1931, as amended, and provides that certain fees formerly payable to the county assessor shall, after the effective date of the Act, be paid into the general fund of the county."

In view of all the foregoing, it is my opinion that the eight per cent retained by Marion County from Inheritance Tax collections is required to be paid to the county general fund, and is not required to be paid to the Mass Transportation Authority of Greater Indianapolis.

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OFFICIAL OPINION NO. 49

November 29, 1968

**AGRICULTURE—SEED INSPECTION—Seed sold to commercial feeders as commercial seed.**

Opinion Requested by Dr. E. D. Schall, State Chemist and Seed Commissioner.

I am in receipt of your request for an opinion concerning the classification of "commercial feed" and "customer-formula feed" as defined in Acts 1955, ch. 161, as amended, and the inspection fee to be paid thereon.

Your letter explains that a number of commercial growers of meat animals are unable to finance the purchase of animals and feed, and that such growers have entered into contractual arrangements of various natures with the distributors of animal feed. You also enclose a number of sample contracts of various types.

Your basic question is under which, if any, of the various sample contracts submitted does the distributor have to pay the prescribed inspection fee for the gross tonnage of feed

supplied, and conversely, under which contracts can the feed supply be classified as "customer-formula feed" some portion of which might be exempt from the inspection fee.

The regulation of the sale of animal feed is provided by Acts 1955, ch. 161, as amended by Acts 1959, ch. 130, the same being Burns IND. STAT. ANN. §§ 16-1012 through 16-1024, identified in its first section as the "Indiana Commercial Feed Law." The Act requires commercial feed to be inspected by the state chemist, and section 6 of the Act, Burns § 16-1017, provides in part:

> "There shall be paid to the state chemist for all commercial feeds offered for sale, or sold, or otherwise distributed in this state an inspection fee at the rate of twenty cents per ton. . . .
>
> "Customer-formula feeds are hereby exempt from payment of the inspection fee but the fee must be paid on each registered commercial feed used in such a mixture."

The third section of the Act, Burns § 16-1014, defines "commercial feed" and "customer-formula feed" thusly:

> "(5) The term 'commercial feed' means all materials which are distributed for use as feed for animals, other than man, but does not include the following:
>
> "(a) Unmixed whole feeds and meal made directly from the entire seeds; or
>
> "(b) Unground hay; or
>
> "(c) Whole or ground straw, stover, silage, cobs, and hulls when not mixed with other materials; or
>
> "(d) Individual chemical compounds when not mixed with other materials.
>
> "(6) The term 'feed ingredient' means each of the constituent materials making up a commercial feed.
>
> "(7) The term 'customer-formula feed' means a mixture of commercial feeds and/or feed materials,

each batch of which is mixed according to the specific instructions of the final purchaser."

The sample contracts submitted with your question can be divided into three groups, which groups you have accurately described thus:

"A. The contract or agreement provides a financing arrangement only. The dealer supplies the feed and other supplies and also furnishes animals or birds and equipment. These are sold to the producer and title passes to him. The transaction is secured by a mortgage or by a promissory note. Any profit or loss from the feeding operation belongs to the feeder only.

"B. The dealer supplies feed and birds or animals to the grower with title to all items so furnished remaining with the dealer. The grower receives a base amount and/or a bonus based upon the performance of the birds or animals. The cost of the feed, birds, animals, and other supplies does not enter into the calculations in arriving at the payment which the grower receives.

"C. The dealer furnishes the feed to the grower and the contract may or may not indicate title to the feed remaining with the dealer. The project is charged with the cost of the feed and the grower receives a guaranteed base income plus part or all of the profit."

None of the contracts submitted with your letter involve a simple financing arrangement wherein the grower is allowed to make whatever purchases of feed or supplies he desires on a credit basis. Instead, they all restrict the grower to a specific feed mixture, usually designated by a brand name.

