In answer to your third question, the moneys appropriated for distribution are appropriated on a fiscal year basis, said fiscal year commencing on July 1st. The distribution payments, as noted above, are on a calendar year basis. Thus the January and April payments for the calendar year 1968 are to be made from the funds appropriated for the 1967-1868 fiscal year, and the July and October payments are to be made from the funds appropriated for the 1968-1969 fiscal year.

OFFICIAL OPINION NO. 21

May 21, 1968

MOTOR VEHICLES—Issuance of Permits for Tractor-Mobile Home Rigs—Inspection to Determine Oversize or Overweight Vehicles. Proper Recipient of Fees.

Opinion Requested by Mr. Martin L. Hayes, Executive Director, State Highway Commission.

I am in receipt of two closely related opinion requests submitted by you, and I have taken the liberty of combining them into this one opinion.

Your first request inquires whether fees collected by the State Highway Commission for the issuance of permits for "tractor-mobile home rigs" should be deposited in the Motor Vehicles Highway Account or in the State Highway Fund.

The operation of tractor-mobile home rigs on the public highways of Indiana is regulated by Acts 1931, ch. 83, §§ 6a through 6f, as last amended by Acts 1967, ch. 132, the same being Burns IND. STAT. ANN. §§ 47-534a to 47-534f.

Section 6a of the Act, as amended by Acts 1967, ch. 132, § 1, Burns § 47-534a, contains this definition:

> "(1) A 'tractor-mobile home rig' is any combination of a mobile home or sectionalized building and a towing vehicle having either a combined over-all length in excess of sixty feet and not in excess of seventy-five feet, of which the tractor portion is not less than twelve feet in length, a width in excess of ninety-six inches and not in excess of one hundred and forty-four inches at the base, a height not in excess of twelve feet six inches, or any two or more of the foregoing dimensions: Provided, however, That it shall not be unlawful for any person to operate a vehicle towing a mobile home which has a combined overall length not in excess of sixty feet, a width not in excess of ninety-six inches and a height not in excess of twelve feet six inches;"

Section 6c of the Act, as amended by Acts 1967, ch. 132, § 3, Burns § 47-534c, sets out the conditions for granting a permit to operate a tractor-mobile home rig, and provides in part:

> "(7) The person shall pay a fee of ten dollars ($10.00) for each tractor-mobile home rig to be operated over the roads or highways in the state highway system, or shall give evidence of sufficient bond to the department and shall file within twenty (20) days after each quarter of the year a report of all tractor-mobile home rigs operated over the roads or highways in the state highway system and shall pay a fee of ten dollars ($10.00) for each tractor-mobile home rig so operated."

The ten dollar permit fee was added to the Act by the 1967 amendment. Unfortunately, neither the 1967 Amendatory Act nor the 1931 Act as it then existed makes any specific provision for the deposit of the permit fees thus collected. Therefore, to answer your question, it will be necessary to briefly examine the history of the 1931 Act and the interrelation of the several sections of that Act.

The title of Chapter 83 of the Acts of 1931 is "AN ACT concerning highways, regulating and restricting the use thereof."

The first section of the Act, Burns § 47-529, has never been amended and it provides:

> "That it shall be unlawful for any person to operate or move, or for the owner to cause or knowingly permit to be operated or moved upon any public highway in this state, any vehicle or combination of vehicles of a size or weight exceeding the limitations provided in this act or any vehicle or combination of vehicles which are not constructed or equipped as required by this act, except as express authority may be granted in this act."

The remaining sections of the original Act contained restrictions on the length, height, width, gross weight, axle weight, and the extension of the vehicle's load to the front, rear and sides of the vehicle. It also required the use of rubber tires, rear bumpers on certain vehicles, reflectors, clearance lights; regulated the use of coupling devices and the length of draw bars on any towing vehicle including trailers or semi-trailers; and limited the number of trailers that may be towed by any vehicle. The Act authorized peace officers to stop and weigh any vehicle, made the owner and operator of the vehicle operated contrary to the Act liable for any damages to highways and bridges resulting therefrom, and made violation of the Act a misdemeanor.

