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:
"1. May a teacher who has been elected mayor of the city in which he teaches serve as a part-time teacher along with his services as mayor and draw a salary for each of the services?

"2. Will such services as a part-time teacher, as referred to in question No. 1 invalidate the tenure rights of the teacher?

"3. Will a teacher under such conditions be permitted to continue as a member of the state teachers' retirement fund and pay his annual dues into the same?"

By section 28-2402 of Burns' Indiana Statutes Annotated (1933) it is provided, among other things, that each incorporated town or city in the several counties of the state "is hereby declared a distinct municipal corporation for school purposes" and in Agar v. Pagin, 39 Ind. Ann. 567, at page 573, the court, after noticing the duties and obligations resting on school boards, said:

"* * * we can but conclude that they are not 'officers and employees of the government of' a civil city."

Section 28-2410 of Burns' Indiana Statutes Annotated (1933) makes it the duty of the school trustees of school cities to employ teachers and to take charge of the educational affairs of their several school cities.

However, it should be noted that under certain circumstances a civil city may contribute to the building of buildings for the corresponding school city.

Burns' Indiana Statutes Annotated (1933), section 28-1304.

The method of selection of the several boards of school trustees vary, in some cases the selection being by the common council and in others by the people at an election, but I do not find that the mayor of a civil city is clothed with authority over such selections. The contrary has been contended for in view of the Classification of Cities Act of 1933, but this department has always held that the provisions of said Act have no application to the appointment of boards of school trustees.