Your letter, again accurately, classifies the contracts described in Paragraph A as a mere financing arrangement, with the grower assuming all the risks of the venture, and thus involving only commercial feeds.

You indicate that the problem arises in the other two categories, and especially that described in Paragraph B, where the animals and feed may remain the property of the dealer. The question is whether, since both the animals being

fed and the feed itself are the property of the dealer and that feed is mixed according to the specifications of the dealer, the feed is customer-formula feed rather than commercial feed.

There is, unfortunately, no Indiana court decision on this point, and research has failed to uncover any relevant decision in other states having a commercial feed law similar to Indiana's. (A number of states have laws identical to the Indiana law, but most were adopted very recently.)

The question, then, is one of statutory interpretation, and that interpretation can be facilitated by considering two other definitions contained in Acts 1955, ch. 161, § 3, as amended by Acts 1959, ch. 130, § 1, Burns § 16-1014:

> "(2) (a) The term 'distribute' means to offer for sale, sell, or barter commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed to a contract feeder.
>
> (b) The term 'distributor' means any person who distributes commercial feed or customer-formula feed; or who supplies, furnishes or otherwise provides commercial feed to a contract feeder.
>
> "(3) The term 'contract feeder' means a person, other than a person performing his duties as an employee of a distributor, who feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person, and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product."

There is no question but that the growers operating under any of the three categories of dealer contract are contract feeders as defined above. In all instances, the growers "remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product."

The definitions of "distribute" and "distributor" contained in clause (2) above each include two types of activity, the *sale* of commercial feed and/or customer-formula feed to

anyone, and the *supplying* of commercial feed to a contract feeder. The statute is thus an instance where the following principle, stated but not applied in *Highland Sales Corp.* v. *Vance,* 244 Ind. 20, 25, 186 N.E.2d 682, 685 (1962), is applicable:

> " 'It is an elementary rule of statutory construction, that when a definite provision is made with reference to one particular subdivision of a section of the law dealing with the identical subject matter as the other subdivisions thereof and a similar reference is omitted from the other subdivisions thereof as well as from all of the rest of the section, the particular reference is intended to apply solely to the subdivision in which it is contained and to exclude its application from all of the rest.' "

The complete omission of any mention of customer-formula feed in relation to contract feeders indicates that the Act contemplates that all feed distributed to contract feeders pursuant to a contract should be classified as commercial feed.

It should also be noted that the Indiana Commercial Feed Law has been amended but once since its adoption in 1955. Clauses (2) and (3) above, as originally adopted, read:

> "(2) The term 'distribute' means to offer for registration, to offer for sale, to sell, to barter, or to otherwise supply commercial feeds or customer-formula feeds.
>
> "(3) The term 'distributor' means one who applies for registration, offers for sale, sells, barters, or otherwise supplies commercial feeds or customer-formula feeds."

Those two definitions of "distribute" and "distributor" were changed by Acts 1959, ch. 130, § 1, and the definition of "contract feeder" was added by that same 1959 Act.

Thus, prior to the 1959 amendment, a distributor was one who either sold or otherwise supplied either commercial feed

or customer-formula feed to anyone, contract feeder or otherwise. Since customer-formula feed is defined as feed mixed to the specification of the "final purchaser," there could be a question as to whether the dealers involved in feeding contracts in which the title to the animals remained in the dealer were the "final purchaser" of the feed. Indeed, one would be hard pressed to find a logical argument supporting the proposition that a dealer who always retains title to both the animals and the feed is not the final purchaser of the feed.

However, the 1959 amendment did change the definitions of "distributor" and "distribute," and did add the definition of "contract feeder." In *Gingerich* v. *State,* 228 Ind. 440, 445, 93 N.E.2d 180 (1950), it was said:

> "This court has further held that it is a rule of statutory construction that a change of phraseology from that of the original act will raise the presumption that a change of meaning was also intended. *Chism* v. *State* (1932), 203 Ind. 241, 179 N.E. 718."

