Acts of 1937, page 781.

Construing similar language in the Act of the Special Session of 1932 (Acts of 1932, page 22), the Supreme Court of the State held that surplus gasoline tax money distributed under that Act could be used to pay existing county highway bonds.

Bridges v. State, ex rel., Vaughn, 208 Ind. 684.

By analogy, I think the same ruling would necessarily be made with respect to such funds distributed under the 1937 Act, above referred to.

Limited as in the above case to surplus funds, which are not necessary for the construction and maintenance of the highways of the county, your question is answered in the affirmative.

In order to aviod any misunderstanding, I think I should say that in my opinion such bonds, when issued, as they must be under chapter 119 of the Acts of 1937, would be general county obligations and would be payable out of general taxation, but in order to reduce taxation surplus gasoline tax money could be used as a supplementary source of revenue.

TAX COMMISSIONERS, STATE BOARD OF: Executory contracts, method of taxation of same.

August 25, 1937.

Hon. Philip Zoercher,
Chairman, State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana.

Dear Mr. Zoercher:

I have before me your letter concerning chapter 51 of the Acts of 1937 (Acts of 1937, p. 289) and requesting an official opinion in answer to the following question:

> "If this statute is constitutional, will the purchasers of real estate on contract from other organizations be entitled to the same deduction?"

Section 1 of the above Act is as follows:

> *"Be it enacted by the General Assembly of the State of Indiana,* That real property liable for taxation

and in possession of a purchaser under an executory contract of sale and with a homestead or community association, corporation, or similar organization, to which such property acquired by the United States or any department or agency thereof, for any resettlement project or rural rehabilitation project for resettlement purposes, has been conveyed by the United States or any department or agency thereof, shall be taxed to such purchaser, and such purchaser shall be deemed the owner thereof for taxation: Provided, however, That such owners shall be subject to all provisions of the tax laws of the state concerning delinquent taxes."

Acts of 1937, pp. 289-290.

For the purpose of this discussion, it is unnecessary to quote the provisions of sections 2 and 3.

Section 4 of the Act provides as follows:

"When such purchaser is indebted for any part of the purchase price of such real property, he may have the amount of such indebtedness, not exceeding one thousand dollars, existing and unpaid upon the first day of March of any year, deducted from the assessed valuation of the purchased premises for that year, and the amount of such valuation remaining after such deduction shall have been made shall form the basis for assessment and taxation for said real estate for said year: Provided, That no deduction shall be allowed greater than one-half of such assessed valuation of said real estate."

Acts of 1937, page 290.

Section 5 of the Act declares an emergency and provides that the Act shall take effect from and after its passage.

Acts of 1937, page 291.

From the foregoing language of the statute it is obvious that the effect of section 1 of the Act is to create a *classification of taxpayers* based solely upon the fact of their having entered into an executory contract of sale of real estate to them by a homestead or community association, corporation or similar organization, which real estate was acquired by the United

States or by some department or agency thereof for a resettlement project or rural rehabilitation project for resettlement purposes and by it conveyed to the vendor and of which real estate the vendee is in possession. As to such class, section 1 of the Act provides that such real estate shall be taxed to the vendee in possession who, for the purpose of taxation, shall be deemed the owner.

Upon exactly the same basis, it is obvious that the effect of section 4 of the Act is to create a *classification of the property thus held* by the vendor and sold by it as provided in section 1 and of which the vendee has the possession,—to create a *classification of such property* for the purpose of applying a particular method of establishing a valuation of such property for taxation. As to such class of property, section 4 provides that when the vendee is indebted for any part of the purchase price he may have the amount of such indebtedness, not exceeding one thousand dollars existing and unpaid on the first day of March of any year deducted from the assessed valuation of the real estate up to one-half of the assessed valuation of said real estate, it being provided that such assessed valuation after the deduction shall form the basis for assessment and taxation of said real estate for said year.

