"The School Corporation Reorganization Act of 1959" does not have the effect of extending the boundaries of a public library taxing district to embrace in such library taxing district the same area as that embraced within the newly-reorganized school corporation. Since my answer to your first question is in the negative, it becomes unnecessary to answer your question No. 2, which would, of necessity, involve the possibility of the complexities of dual taxation for library purposes if another public library taxing district were already within the boundaries of the newly-reorganized school corporation. If it is the desire of the taxpayers and persons concerned to extend the library services beyond the limits of the present library district, then such persons should follow the procedures set forth in the "Library Law of 1947" in which various provisions are made for extending such services and for the levy of a tax accordingly.

OFFICIAL OPINION NO. 70

December 3, 1964

Mr. James C. Courtney, Commissioner
Indiana Department of State Revenue
202 State Office Building
Indianapolis, Indiana

Dear Mr. Courtney:

You have asked for my Official Opinion as to whether a specific devisee receives an additional bequest, for inheritance tax purposes, when under the terms of the decedent's will, inheritance taxes are to be paid by the estate or some other person. To illustrate your point, you cite in your letter the following example:

"Example
A by his will provides:

Paragraph 1. All his debts including all inheritance taxes be paid out of the estate

Paragraph 2. $10,000 to B (a class C beneficiary)
Paragraph 3. All rest and remainder to C (a class A beneficiary)"

Based on this example you ask the following question:

“Question—What is the amount received by B which is subject to the Inheritance Tax?”

The answer to your question must of necessity be found in the Indiana Inheritance Tax Law, Acts 1931, Ch. 75, as amended and found in Burns’ (1953 Repl.), Section 7-2401 et seq., as well as any applicable case law. The Indiana inheritance tax is a tax upon both the transfer of property and the transfer of any interest in property. Burns’ 7-2401, supra, provides, in part, as follows:

“A tax is hereby imposed under the conditions and subject to the exemptions and limitations hereinafter described, upon all transfers, in trust or otherwise, of the following property, or any interest therein or income therefrom:”

The Supreme Court of Indiana has held that our inheritance tax is not a tax upon the estate of the decedent, but rather a tax upon the transfer of property, with the amount of tax calculated on the degree of relationship to the decedent of the transferee of the estate.

Armstrong v. State ex rel. Klaus (1908), 72 Ind. App. 303, 120 N. E. 717;

Indiana Department of State Revenue v. Kitchin (1949), 119 Ind. App. 422, 86 N. E. (2d) 96.

The inheritance tax law clearly indicates that each transferee shall be liable for inheritance taxes, and such taxes shall be a lien upon the respective property taken by the respective transferee. Further, the law empowers the executor to sell so much of the decedent’s property as is necessary to enable him to pay the taxes. However, where the decedent’s will provides that inheritance taxes are to be paid out of the estate, such taxes are properly chargeable against the residuary estate.
The Indiana Inheritance Tax Law is not specific as to the manner of computing the tax when the testator directs the inheritance taxes on a devisee's bequest to be paid from the residuary estate. While the Indiana courts have never passed on this question, appeal courts from at least nine other states have considered the question. Seven of these decisions have held that a devisee, for inheritance tax purposes, receives a beneficial transfer of the amount of inheritance tax paid on his bequest by the estate.

In re Lavalley's Estate (1926), 191 Wis. 356, 210 N. W. 941;
In re McKinnon's Estate (1957), 212 Ore. 213, 319 P. (2d) 579;
In re Irwin's Estate (1925), 196 Cal. 366, 237 P. 1074;
In re Bowlin's Estate (1933), 189 Minn. 196, 248 N. W. 741;
Bouse v. Hutzler (1942), 180 Md. 682, 26 A. (2d) 767;
Succession of Anderson (1963), — La. —, 152 So. (2d) 874;
In re Henry's Estate (1937), 189 Wash. 510, 66 P. (2d) 350.

In two states recent appellate decisions contrary to the above-cited cases have been handed down.

In re Loeb's Estate (1960), 400 Pa. 368, 162 A. (2d) 207;

I am advised that since the inception of the present Indiana Inheritance Tax Law of 1931, no question has ever been formally raised as to the method of computing inheritance taxes on bequests wherein the inheritance taxes on specific bequests are directed to be paid from the residuary estate. In fact, it appears that some judges, lawyers and state officials
responsible for administering this state’s inheritance tax laws have followed the practice that the amount of tax which is payable out of the residuary estate on a tax-free legacy is computed and assessed on the pecuniary amount of the legacy. While it is true that such administrative construction if erroneous would not operate as an estoppel against the state, it is equally true, where the words of a statute are not clear or explicit, the contemporaneous construction of such statute, by those charged with its execution and application, especially where it has long prevailed, is entitled to great weight and should not be disregarded except for clear language in the act itself or for very strong, cogent and convincing reasons.

See: 26 I. L. E. Statutes, § 126 and cases therein cited.

The long-standing interpretation of the Indiana Inheritance Tax Law by those chargeable with its enforcement and administration, is some evidence that the statute is other than clear as to whether the amount of tax paid for on and in behalf of a specific legatee is to be considered an additional bequest for inheritance tax purposes. I would, therefore, hesitate to question the administrative interpretation in the absence of clear language to the contrary. In conclusion, it is my opinion, that the present apparent practice in treating such transfers should be continued. In matters of this nature, it is often desirable that the Legislature be given an opportunity to consider such problems in order that it may adopt clarifying legislation if it deems it advisable.