Therefore, if there be no division of a pre-existing school corporation and no provision to the contrary in the plan of re-organization, the assets of a pre-existing school corporation, including textbooks owned by such corporation, would be transferred to the new community school corporation. The Acts of 1935, Ch. 171, Sec. 1, as amended, as found in Burns' (1963 Supp.), Section 28-638, reads as follows:

"Any board of school commissioners, board of school trustees, school township trustee, joint or consolidated school board, county board of education, or the governing body of any school corporation of this state may purchase from the publishers, at the net wholesale or net contract price, any text-book or series of text-books selected by the state board of text-book commissioners and the local text-book committee of such cities, towns or such counties outside of cities and towns as provided by law, and rent said text-books or series of text-books to the pupils of their respective schools at an annual rental of not to exceed twenty-five [25] percent of the retail price of said books." (Our emphasis)

Thus, in answer to your second question, specific authority is given to a consolidated school corporation to rent textbooks at an annual rental of not to exceed twenty-five percent of the retail price of said books. That textbooks are acquired from a pre-existing school corporation, rather than from a publisher, cannot be held to interfere with the general authority to rent textbooks which has been granted consolidated school corporations.

OFFICIAL OPINION NO. 28
June 22, 1964

Mr. James C. Courtney, Commissioner
Indiana Department of State Revenue
202 State Office Building
Indianapolis 4, Indiana

Dear Mr. Courtney:

This is in response to your request for my Official Opinion in answer to the question presented in the third paragraph of your following letter:

142
"We refer to your Opinion of June 29, 1961, which contained the following statement: 'With respect to any part of such proceeds which are not used to obtain property of a similar kind to that taken by the condemning authority within two years, it would appear that such part of the proceeds which is taxable becomes so commencing with the expiration of a two year period.'

"Section 701 of House Enrolled Act No. 1509 of the Special Session of the 1963 General Assembly, states that any person who is liable for tax under this act (Adjusted Gross Income Tax Act of 1963) shall not be liable for any tax on gross income received subsequent to June 30, 1963.

"As the excess from condemnation proceeds in many cases cannot be determined until after June 30, 1963, since the two year period does not expire until after June 30, 1963, will you please advise whether or not a tax can be determined, imposed and collected, when such determination of tax liability, according to your previous Opinion, cannot be made until the expiration of the two year period and such two year period does not expire until after June 30, 1963." (Our emphasis)

My Official Opinion of June 29, 1961, to which you make reference, is 1961 O. A. G., page 158, No. 28. It was there stated that Section 3a, as added to the "Gross Income Tax Act of 1933," as amended by the Acts of 1961, Ch. 293, Sec. 1, as found in Burns' (1961 Repl.), Section 64-2603a, does not apply to gross receipts received from the condemnation of real estate by the State of Indiana, any instrumentality thereof or any organization given the power of condemnation; nor does such section apply to amounts received as the purchase price or a compromise in contemplation of a condemnation. This conclusion was reached upon the basis that another section of the "Gross Income Tax Act of 1933," as amended, being Section 6 (n) thereof, Acts of 1933, Ch. 50, Sec. 6 (n), as amended, as found in Burns' (1961 Repl.), Section 64-2606 (n), provides as follows:

"There shall be excepted from the gross income taxable under this Act:
"(n) All amounts received from the condemnation of real estate by the State of Indiana or instrumentality thereof or any organization given the power of condemnation by the State of Indiana or any amounts received as purchase price or compromise in contemplation of such condemnation, but in no case in excess of the total amount used within a reasonable time not to exceed two (2) years to obtain property of a similar kind."

In connection with the above-cited Opinion, it was stated, on p. 164 thereof:

"Also with respect to any part of such proceeds which are not used to obtain property of a kind similar to that taken by the State of Indiana within two years, it would appear that such part of the proceeds which is taxable becomes so, commencing with the expiration of the two year period. * * *

This language was used to indicate that even though gross receipts of such character would otherwise be taxable in the year of receipt (such tax being due and payable not later than January 31st of the following year), nevertheless, the portion of such gross receipts which would be taxable could not be determined until the expiration of the two-year period within which the grantor of the real estate could obtain property of a similar kind, thereby making nontaxable that portion of such condemnation receipts so used. Thus, when the Opinion stated that such part of the proceeds which is taxable becomes so, commencing with the expiration of the two-year period, the meaning was that such part of the proceeds as is taxable is both determined at the expiration of the two-year period and payable at that time. However, this interpretation would not alter the fact that the law in effect at the time of the receipt of such proceeds would control the determination of the amount of tax due thereon.

"The Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 701, as found in Burns' (1963 Spec. Supp.), Section 64-3249, reads, in part, as follows:

"'Any person who is liable for tax under this act and any corporation which is exempt from federal income tax under section 1372(b)(1) of the Internal Revenue Code and if all stockholders of such corporation are residents of this state, shall not be liable for any tax on gross income received subsequent to June 30, 1963, as imposed by Sections 2 and 3 of the Gross Income Tax Act of 1933 as amended (Chapter 50 of the Acts of 1933, as amended) * * *'

"Thus, under the above section, any person who is liable for the payment of adjusted gross income tax imposed by the 'Adjusted Gross Income Tax Act of 1963' will not be liable for the payment of any gross income tax on gross income received subsequent to June 30, 1963. However, every taxpayer is liable for the payment of gross income tax on any gross income received prior to June 30, 1963. * * *" (Our emphasis)

The "Gross Income Tax Act of 1933," as amended, has not been repealed, and, as stated in my 1964 O. A. G., No. 19, supra, the intent of the Legislature was that persons should not be relieved of their liability for the payment of gross income tax with respect to gross income received on or prior to June 30, 1963.

Therefore, since your instant question obviously relates to proceeds from the condemnation of real estate which were received on or prior to June 30, 1963, it follows that the provisions of the Gross Income Tax Law apply to the determination of the tax liability accruing under that act to the same extent as if the "Adjusted Gross Income Tax Act of 1963" had not been enacted. Thus, the tax on such condemnation proceeds received on or prior to June 30, 1963 must be determined, imposed and collected under the "Gross Income Tax Act of 1933," as amended, even though the exact portion of such proceeds which is taxable under that act may not, in some
instances, be capable of determination until the expiration of the two-year period provided by Burns' 64-2606 (n), supra, which will expire at the latest no later than June 30, 1965.

OFFICIAL OPINION NO. 29

June 24, 1964

Mr. Albert Kelly, Administrator
Department of Public Welfare
701 State Office Building
Indianapolis 4, Indiana

Dear Mr. Kelly:

This is in answer to your letter of May 4, 1964, in which you present eight questions concerning Acts of 1963, Ch. 432, which, although vetoed by Governor Welsh, became law for reasons expressed by the Supreme Court in the case of Charles O. Hendricks, Secretary of State etc. v. State ex rel. Northwest Indiana Crime Commission et al. (1964), — Ind. —, 196 N. E. (2d) 66.

The act is concerned with medical aid to the aged, and although its provisions resemble, in many respects, provisions contained in Acts of 1936 (Spec. Sess.), Ch. 3, as amended, as found in Burns' (1951 Repl.), Section 52-1001 et seq., commonly known as the Public Welfare Act of 1936, the new act is separate and apart from the Welfare Act, and is not made amendatory thereto.

To date the State Department of Public Welfare and the Welfare Departments of the ninety-two counties have been governed and controlled by the Public Welfare Act of 1936, supra, and by rules and regulations adopted in accordance therewith. Since the Departments have been supplying medical aid to the aged under the Welfare Act and its rules and regulations, your questions concern the additional duties created by the new act, and the effect thereof upon general welfare administration throughout the state.

The new act was considered as having been vetoed by the Governor, and was therefore not placed in the 1963 Supple-