The obvious intent of the 1931 Act was to protect highways from the excessive deterioration and destruction caused by overweight vehicles, and to prevent oversized or semi-hidden vehicles from creating a dangerous and unnatural moving barricade across the highway.

Somewhat important to the instant question, the tenth section of the Act permitted the State Highway Commission, or the proper local authority, to issue a temporary permit for the operation of an oversized vehicle. No fee for such permit was provided.

It should be noted that no money accrued to the State Highway Commission under the 1931 Act as originally adopted. Violations of the Act were misdemeanors to be treated in a court of law as any other misdemeanor, and permits authorized by the Act were to be issued without charge.

Various sections of the Act have been amended from time to time and several, especially those concerning clearance lights, reflectors and similar warning equipment, have been superseded or repealed by subsequent independent legislation. The Act, as it has been amended, is now primarily concerned with oversized and overweight vehicles.

Conversely, two subsequent amendatory Acts have each added a block of new sections to the Act, all of such sections dealing with oversized and overweight vehicles.

One such amendatory Act, Acts 1949, ch. 269, amended section 8 of the original Act (which limited total weights and axle weights), and added two new sections, 8a and 8b. Section 8a made overweight a misdemeanor punishable by a fine calculated on the excess of weight. This section was again amended by Acts 1953, ch. 183, § 1, to make overweight a misdemeanor punishable by a fine of $5.00, and to provide for an additional civil penalty proportional to the overage. Section 8b provides that an owner or operator who is convicted of violating the weight provisions frequently can have his right to use the highway suspended. See Burns §§ 47-536, 47-536a, and 47-536b.

The other amendatory Act, Acts 1955, ch. 56, added to the 1931 Act a block of sections, 6a through 6e, concerning the towing of mobile homes over public highways. The new section 6e made it unlawful to tow a mobile home on the public highways without a permit, but the Act did not provide for a charge for such permit. See Burns §§ 47-534a to 47-534e.

The sections concerning mobile homes added in 1955 were in turn amended by Acts 1967, ch. 132. As noted above, the 1967 Act, *inter alia,* provided for fees for the issuance of permits, but made no provisions for the deposit of the fees collected. Therefore, as the court stated in *Combs v. Cook,* 238 Ind. 392, 397, 151 N.E. 2d 144, 147 (1958), "[o]ur duty

here is to ascertain the intent of the Legislature as shown by the entire Act, each section being considered with reference to all the other sections, . . ."

The 1931 Act as originally adopted authorized the State Highway Commission to issue only one kind of permit, and did not provide any fees for the issuance of that permit. Acts 1931, ch. 83, § 10, authorized the Commission "to grant permits for transporting heavy vehicles and loads, or other objects, not conforming to the provisions of sections 2 [overall size] and 8 [weight] of this Act." Acts 1937, ch. 275, § 3, amended that section to provide a fee of ten cents per mile of travel, but not less than ten dollars nor more than twenty-five dollars, for such a permit. The section has been amended twice since then, most recently by Acts 1965, ch. 322, § 1. As it is now written, that section, in relation to the fees charged, distinguishes between permits for oversized vehicles and permits for overweight vehicles. Oversized vehicles pay the fee prescribed by the 1937 Act; overweight vehicles pay a fee of twenty-five cents per mile, but not less than ten dollars nor more than fifty dollars. See Burns § 47-538.

Oversized vehicles are those that exceed the maximum limitations on width, length and height of vehicles established in the second section of the Act, as last amended by Acts 1965, ch. 142 § 1, Burns § 47-530, which provides in part:

> "(1) No vehicle shall exceed the total maximum width of eight (8) feet. . . .
>
> "(3) No single vehicle operated under its own motive power shall exceed a length of thirty-six (36) feet and no combination of two (2) vehicles coupled together shall exceed a total length of fifty-five (55) feet, and no combination of three (3) or more vehicles coupled together shall exceed a total length of sixty-five (65) feet, except that a combination of vehicles coupled together and especially constructed to transport motor vehicles shall not exceed a length, without load, of sixty (60) feet: Provided, however, That the provisions of this subsection (3) shall not

> apply to any pole trailer owned by, or operated for, a public utility as defined in section 1 of chapter 76 of the Acts of 1913, as amended, known as Public Service Commission Act, while such pole trailer is being used in connection with the utility services of such public utility nor to trailers used in transporting oil field equipment or pipe for the transmission of oils or gas."