The purpose of this Act is obvious. It takes cognizance of the usual provision of contracts for the sale of real estate which is to be paid for with a small down payment and by the payment of subsequent monthly installments whereby the purchaser is required by such contracts to pay the taxes on said real estate and seeks to place such vendee in the same position as if title had been made to him and a mortgage on said real estate for the unpaid purchase price had been executed by the vendee to the vendor, thereby authorizing the claiming of a so-called mortgage exemption.

We are here dealing with the taxation of property as such and section 1 of article 10 of the Indiana Constitution applies. Said section provides as follows:

> "The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law."
>
> Section 1, article 10 of the Indiana Constitution.

The predecessor of the present so-called mortgage exemption statute was upheld by the Supreme Court of Indiana in the case of State, ex rel., Lewis v. Smith, 158 Ind. 543, decided in 1901. The above decision was upon the theory that the so-called exemption was not an exemption in fact but that the statute simply authorized a deduction for the purpose of securing "a just valuation for taxation." It will be observed from the above decision, therefore, that the principle of allowing a deduction as a basis of securing "a just valuation for taxation" in certain cases has authority in this state to sustain it.

Without entering further upon the discussion of this particular phase of the question, I desire to point out, however, that perhaps a more serious question arises in the consideration of the limited class which may avail itself of the provisions of the Act. Section 22 of article 4 of the Indiana Constitution forbids the General Assembly from passing local or special laws "for the assessment and collection of taxes for state, county, township, or road purposes." In defining what is a special or local law the court in the case of Armstrong v. State, 170 Ind. 188 on page 193, used the following language:

> "It is well settled that a law is not necessarily general merely because it operates upon all within a defined class, but back of that fact must be found a substantial reason why it is made to operate only upon such class. Classifications, when allowable, can only be made upon natural, intrinsic or constitutional distinctions, and special privileges, peculiar disabilities, or burdensome conditions in the exercise of a common right, may not be conferred or imposed upon a class of persons arbitrarily selected from the general body of citizens standing in the same relation to the subject-matter of the law."

Armstrong v. State, 170 Ind. 188, at p. 193.

Again, in the case of Saraceno v. State, 202 Ind. 663, at page 666, the court said:

> "A law is not local and special if it applies to all who come within its provisions generally and without exception, rests upon an inherent and substantial basis of classification, and its operation is the same in all parts

of the state under the same circumstances and conditions."

Saraceno v. State, 202 Ind. 663, at p. 666.

There is serious question I think as to whether the Act under consideration will stand the foregoing tests. In the first place, it will be noted that it can be effective as a matter of fact only in such counties as have located within it a resettlement or rural rehabilitation project. Moreover, it is effective even in *such counties* only as to those whose executory contracts of purchase are with a homestead or community association, corporation or other similar organization which has acquired the property from the United States or some department or agency thereof for a resettlement project or rural rehabilitation project. It does not apply to relieve sellers generally from the primary tax liability attaching to ownership of real estate, nor does it extend to buyers generally upon the same general plan of installment contract. If it should be urged that the real estate is actually exempt from taxation in the hands of the owner and that the effect is to create new tax liability as to this class of purchasers, no very good legal reason appears for treating the class as above limited differently than the remainder of such class buying from other types of owners who are exempt from taxation. In other words, if the classification is based upon the fact that the property is exempt in the name of the vendor it should apply to every one in the class which obviously is not the case.

It should be remembered that courts are very reluctant to declare laws to be unconstitutional which have been duly enacted by the General Assembly and signed by the Governor, and such Acts of the General Assembly are clothed with a presumption of constitutionality. However that may be, there certainly is no reasonable ground for extending the provisions of this Act to cases which are not clearly within its terms. While it is not technically an exemption statute it is at least a statute of that general character and the rule applicable to the construction of exemption statutes requiring such statutes to be strictly construed I think would apply.

In order to be entitled to the exemption or deduction as provided in the Act under consideration, therefore, it would be necessary that the party claiming the deduction bring himself clearly within all of the conditions of the statute. With this explanation, the answer to your question is in the negative.