
Dexter, Indiana."
It was not the trustee's duty to abandon the school until he had determined that the number of persons signing said petition was at least equal to sixty per cent of the total number of resident taxpayers of the township, and in the event that he found the number to be less, it was not his duty to proceed to close the school.

As the matter now stands, the school township and the township trustee are in the same position as if no petition of any kind had ever been filed, for the law plainly provides that the petition, in order to be effective, must be signed by sixty per cent of the resident taxpayers in order to make Section 1 of the above named statute operative to the extent that the school should be abandoned.

It is therefore my opinion that insofar as the enclosed data is concerned, the school township of Union Township, Perry County, Indiana, should be recognized and treated the same as though said petition had never been filed and that the current operating costs of the Union Township high school in Perry County for the years 1936-1937 should be approved on state school relief.

I am therefore answering your question in the affirmative.

GROSS INCOME TAX AND STORE LICENSE DIVISION:
Taxation—Liability of corporation in case of transfer of physical assets to pay debt; whether there is receipt within meaning of Act.

August 28, 1936.

Mr. F. C. McClurg,
Gross Income Tax Division,
Department of Treasury,
Indianapolis, Indiana.

Dear Sir:

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

"The question is presented concerning the liability of a corporation (either in the process of dissolution, or as a going concern) for Indiana Gross Income Tax upon the constructive receipts of such corporation re-