The limitations established by this statute should be contrasted with the definition of a trailer-mobile home rig, set out in full above, which in effect provides that a combination of towing vehicle and mobile home will not be considered a "tractor-mobile home rig" unless it exceeds the above limitations on either overall length or width.

Thus, a trailer-mobile home rig permit could properly be considered a special subclass of permits included within the general class of permits for oversized vehicles authorized by section 10 of the Act.

In relation to the disposition of fees collected for permits to operate oversized or overweight vehicles, Acts 1931, ch. 83, § 10, as last amended by Acts 1965, ch. 322, § 1, the same being Burns § 47-538, provides:

> ". . . When any such permit is issued by the issuing officer or body, it shall be submitted to the department of treasury for approval, and thereupon the department shall fix the fee to be paid, as hereinbefore prescribed, and, upon the payment of such fee, or tax, the department shall validate such permit, and the fee or tax so received shall be credited to the motor vehicle highway account."

The only conclusion concerning the disposition of tractor-mobile home rig permit fees that would maintain the internal consistency of the Act is that such fees are to be deposited in the Motor Vehicle Highway Account, as are fees collected for the issuance of permits to other oversized vehicles.

Two other considerations support this conclusion.

As noted before, section 8a of the Act, added in 1949, was amended by Acts 1953, ch. 183, § 1, to provide for a civil penalty for those persons found guilty of owning or operating an overweight truck. The 1953 amendment also provided that "[a]ll civil penalties so assessed shall be collected and deposited to the credit of the motor vehicle highway account." See Burns § 47-536a. This provision is further evidence that the Legislature intended that moneys collected under this Act be deposited to the Motor Vehicle Highway Account.

A final consideration is the nature of the Motor Vehicle Highway Account itself, an account first created by the same 1937 session of the General Assembly that first imposed fees for the issuance of oversize vehicle permits. See Acts 1937, ch. 135. The account as it presently exists was established by Acts 1941, ch. 168, the same being Burns §§ 36-2815 to 36-2834. The first section of that Act defines the motor vehicle account in this manner:

> " 'Motor vehicle highway account' means the account of the general fund of the state known as the 'motor vehicle highway account' to which is credited collections from motor vehicle registration fees, licenses, driver's and chauffeur's license fees, gasoline taxes, auto transfer fees, certificate of title fees, weight taxes or excise taxes and all other similar special taxes, duties or excises of all kinds on motor vehicles, trailers, motor vehicle fuel or motor vehicle owners or operators."

The statute above is not mandatory in the sense that it requires all collected money of the class therein described to be credited to the account, but it is indicative of what the Legislature considered would be proper sources for the account. The second section of the Act, Burns § 36-2816, declares it "to be the policy of the State of Indiana that the net amount in the motor vehicle highway account shall be budgeted for the construction, reconstruction, improvement, and maintenance of the highways of the state. . . ." Since oversized vehicles, like overweight vehicles, tend to cause deterioration of highways, it is only appropriate that the

permit fees be placed in the account intended for the construction, reconstruction, and maintenance of those highways. Therefore, it is my opinion that the fees collected for the issuance of permits to tractor-mobile home rigs should be credited to the Motor Vehicle Highway Account.

Your second request explains that in 1937 the Department of Treasury authorized the State Highway Commission to collect the permit fees for oversized and overweight vehicles established by the 1937 amendment of the tenth section of Acts 1931, ch. 83. The Highway Commission was further directed to forward the fees collected to the Commissioner of Motor Vehicles. You indicate that the Commission is still forwarding the fees to the Bureau of Motor Vehicles, and inquire whether, since that Bureau is now an independent agency of the State, the fees should not be forwarded to the Treasurer of State.