The 1959 amendment of the Commercial Feed Law did indeed change the phraseology of that law, and specifically changed the phraseology to make provision for contract feeders. The amendment distinguished between a "contract feeder" and an "employee," including among the former category all those growers operating under a feed contract whose income is dependent directly upon the performance of the animals and thus indirectly upon the quality of the feed, whether or not he ever has title to either the animals or the feed. The clear intent of the change in phraseology is to provide for contract feeders the same protection that is provided for independent growers. Both contract feeders and independent growers, as opposed to salaried employees of a distributor, have a financial interest in the farm operation, which interest could be lost if the feed be not of the proper quality. In fact, the quality of the feed may well be more important to the contract feeder than to the independent grower since the latter may readily switch to a different feed if his animals are not performing properly, while the contract feeder may be forced by his contract to continue raising his animals on inadequate feed.

This approach is supported by the opinion of the court in *State* v. *Weller*, 171 Ind. 53, 85 N.E. 761 (1908), wherein an earlier Commercial Feed Law, Acts 1907, ch. 206, was considered. That law placed certain restrictions on the sale of any "concentrated commercial feed stuff," and included within that category "wheat middlings," and excluded from that category "unmixed meals made directly from the entire grains of wheat." After considering the meaning of the term "wheat middlings" and describing the process for producing the same, the court said:

> "It is manifest from these definitions that 'wheat middlings' consist of only a part of the ground grains, from which at least the coarser bran, and usually the finer flour, has been separated. The quality and value of middlings as feeding stuff would therefore vary, and depend upon the milling process of the manufacturer in any given case. This fact furnishes the reason for requiring the manufacturer, importer or dealer to file with the state chemist a sworn statement of the ingredients of his concentrated commercial feeding stuff, and of the name, brand or trade mark under which it will be sold, and to obtain official certificates and tags, as provided in the act, which guarantee to purchasers the contents and purity of the article. If an unmixed meal be made from the entire grains of wheat, the ingredients would be the same, regardless of the manufacturer or the mill in which it was made, and no substantial reason could be advanced for requiring registration of the product." (171 Ind. at 57.)

As stated by the court, the purpose of a Commercial Feed Law is to distinguish between unmixed whole grain feeds and those feeds that have been processed, and, in the latter case, "to guarantee to purchasers the contents and purity of the article." That purpose would be defeated were the processors of feed able to distribute their feed to commercial feeders without prior inspection.

Therefore, it is my opinion that all feed sold to contract feeders pursuant to a contract falling within any of the three categories described above is commercial feed and must be in-

spected by the state chemist, and the inspection fee paid thereon.

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## OFFICIAL OPINION NO. 50

November 29, 1968

**SCHOOLS AND SCHOOL CORPORATIONS—Appointment of treasurer of governing body—School corporation of first class city.**

Opinion Requested by Mr. Richard L. Worley, State Examiner, State Board of Accounts.

You have informed me that field examiners auditing the records of the School City of Indianapolis have reported that the Treasurer of Marion County is serving ex officio as Treasurer of The Board of School Commissioners of the City of Indianapolis, pursuant to Acts 1931, ch. 94, § 4, as last amended by Acts 1963, ch. 310, § 2, Burns IND. STAT. ANN. § 28-2304, but has not been appointed to that position by the Board. Section 301(2) of the Indiana General School Powers Act, Ind. Acts of 1965, ch. 307, as amended by Acts 1967, ch. 82, § 1, Burns § 28-6417(2), provides that:

> "The governing body shall also . . . appoint a treasurer of the governing body and of the school corporation who is a person, other than the superintendent of schools, who is not a member of the governing body."

The 1967 amendment added the provisions above to section 301.

Section 4 of Acts 1931, ch. 94, as last amended by Acts 1963, ch. 310, § 2, Burns § 28-2304, which applies only to City of Indianapolis schools, reads in part as follows: