becoming trespassers, etc. It is very evident that under such an agreement for the sale of real estate the auditor would have no authority to transfer said property for taxation on the transfer book to the person who had thus agreed to purchase said real estate in order to allow said purchaser a mortgage exemption on the same.

Attorney General's opinion, 1913-1914, page 176.

Following this opinion, the State Board of Tax Commissioners has ruled that the holder of an executory contract to purchase real estate, although he may be in possession of the land, is not entitled to a deduction from taxes on account of payments made or due on the purchase price. This administrative ruling, followed for many years, construing the Sections of the tax law, has never been questioned in any court proceedings and is entitled to considerable weight.

The situation which arises in connection with the homestead project may call for some legislation in connection with the Mortgage Exemption Act, but construing the present law, my opinion is as expressed above.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Trust investments by banks—Whether bonds of Indiana University are eligible.

September 22, 1936.

Mr. E. H. DeHority,
Bank Supervisor,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter asking for an official opinion in answer to the question whether general obligation bonds of the Trustees of Indiana University and issued, I assume, pursuant to the authority conferred on said trustees by Chapter 53 of the Acts of 1935 are legal investments for trusts as provided by Section 29 of Chapter 5 of the Acts of 1935. Section 29 of Chapter 5 of the Acts of 1935 is amended Section
186 of the Financial Institutions Act of 1933 and provides as follows:

"Every bank or trust company shall invest any and all money now held or hereafter received by it in any fiduciary capacity in the following classes of property, but no other:

(a) Bonds, notes or certificates which are the direct or indirect obligations of the United States or direct obligations of any territory or insular possession of the United States.

(b) Bonds, notes or certificates which are the obligations of any state of the United States or of any county, township, city, town or other taxing district or municipality of the State of Indiana which is not then in default in the payment of either principal or interest on any of its obligations, and has not so defaulted within the five years immediately preceding the purchase of such securities.

(c) Bonds, notes or mortgage certificates which shall mature in not more than five years from the date of purchase or provide for an annual principal reduction of not less than five per cent and which shall be secured by first mortgage on the fee simple title of improved real estate in the State of Indiana which has a value of not less than twice the total of the obligations secured thereby as shown by an appraisal made by not less than two competent disinterested appraisers within one year prior to the investment.

(d) Bonds or notes rated in one of the first three classifications established by one or more standard rating services to be specified by the department and which satisfy such requirements of marketability as may be prescribed from time to time by the department which are the obligations of a corporation whose average yearly net earnings for the three years immediately preceding the purchase have been at least two times the interest requirements on all debts of the corporation after depreciation.

(e) Bonds or debentures issued under and by the authority of the Federal Farm Loan Act, or of the Fed-
eral Home Loan Bank Act, or of the Home Owners’ Loan Act of 1933 or of any amendments to said Acts.

(f) Any other property, real or personal, which the fiduciary is authorized or directed to hold or purchase by the terms of the instrument creating the trust.

(g) Any other property, real or personal, which the fiduciary is specifically authorized or directed to purchase by the written consent of each beneficiary of the trust, where all such beneficiaries are competent, and such authorization or direction is not contrary to the terms of the instrument creating the trust.

(h) Any other property, real or personal, which the fiduciary is specifically authorized or directed to purchase by the court having jurisdiction of the estate or fund after a petition filed and notice of the time and place of the hearing thereon given as in civil actions to each beneficiary of the trust then in life; but such notice may be waived by any competent beneficiary.”

Section 1 of Chapter 53—supra, authorizes the Trustees of Indiana University to borrow money for the construction, equipment, furnishing or repair of any building to be used for the purposes of the University. The Section also authorizes the Trustee of the University to execute mortgages and pledges of the income from the use of such buildings or other buildings and the income from the permanent endowment fund of the University and the income from contingent fees collected by the University as security for the repayment of any money borrowed for the above purposes. The Trustees are authorized to issue bonds for the purpose of securing money as above provided.

Section 2 of the Act authorizes the Trustees of the University to issue bonds not exceeding four hundred thousand dollars for the purpose of securing money with which to construct and equip an administration building and to pledge an amount of the income from the permanent endowment fund sufficient to pay and discharge the same, both principal and interest, when due.


I think from a consideration of Section 186 of the Financial Institutions Act of 1933 as amended in 1935 and copied
herein that these bonds are not legal investments for trusts as provided in the above Section. They are clearly not bonds which are the direct or indirect obligation of the United States or the direct obligation of any territory or insular possession of the United States. Subsection (a). They are not the bonds or obligations of any state of the United States or of any county, township, city, town, or other taxing district or municipality of the State of Indiana. Subsection (b). I may say in this connection that the term bonds, notes and certificates which are the "obligations of any state," etc., refers to legal obligations and is not satisfied by the existence of a moral obligation. These bonds are not secured by a mortgage on the fee simple title of improved real estate in the State of Indiana. Subsection (c). They are clearly not covered by subdivision (d) of Section 186. The specific enumeration in subdivision (e) of Section 186 excludes them.

It is my opinion, therefore, that such bonds are not legal investments for trusts under either subdivision (a), (b), (c), (d), or (e) of Section 186, supra. As to subsections (f), (g), and (h) their eligibility would depend upon factors which are not present in your request and I am, therefore, unable to answer as to them with any greater particularity.

GOVERNOR'S OFFICE: Workmen's compensation—Whether Indiana Act applies to laborers assigned to public projects by Resettlement Administration; whether state and other political subdivisions may use public funds to purchase insurance protecting above risk.

September 24, 1936.

Hon. Paul V. McNutt,
Governor of Indiana,
Indianapolis, Indiana.

My dear Governor:

I have before me the letter of Mr. R. C. Smith, Regional Director, Region III Resettlement Administration, which you have transmitted to me for an opinion in answer to the following questions:

"(1) May the public funds of the State and political subdivisions thereof and other local governing or pub-