AUDITOR OF STATE: Distribution of gasoline tax money.

December 1, 1938.

Hon. Frank G. Thompson,
Auditor of the State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

You request an official opinion on the following questions dealing with the distribution of gasoline tax money. The specific questions which you ask are these:

"1. When can your office distribute gasoline tax monies from the Motor Vehicle Highway Act?

"2. Can advancements be made to a county’s credit against their quarterly share prior to the date which would nominally be the quarter year?"

Part “C” of Section 3 of Chapter 135 of the Acts of 1937 provides as follows:

“Except as to counties in which cities of the first and second class are located, the funds allocated to the respective counties from the motor vehicle highway account, or such portion thereof as may then be held in the motor vehicle highway account shall be distributed and paid to the respective counties by the auditor of state on the first day of April in each year and quarterly thereafter. As to counties in which are located cities of the first class the funds which would otherwise be annually allocated to such county or counties, respectively, from the motor vehicle highway account shall be divided so that the county shall receive two-fifths of the allotment and the city of the first class shall receive three-fifths of the allotment. As to counties in which are located cities of the second class, and/or one city of the second class and one city of the third class the funds which would otherwise be annually allocated to such counties, respectively, from the motor vehicle highway account shall be divided so that the county shall receive four-fifths (4/5) of the allotment and the city or cities of the second class shall receive one-fifth (1/5) of the allotment, and whenever
two or more cities of the second class are located in the same county such cities of said county shall share in the allotment in proportion to their population as determined by the latest U. S. census. Distribution of the respective annual allotments to said cities and counties, or such portion thereof as may then be held in the motor vehicle highway account, shall be made and paid thereto by the auditor of state on the first day of April in each year and quarterly thereafter."

It will be noticed by reading of the above quoted section that the portion due the county from the state in the motor vehicle highway Act "shall be distributed and paid to the respective counties by the auditor of state on the first day of April in each year and quarterly thereafter." You will also notice that a provision is made for counties having a city of the first class and counties in which are located cities of the second class and those of a second and third class being in the same county. In these instances, the payments shall be made on the first day of April and quarterly thereafter also. In my opinion, it is clear from a reading of the above statute that your authority to make the proportionate distribution to the various counties extends no further than to make such distribution on January 1, April 1, July 1, and October 1 of each year. I find no authority given you by the statute for the making of any advancement out of this fund prior to any quarterly date.

PUBLIC INSTRUCTION, DEPARTMENT OF: Right of a teacher to continue part time service in a city of which he is mayor. Whether tenure rights are lost thereby. Whether membership in teachers' retirement fund remains.

December 2, 1938.

Hon. Grover Van Duyn,
Assistant Superintendent of Public Instruction,
Department of Education,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following questions: