only for debt retirement, lease rental and cumulative building fund purposes, but that such distribution or any part thereof may be transferred to the Cumulative Building Fund without requiring any reduction to be made to the $1.25 cumulative building fund levy in the absence of a petition for such a reduction. The right to use such monies from the Cumulative Building Fund for the purposes for which such fund may be used would be subject to the same supervision by the State Board of Tax Commissioners as if the Cumulative Building Fund were wholly derived from the local cumulative building fund tax levy. There is no provision in the statutes requiring that the cumulative building fund tax levy must be reduced on account of the receipt into such fund of monies derived from the distribution of the Property Tax Relief Fund. When, in the 1965 appropriation act, it is provided that the tax levy for debt retirement, lease rental and cumulative building fund be reduced to one cent or less per one hundred dollars of assessed valuation for each of such funds, such provision is a prerequisite only to the authority to use any such monies in the Special School Account, but is not a restriction prohibiting the addition of such monies from the Property Tax Relief Fund or any part thereof to the local tax revenues which would otherwise be received in the cumulative building fund from the application of the total tax levy previously authorized, nor does such addition result in a mandated reduction in the cumulative building fund tax levy, when no petition for the reduction of such tax levy has been filed.

OFFICIAL OPINION NO. 70

December 29, 1965

Hon. Rodney Piper
Indiana State Senator
3207 West Jackson Boulevard
Muncie, Indiana

Dear Senator Piper:

This is in response to your request for my Official Opinion in answer to the question of whether the phrase “total gross income from all sources,” as used in the Acts of 1965, ch. 228,
§ 1, requires the inclusion of Social Security benefits in determining whether blind persons are eligible for the property tax deduction provided by said 1965 Act.

It would be well to note that said Acts of 1965, ch. 228, is amendatory of the Acts of 1943, ch. 186, § 1. Moreover, a comparison of the 1965 Act with the Acts of 1943, ch. 186, § 1, will disclose a marked variation in the eligibility requirements for such blind person’s deduction—so marked that it may, in truth, be said that the 1965 version establishes new guide lines relative to the qualification for such deduction. The said 1943 Act, as found in Burns IND. STAT. ANN. (1961), § 64-224 formerly provided as follows:

“Any blind person owning real estate which is used and occupied exclusively for his residence, and is not used for commercial purposes, and who does not receive any income from the same, and whose total net income from all sources is not in excess of his exemption under the normal Federal Internal Revenue Act, may have deducted from the assessed valuation of said real property the sum of one thousand dollars [§1,000], and the amount remaining shall constitute the basis for assessment and taxation for said property.” (Emphasis added.)

Reference to the above-quoted former statutory provision discloses that blind persons were accorded a $1,000 deduction therein provided only if the property was used exclusively for such blind person’s residence and if such person did not receive any income from such property and if his “total NET income from all sources is not in excess of his exemption under the normal Federal Internal Revenue Act.” This meant, then, that such blind person was not entitled to the deduction provided by the Acts of 1943, ch. 186, supra, if his net income under Federal tax standards was in excess of $1,200. Further, if such person were both blind and 65 years of age or more, his exemption under the Federal net income tax law would be $1,800, so that the state deduction from property taxes would not apply if such person’s net income exceeded $1,800.

Reference to the Acts of 1965, ch. 228, § 1, which amended the 1943 Act, discloses that the Legislature effected a sharp
departure from the standards which were formerly used in
determining the eligibility of a blind person for the deduction
from property taxes. The 1965 Act, as found in Burns IND.
STAT. ANN., (1965 Supp.), § 64-224, provides as follows:

“Any blind person, as said term blind is defined in
the Indiana Public Welfare Act, as amended, owning
real estate which is used and occupied exclusively for
his residence, and is not used for commercial purposes,
and who does not receive any income from the same,
and whose total gross income from ALL sources was
not in excess of two thousand five hundred dollars
[$2,500], for the immediately preceding calendar year,
may have deducted from the assessed valuation of said
real property the sum of two thousand dollars [$2,000],
and the amount remaining shall constitute the basis
for assessment and taxation for said property. Per-
sons desiring to claim deduction under this section shall
apply annually, between March 1 and the first Monday
of May, to the county auditor on forms prescribed by
the state board of tax commissioners. Proof of blind-
ness may be supported by the records of the county
department of public welfare or state department of
public welfare, and, where proof is not on file with
either of such departments, the applicant shall file with
the application a statement certifying the applicant is
blind, prepared in accordance with the provisions of
Acts 1936, c. 3, s. 12 (o) [§ 52-1001 (o)].” (Emphasis
added.)

(The emphasis indicated in the above-quoted 1965
version has been given to indicate all of the changes
which were effected to this section by said 1965 Act.)

Although said 1965 version increases the amount of allowable deduction from the assessed valuation of such blind person's real property from $1,000 to $2,000, said 1965 version no longer uses the eligibility standard of "total net income from all sources (which) is not in excess of his exemption under the normal Federal Internal Revenue Act," but, instead, uses the eligibility standard of "total gross income from all sources (which) was not in excess of two thousand five hundred dollars [$2,500] for the immediately preceding calendar
"year." (Emphasis added.) While Social Security benefits received are not, under the standards of the Federal Internal Revenue Act, considered to be "gross income" for the purpose of determining one's Federal income tax liability, such would not, necessarily, be of controlling effect in determining the answer to your question, for the reason that, as in all cases of statutory construction, it is the intent of the Legislature, as gleaned from the language used in the statute, to which effect is to be given.

Comparison of the 1965 version of Burns 64-224, *supra*, with the eligibility requirements for persons 65 years of age or more to secure the $1,000 deduction from assessed valuation accorded certain persons of such age indicates a marked degree of similarity. The "age 65 tax deduction statute" was first enacted by the Acts of 1957, ch. 323, in which act the Legislature first provided that such aged person would be ineligible for the exemption thereby provided if his "total income" for any year exceeded $2,250. At that time, the State Board of Tax Commissioners construed such language to mean gross income, inclusive of Social Security benefits. When said 1957 Act was amended by the Acts of 1961, ch. 197, § 1, the words "total income" were changed to "total annual gross income from every source" and § 2 of the Acts of 1957, ch. 323 was amended by § 2 of the Acts of 1961, ch. 197, to require the applicant for such age-65 deduction to submit, for inspection by the county auditor, "a copy of his gross income tax return and that of his or her spouse showing gross income received for the preceding year by such person and his or her spouse." See: Burns IND. STAT. ANN., (1961), §§ 64-225 and 64-226. Under the Indiana Gross Income Tax Act, Social Security benefits were considered to be includible as "gross income." Moreover, although the "Adjusted Gross Income Tax Act of 1963" has, in large part, replaced the Indiana Gross Income Tax Act of 1933, as amended, yet the latter act, although excepting amounts received "as unemployment benefits under the provisions of the Federal Social Security Act," nevertheless still includes as "gross income" amounts received under the Federal Social Security Act to the extent that such amounts are in excess of $3,000 per annum. See: Burns IND. STAT. ANN., (1965 Supp.), § 64-2606 (d) and (g).
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Consistent with its former interpretation of "total income" as found in the Acts of 1957, ch. 323, and following the enactment of the Acts of 1961, ch. 197, the State Board of Tax Commissioners again construed the new phrase in the age-65 tax deduction law, being "total annual gross income from every source," to include Social Security income. Form 323-Revised (1962), prescribed by the State Board of Tax Commissioners, is the form upon which persons 65 years of age or more have applied for the age-65 tax deduction. On the reverse side thereof are certain statements interpreting the Acts of 1957, ch. 323, by the State Board of Tax Commissioners, included among which is the following:

"Total Annual Gross Income from all sources must be reported. The term 'gross income' includes all income from whatever source derived without any exceptions or deductions. Included, without limitation, would be the following: Salary, wages, fees, bonuses or commissions; social security and all other retirement income; rents (gross); interest and dividends; sale of real estate or other property; and any other income received." (Emphasis added.)

It has been stated by our Indiana Supreme Court that:

"While not controlling, the contemporaneous construction of a statute by those charged with the administration of it is entitled to great weight, and should not be interfered with unless there are very cogent and persuasive reasons for departing from it. . . ."


Bearing the foregoing rule of statutory construction in mind, it is noticeable that in the "age-65 tax deduction statute," which was also amended in 1965 by the Acts of 1965, ch. 213, § 1, the Legislature increased from $2,250 to $2,500 the amount of "total annual gross income from every source" which such aged person may receive and yet be eligible for the deduction from assessed valuation to which he may otherwise be entitled but without changing the standard of "total an-
nual gross income from every source” which it presumably knew had been interpreted by its agent, the State Board of Tax Commissioners, to include Social Security income, which interpretation has continued since 1957 to date. While the terminology used in the statute providing the $2,000 deduction from assessed valuation to blind persons and that used in the statute providing the $1,000 deduction from assessed valuation to persons 65 years of age or more is not precisely identical, there is so much similarity that it can only be concluded that the phrase “total gross income from all sources . . . for the immediately preceding calendar year” as used in the blind person’s tax deduction statute and the phrase “total annual gross income from every source” as used in the age-65 tax deduction statute have substantially the same meaning. Because of such similarity, there would be no basis for an administrative ruling regarding the eligibility requirements of blind persons for such tax deduction to exclude Social Security benefits, whereas the same administrative body regarding the eligibility requirements of persons 65 years of age or more has ruled that such Social Security benefits are to be included in determining their eligibility for such deduction from the assessed valuation of their property.

Moreover, the Legislature has delegated to the State Board of Tax Commissioners the express authority to construe the property tax laws of this state, stating in the Acts of 1961, ch. 319, § 1503, as amended, as found in Burns IND. STAT. ANN., (1965 Supp.), § 64-1233:

“The state board of tax commissioners shall construe the property tax and revenue laws of this state and instruct taxing officers in relation to their duties with reference to taxation and assessment.”

Therefore, in conclusion, although recognizing that a plausible argument may be made that Social Security benefits should not be included in “total gross income from all sources,” as used in the Acts of 1965, ch. 228, § 1, Burns 64-224, supra, nevertheless, I am constrained to conclude that the Legislature apparently has acquiesced in the interpretation of the State Board of Tax Commissioners in its conclusion that the phrase “total annual gross income from every source” as used in the “age-65 tax deduction law” does include Social Security
benefits. Upon this basis, I must conclude that the Legislature also apparently meant that the term "total gross income from all sources" as used in the Acts of 1965, ch. 228, § 1, Burns 64-224, supra, should include Social Security benefits received by such blind persons.

OFFICIAL OPINION NO. 71

December 30, 1965

Mr. Richard L. Worley
State Examiner
Indiana State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. Worley:

This is in response to your recent letter requesting an Official Opinion pertaining to the interpretation of Chapter 411 of the Acts of 1965, which reads:

"... All cities of the first, second, third and fourth classes having regularly organized and paid police and fire departments shall provide for use by the active members of such police and fire departments of all uniforms, clothing, arms and equipment necessary to the performance of their respective duties: Provided, That after one (1) year of regular service in said departments, any such member thereof may be required by such city to furnish and maintain all of his uniform, clothing, arms and equipment upon the payment to such member by such city an annual cash allowance of not less than one hundred and twenty-five dollars ($125) : Provided further, That a city of first, second, third and fourth class may credit such a uniform allowance to each individual officer as against his purchases during any calendar year and provide for the payment of any cash balance remaining at the end of the calendar year."

The specific questions stated in your letter are as follows:

"(1) Will Chapter 411 of the Acts of 1965 authorize a city of the first, second, third or fourth class to