It is my opinion that this assumption on the department's part again is a correct one. Although the particular language in section 10 of the Act from which you reach this conclusion may be construed in more than one way, it does provide a vehicle by which the State Police, acting under orders of the Governor (or at the request of a Mayor approved by the Governor), may enforce city ordinances.

Therefore, I see no reason why the State Police would not be able to enforce a curfew ordinance of a city or a curfew legally imposed by the Mayor of a city during periods of domestic unrest if they are directed to do so by the Governor or the Mayor has requested their aid and the Governor has approved.

OFFICIAL OPINION NO. 44
November 22, 1968

TAXATION—AERONAUTICS COMMISSION—Diversion of tax funds for special benefits—Possibility of additional tax on airplanes.

Opinion Requested by Mr. Robert J. Winter, Director, State Aeronautics Commission.

This is in reply to your request for my opinion on the possibility of diverting all taxes collected from property taxes on aircraft into a state fund, to be used for airport development throughout the state.

In the interest of completeness, your questions are, verbatim:

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“(1) Is there now authority in existing statutes to permit the State to accumulate tax revenues, derived from the property taxes, from aircraft in the State, into a fund to be used as a financial aid to communities needing airports and facilities and unable to provide them?

“(2) If the above mentioned arrangement is not legally possible, is there then a possibility, under existing statutes, a provision whereby revenues derived from the taxation of aircraft could be diverted into a local aviation fund in the taxing unit, where municipally-owned airport is being supported by public money?”

The context of your letter is such that the necessary inference is that the “tax revenues, derived from the property taxes, from aircraft in the State” (as expressed in your first question) and the “revenues derived from the taxation of aircraft” (as expressed in your second question) means the taxes collected under existing law as personal property taxes.

In McClelland v. State, 138 Ind. 321, 37 N.E. 1089 (1894), the Supreme Court of Indiana discusses certain cases cited to support the appellant's position, and comments at p. 338:

“yet, in neither of the cases cited, does the court recognize a right in the General Assembly to legislate a debt upon the people. . . .”

The Indiana Court then cites Commissioners of St. George's County v. Commissioners of Laurel, 70 Md. 443, 17 A. 377, 3 L.R.A. 528 (1889), which case is the authority for the statement found in 51 Am. Jur., at p. 220 that:

“a statute which requires county taxes collected from the real estate located in a certain town in the county to be expended for public improvements in the town is violative of a constitutional requirement of uniformity in taxation, since it operates to exempt such real estate from taxation for other county purposes and throws a
disproportionate burden upon other real estate in the
county."

The Court of Appeals of Maryland (the highest court of
that state) put it this way:

"It appropriates to the uses of the town of Laurel not
the *road tax* only for *road purposes*, as was done by the
Act of 1880, ch. 144, but *all* the taxes levied upon the
real estate of the town of Laurel, for county purposes.
It takes the tax levied for the maintenance of the
Courts, of the alms-house, of the jail, of the public
schools, for building bridges, and all other expenses
incident to the county's corporate existence, which
comes from the assessable real estate within the cor-
porate limits of Laurel, and applies it to the mainte-
nance of the roads in Laurel, and 'such other improve-
ments as the commissioners shall deem proper.' If the
commissioners of the town should think the introduc-
tion of gas, electrical light, or water-works desirable
improvements, the taxes thus appropriated could be
used to gratify such desires. It is too plain for argu-
ment that such legislation cannot be sustained. It is
practically exempting the owners of real estate in
Laurel, from contribution *pro tanto* to the necessary
expenses of the county government. If it be competent
to take the taxes levied upon the real estate in the
town for such purposes, all taxes levied on the personal
property within the town limits could be taken for the
same object, and thus the citizens of Laurel would, in
fact, be relieved from contributing a farthing to the
support of the county government; and the whole
county expenses would be thrown on those who live in
the rural districts; and the rural districts would be
indirectly supporting a corporation which gave them no
protection or advantages. If it is permissible for one
town, it would be lawful for all the villages which may
exist in the county, and thus a very large increase of
taxation might be made necessary for the support of
the county government; and no part of the increased
taxation would be contributed by the towns. To the
extent that the *general* taxes on real estate within the
town of Laurel are withdrawn from the public treasury, and applied to the town of Laurel for roads, and such purposes of improvements as its authorities may decide proper, it is too plain for discussion, that the citizens of the town are relieved from sharing the expenses of the county, while enjoying all the benefits of county government. This is in plain violation of Art. 15, of the Bill of Rights.” (at p. 446 of 70 Md.)

Article 15 of the Bill of Rights of the Maryland Constitution of 1867 to which the Court of Appeals refers provided for uniformity and equality of taxation as follows

“That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the government, but every other person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of government, according to his actual worth in real or personal property; yet fines, duties, or taxes may properly and justly be imposed or laid, with a political view for the good government and benefit of the community.”

Uniformity and equality of taxation are also required by Sections 11 and 20 of the Constitution of North Dakota, and the Supreme Court of that state found such provisions required it to hold that:

“a statute directing county treasurers to pay over to cities located within the county the penalties and interest collected on city taxes, but not requiring the payment over to other taxing districts within the county, such as villages, school districts, etc., of the penalties and interest on taxes imposed by them, creates an unreasonable discrimination in favor of property owners in the city” (51 Am. Jur. 246, citing 111 A.L.R. 1356 which cites State ex rel. Mitchell v. Mayo, 15 N.D. 327, 108 N.W. 36 (1906)).

A portion of the opinion of the North Dakota Supreme Court is reproduced verbatim, at p. 331 of 15 N.D.:
"The city taxpayers will share pro rata in the benefits of reduced taxation for the county general fund resulting from the contributions to that fund by the taxpayers of the villages, townships, and rural school districts throughout the county; but the latter are to be excluded from any share in like collections from the city taxpayers. The city taxpayers are to be given the exclusive enjoyment of the interest and penalties collected at the expense of the county from city taxpayers, but the county taxpayers must share the interest and penalties on taxes in the rural district with the city taxpayers. This is manifestly an unjust and unreasonable discrimination in favor of city property owners, and against those who own property outside the city limits. The act clearly contravenes section 11 of the Constitution, which declares that all laws of a general nature shall have a uniform operation, and is likewise an infringement of that part of section 20 which forbids the granting of any privilege or immunity to one citizen or class of citizens which is not granted on the same terms to all."

Sections 11 and 20 of the North Dakota Constitution which were the law of that case provided:

"Section 11. All laws of a general nature shall have a uniform operation."

"Section 20. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."

The Constitution of the State of Indiana (as it read prior to the 1966 amendment) is more explicit with respect to the requirement of equality and uniformity of tax laws in Art. 10, § 1:

"The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure
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a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specifically exempted by law.”

Additionally, our Indiana Constitution provides, in Art. 4, § 22:

“The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say: . . .

“[12] For the assessment and collection of taxes for State, county, township, or road purposes. . . .”

The Maryland and North Dakota cases cited are strongly persuasive as a matter of precedent, being expressions of opinion of the highest courts of those states.

More importantly, these decisions are strongly supported by logic, and the logic applies most appropriately to the Indiana General Personal Property Tax. It is readily apparent that an impossible situation would arise if the personal property tax collected for each class of personal property were to be expended only for the direct benefit of the owners of such property. That is, if the personal property tax on airplanes could be spent only for airport facilities, it would only be fair, for example, that the tax collected on mobile trailer homes should be spent only on “parks” for such trailers.

The 1966 amendment of Art. 10, § 1 of the Constitution is considered not to alter the case except with respect to airplanes for leisure or pleasure purposes.

Article 10 of the Indiana Constitution has been amended to read as follows:

“Assessment and taxation.—(a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal. The General Assembly may exempt from property taxation any property in any of the following classes:
“(1) Property being used for municipal, educational, literary, scientific, religious or charitable purposes;

“(2) Tangible personal property other than property being held for sale in the ordinary course of a trade or business, property being held, used or consumed in connection with the production of income, or property being held as an investment;

“(3) Intangible personal property;

“(b) The General Assembly may exempt any motor vehicles, mobile homes, airplanes, boats, trailers or similar property, provided that an excise tax in lieu of the property tax is substituted therefor.” [As amended November 8, 1966.]

Subsection (a) (2) permits the General Assembly to exempt from property tax certain tangible personal property, namely, assets not “held for sale in the ordinary course of a trade or business, property being held, used or consumed in connection with the production of income, property being held as an investment.”

This subsection would permit the General Assembly to exempt from the property tax all “pleasure” airplanes. There would then be no prohibition from the enactment of an excise tax on such airplanes, the proceeds of which could be applied to the purposes suggested in your question.

It should be emphasized that the General Assembly has not provided for such exemption nor for such “ear marked” or “encumbered” excise tax.

Subsection (b) permits the General Assembly to “exempt any . . . airplanes . . . provided that an excise tax in lieu of the property tax is substituted therefor.” (Emphasis added.)

The problem now presented is whether or not the Constitution of Indiana has been so changed as to permit favored treatment to the holders of any of the assets listed in said subsection (b).

It is submitted that no such change was effected by the amendment of the Indiana Constitution.
The history of the amendment is considered to be of significant assistance in determining whether or not the intent of the change was to permit the erosion of the tax base by exempting the enumerated assets and permitting the proceeds of the excise tax thereon to be allocated to a specific purpose. The amendment was first passed as House Joint Resolution No. 22 in 1963. It followed the decision of the Supreme Court of Indiana in *Wright v. Steers*, 242 Ind. 582, 179 N.E.2d 721 (1962), in which Chapter 345 of the Acts of 1961 was held to be unconstitutional. It is assumed that the Joint Resolution was in response to the Court's dicta in that case relating to a possible effective (and constitutional) method of achieving the result sought in the enactment of said Chapter 345.

Chapter 345 was an attempt to provide a modern and effective manner for taxation of motor vehicles and mobile homes. The most significant procedural departure provided by Chapter 345 was the provision for paying the tax on these vehicles to the Bureau of Motor Vehicles at the time "provided in the motor vehicle registration laws of this state for the registration or renewal of registration of motor vehicles, or as provided in this act for mobile homes." (Section 5) The reason for this departure is obvious.

Chapter 345 further established a rate of tax at two percent and provided for classifications for valuation purposes as well as for reduction of value percentages for each year of the vehicle’s life after the first. These and other provisions were intended to furnish economy of administration.

The Indiana Supreme Court held that Chapter 345 was not constitutionally acceptable, and thus the amendment of Art. 10, § 1 was proposed and adopted. Stated another way, the purpose of the amendment of the Constitution of Indiana was to permit more realistic enforcement of the taxes on motor vehicles.

On the other hand, it was *not* the purpose of the amendment to enable the wholesale remission of taxes on tangible property. Chapter 345 had provided, with respect to the excise tax it substituted for the property tax on motor vehicles, that the Bureau "within fifteen days after the close of each
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quarterly period [remit] to the county treasurer all such taxes collected in the respective counties of the state.” (Section 8) It was further provided in Section 9 that the county auditor “apportion the total excise taxes [so] deposited with the county treasurer in the same manner and at the same time as property taxes are apportioned and distributed.” (Emphasis added.)

The quoted language of Chapter 345 demonstrates a clear legislative intent to keep the value of motor vehicles and the excise tax collected thereon available for the identical purposes for which the property tax is available. Such intent would preclude the removal of the value of motor vehicles from the general property tax base.

It is submitted that the historical context of the amendment to Article 10 as outlined herein compels the conclusion that Article 10 was not so changed as to permit the exclusion from taxation (or allocation of tax proceeds for special benefits, which would be the same thing) with respect to property unless it was not held for sale in a trade or business, or held, used or consumed in the production of income, or held as an investment.

The scope of this opinion is limited to the taxation of airplanes. It is, therefore, not intended to raise or answer any question relating to the effect of amendment of a section of a constitution on legislation held unconstitutional as contravening the section as it read prior to the amendment. This matter is discussed at 11 Am. Jur. 1210, § 380.

It should be noted that there is absolutely no prohibition against the enactment of an additional tax, in the nature of an excise tax to be paid by the owners of airplanes, and the law of Indiana would not prohibit the expenditure of the entire amount of revenue raised by this tax for the sole benefit of the owners of such airplanes.

In conclusion, it is my opinion that the Constitution of the State of Indiana requires a negative answer to both of the questions propounded in your letter.