ATTORNEY GENERAL, ASSISTANT TO: Real estate—Whether State may accept title to real estate in settlement of claim.

September 18, 1936.

Hon. John W. Kenny,
Legal Department,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following question:

"May the State of Indiana accept title to a parcel of improved city real estate in satisfaction of a debt owing to the State, with the purpose of immediately disposing of same and applying the proceeds therefrom to the debt?"

In order to answer the above question with accuracy, I should be furnished with more of the details which constitute the basis for it. However, I will say that claims in favor of the State may be compromised with the consent of the Governor and Attorney General. (Burns Indiana Statutes Annotated (1933), Section 49-1917.) The acceptance of less than the full amount of such claim in satisfaction of it or the acceptance of something other than cash would involve a compromise and the above statute apparently would apply.

AUDITOR, OFFICE OF: Congressional law on tax on motor vehicle fuel sold in military posts for non-governmental purposes.

September 18, 1936.

Hon. Laurence F. Sullivan,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:

I have your request for an opinion as to the effectiveness of an Act passed at the last session of Congress, sometimes referred to as the Hayden-Cartwright Law. It is found in Title 23, Section 55a of U.S.C.A., and is as follows:
“(a) That all taxes levied by any State, Territory or the District of Columbia upon sales of gasoline and other motor vehicle fuels may be levied, in the same manner and to the same extent, upon such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory or the District of Columbia, within whose borders the reservation affected may be located.

“(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel not sold for the exclusive use of the United States during the preceding month. (June 16, 1936, c. 582, Section 10, 49 Stat.)”

The Indiana Motor Vehicle Fuel Tax Law imposes a stated tax per gallon on all gasoline sold in this state. It is not a tax on the gasoline itself, but an excise tax on the use of the fuel, and its validity has been sustained by the courts.

Gafill v. Bracken, Auditor, 195 Ind. 551.

Of course, the Indiana law does not apply to sales of motor fuel purchased for use of the Federal Government for its governmental purposes; and the Hayden-Cartwright Law does not contemplate that any state law will. The Act simply provides a method by which gasoline sold to private consumers, through post exchanges and other like government agencies, may account for the state tax, and the government officer in charge of the post is required to report the sales to the state taxing authorities, which in Indiana would be the State Auditor.

Ordinarily, there might be some administrative difficulties in enforcing the Indiana law on government reservations. The Act is intended to obviate such difficulties. In my opinion, the intention of Congress was to put the responsibility in ac-
counting for all sales of gasoline for nongovernmental purposes on the officer in charge of the reservation. I do not believe the language should be construed to mean that a tax would be exacted on all gasoline sold to the government agency and then a refund would be made on that part of the fuel used by the Federal Government.

With proper co-operation between the gasoline department of your office and the commanding officer of the United States reservations, there is no reason to believe that the State will lose any gasoline tax by reason of the fuel passing through the Federal Government Agency.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Retail installment sale contract—Issuance, to whom should rebate be paid in case of prepayment of time balance.

September 19, 1936.

Hon. R. A. McKinley,
Director, Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter concerning the Retail Installment Sales Act of 1935 in which you submit the following question:

“When the unpaid time balance on a retail installment contract is prepaid before maturity and the proper discount as required by General Order Number 2 of the Retail Installment Sales Act is given, to whom should the rebate for insurance policy cancellation be paid?”

Section 4 of the above Act on the subject of the provisions which must be contained in any such contract provides as follows:

“Provisions of Written Instruments. Every written instrument evidencing a retail installment sale shall recite the following separate items as such and in the following order: