sufficiently broad to include the motor vehicle account and that accordingly all fees and charges imposed by chapter 287 of the Acts of the Indiana General Assembly of 1935 and remaining in said account after the payment of the costs of administering said Act, should be transferred to the motor vehicle highway account and distributed as provided by chapter 135 of the Acts of 1937.

ELECTION OF COMMISSIONER, STATE: Elections. Right of voters in abandoned township to vote.

August 29, 1938.

Indiana State Board of Election Commissioners,
204 Castle Hall Building,
Indianapolis, Indiana.

Gentlemen:

This will acknowledge receipt of your letter of August 25, in which you submit the question as to the procedure to be followed in the coming election in cases where townships have been abolished and township boundary lines changed. You inquire as to the right of those voters who have resided in the townships which have been abolished to vote in the new townships to which new territory has been added.

In reply to this question, your attention is first directed to section 29-803, which reads as follows:

"The board of commissioners of any county may change the boundaries of any precinct within such county, or divide any precinct into two (2) or more precincts, or consolidate two (2) or more precincts into one (1), or change any place of holding elections whenever public convenience or the public good may require it: Provided, That no such change, division or consolidation shall be made after the June term of such commissioner’s court next preceding an election: And, provided further, That no such change, division or consolidation shall be valid without giving due notice, at least one (1) month before any election, by one (1) publication in two (2) newspapers published in said county, representing the two (2) political parties which
cast the highest number of votes in the state at the last general election, and by posters put up in four (4) of the most public places in each precinct: And, provided, further, That no precinct shall be enlarged so as to contain more than two hundred and fifty (250) electors."

You will note that this statute authorizes the board of commissioners to change the precinct boundaries whenever public convenience or public good require it. Clearly, when townships have been abolished by the board of commissioners and the territory annexed to adjoining townships, the precinct boundary line should be changed to conform to the new township boundary.

If the commissioners made the order dissolving the township and annexing the territory to other townships in March, 1938, as you indicated, then not later than June, 1938, an order should have been entered changing the precinct boundary lines in conformity with the above statute. If this has been done, then the voters of the territory are entitled to vote in their respective precincts for the officers of the new township. If this was not done by the commissioners at the June term, it should be done now.

This question was discussed by the Supreme Court of Indiana in the case of Duncan v. Shenk, 109 Ind. 26, in which the Supreme Court held that the board of commissioners were authorized to readjust the election precinct boundaries even after their June meeting when the change of township boundary lines so required. On this subject the Supreme Court spoke as follows:

"Having in view the right of every qualified voter of the state to cast his vote at some designated and appropriate voting place, at every election held in the township or precinct in which he may reside, we feel it to be our duty to hold that the provisions of section 4687, above set out, do not apply to cases like the one before us, in which the readjustment of an election precinct becomes a necessity on account of a change in the boundary line between townships.

"Any other construction would enable the boards of commissioners of the several counties of the state to practically disfranchise large bodies of voters, by inad-
vertently, or otherwise, changing the boundaries of townships at other times than at the June terms of such boards."

It is my opinion, therefore, that voters who resided in the township which has been abandoned, if otherwise legally qualified, are entitled to vote in the coming election for the officers in the new township to which the territory in which they live has been annexed.

The board of county commissioners, if they have not already done so, should readjust the precinct boundary lines to conform to the boundary lines of the new township.

ACCOUNTS, STATE BOARD OF: County Highway Maintenance Fund. Use of surplus fund for purchase of machinery.

August 29, 1938.

Hon. W. P. Cosgrove,
State Examiner,
Division of Accounting and Statistics,
State House,
Indianapolis, Indiana.

Dear Mr. Cosgrove:

This will acknowledge receipt of your letter of August 26, in which you ask concerning the use of the surplus existing in the county highway maintenance fund at the end of any year and particularly if such funds may be used for the purchase of a cement mixer.

In reply to this inquiry, your attention is directed to section 4(b), chapter 135 of the Acts of the Indiana General Assembly of 1937, which reads as follows:

"Any surplus existing in the maintenance fund at the end of any year shall thereafter be used for construction and reconstruction of such highways by the respective counties."

The Act above referred to defines the term "construction" in the following language:

"The term 'construction' when used in reference to cities, towns and counties means the planning, super-