One of the earliest, although not the earliest, enactments concerning the registration of vehicles, the licensing of drivers and other functions presently performed by the Bureau of Motor Vehicles was Acts 1925, ch. 213, which Act made the performance of those functions the duty of the Secretary of State. The State Executive-Administrative Act of 1933 (Acts 1933, ch. 4, repealed by Acts 1941, chs. 4 and 13) created various departments of state government and authorized the Governor to transfer the functions and duties of one department to another department. Pursuant to that authority, the Governor, by proclamation dated April 15, 1933, transferred the duties of the Secretary of State relating to motor vehicles to the Department of Treasury. That the Legislature acquiesced to this reassignment is evidenced by Acts 1935, ch. 66, § 2, which amended an earlier act concerning the compilation of automobile registrations for the benefit of police officers to define the term "secretary of state" as used in that act to mean "the officer, department or bureau which has charge of the registration and licensing of motor vehicles."

Thus, when the Legislature first established a fee for the issuance of permits for oversized and overweight vehicles in 1937 the Bureau of Motor Vehicles (although not known by

that name) was a portion of the Department of Treasury, and it was proper that the fees be submitted to that Bureau.

However, Acts 1945, ch. 304, created the Bureau of Motor Vehicles as a department of state government separate and independent from the Department of Treasury. See Burns § 47-2401, *et seq.* The forwarding of overweight permit fees to the Bureau of Motor Vehicles is therefore no longer synonymous with forwarding such fees to the Treasurer of State. It is, instead, a rather cumbersome and circuitous procedure which requires unnecessary handling of the fees by a Bureau which, in actuality, has no practical interest in either the money collected or the permits issued.

Furthermore, that procedure might violate the provisions of the Financial Reorganization Act of 1947, the same being Acts 1947, ch. 279, as amended, Burns §§ 60-1801 to 60-1835. Section 23 of that Act, Burns § 60-1823, provides:

> "All receipts from any source coming into the possession of any state agency shall be deposited with the State Treasurer each day or as soon as practicable after the same is received, unless otherwise provided by law, and at the end of each calendar month each agency shall file a report of all receipts deposited since the last previous report, which report shall show the disposition thereof. Said report shall be submitted to the Director of Auditing by the depositing agency. All moneys so received by the Treasurer during any month shall be credited by him and by the Director of Auditing to the proper funds not later than the fifth day of the following month."

Overweight permit fees collected by the Highway Commission are receipts coming into the possession of a state agency, and thus should be deposited with the Treasurer of State as soon as practicable after collection. The present procedure of forwarding such fees to the Bureau of Motor Vehicles is not a procedure "otherwise provided by law," but rather an anachronism remaining from the days when the Treasurer was in charge of the Bureau of Motor Vehicles.

Therefore, it is my opinion that the State Highway Commission should forward fees collected for the issuance of permits to oversized and overweight vehicles, including tractor-mobile home rig permits, directly to the Treasurer of State for deposit in the Motor Vehicle Highway Account.

OFFICIAL OPINION NO. 22

May 22, 1968

ANNEXATION—SCHOOLS—School Corporation Adjusting Boundaries by Annexation or Disannexation of Territory.

Opinion Requested by Hon. Richard D. Wells, State Superintendent of Public Instruction.

This is in answer to your recent request for an Official Opinion with respect to the following question:

> "Would it be permissible for a part of a school corporation to be annexed by an adjoining school corporation if this caused the losing corporation to fall short of the minimum standards established by the State Commission on School Reorganization?"

Your letter also reflects that you seek a clarification of Acts 1963, ch. 296, § 8, and Acts 1959, ch. 202, § 6(3)d, along with other statutory provisions which may be pertinent to your question.

The School Corporation Reorganization Act of 1959, Acts 1959, ch. 202, § 1, as set out in Burns IND. STAT. ANN. § 28-6101, Compiler's Note, declares the reasons and purposes of the Act to be as follows: