any other statute to the contrary notwithstanding.”
(Our emphasis)

The purposes enumerated above do not encompass the purpose for which an appropriation and tax levy are authorized in Burns’ 15-315, supra.

In conclusion, please be advised it is my opinion that while a sufficient petition is required for the construction of a building pursuant to the statute in question, yet no additional petition is necessary to enable the board of county commissioners, subsequent to such construction, to levy a maximum two cents’ tax for the purpose of operating and maintaining such building. It is further my opinion that inasmuch as the board of county commissioners is the tax-levying body under the act, no approval from the county council need be obtained as to the tax levy; however, such board of county commissioners must yet, under the specific provisions of Burns’ 64-1908, supra, obtain the approval of the county tax adjustment board as to its tax levy. Moreover, as previously stated, any appropriations under the act would be necessarily made by the county council.

OFFICIAL OPINION NO. 69
November 25, 1964

Mr. Richard L. Worley, Chairman
State Board of Tax Commissioners
201 State Office Building
Indianapolis, Indiana

Dear Mr. Worley:

You have requested my Official Opinion on the following questions:

“(1) Where a public library, established under the provisions of the Acts of 1881, Ch. 27, as amended, as found in Burns’ (1948 Repl.), Section 28-1433 et seq., is operated in any city or town and the schools of such city or town become a part of a community or united school
corporation embracing an area outside such city or town, pursuant to the School Corporation Reorganization Act, being the Acts of 1959, Ch. 202, as amended, as found in Burns' (1963 Supp.), Section 28-6101 et seq., does the reorganization of schools have the effect of extending the boundaries of the former public library taxing district to embrace all of the area within the reorganized school corporation?

"(2) If your answer to question No. 1 is in the affirmative, and there is another public library taxing district located within the boundaries of the reorganized school district, what effect would the extension of the boundaries of the former city or town public library have upon the other public library taxing district?"

Your letter further states, in part:

"* * * the answers to the above questions are needed by this Board in connection with the review of the 1965 budgets and the fixing of tax levies and rates in the taxing districts affected * * *"

Your request concerns the basic question of whether the process of the reorganization of schools pursuant to "The School Corporation Reorganization Act of 1959," being the Acts of 1959, Ch. 202, as amended, as found in Burns' (1964 Supp.), Section 28-6101 et seq., automatically enlarges or otherwise changes the boundaries of independent public library districts so that the boundaries of such library districts become identical with those of the new community school corporation or united school corporation. It should be observed, as implied from your second question, that if such were the effect of the process of reorganization of schools pursuant to said school corporation reorganization act, then it would be possible for a new library district, so formed, to include areas in which there is already an independent library operating under the provisions of the "Library Law of 1947," being the Acts of 1947, Ch. 321, as amended, as found in Burns' (1952 Repl.), Section 41-901 et seq., or some other library statute, wherein
a library tax is already imposed by such separately-constituted library districts. If such were the case, such a conclusion might result in the property owners within such an area having a tax imposed upon them for their previously-organized, separate library district and also another tax imposed upon them for the library district supposedly formed by the process of reorganization of schools pursuant to said school corporation reorganization act.

The statute to which you have referred in your first question is the Acts of 1881, Ch. 27, as amended, as found in Burns’ (1948 Repl.), Section 28-1433 et seq. With respect to such libraries, Section 2 of said 1881 Act, as amended, provides the authority for the levy of a tax for such library and, as found in Burns’ (1948 Repl.), Section 28-1434, provides as follows:

"Such board shall also have power to levy a tax of not exceeding one [1] mill on each dollar of taxable property assessed for taxation in such city in each year; which tax shall be placed on the tax duplicate of such city, and collected in the same manner as other taxes; and when said taxes are so collected, they shall be paid over to the said board for the support and maintenance of said public library. Such board shall have power, and it shall be its duty, to disburse said fund, and all revenues derived from gift or devise, in providing and fitting up suitable rooms for such library, in the purchase, care and binding of books therefor, and in the payment of salaries to a librarian and necessary assistants."

The above section of the Acts of 1881, Ch. 27, as amended, supra, provides authority for the levy of a tax for a library organized thereunder and confines the levy of the tax to the "taxable property assessed for taxation in such city * * *" (Our emphasis) There is nothing in that act which would authorize the taxing district of such free library to change its boundaries automatically to conform with a change in the boundaries of the taxing district of the public schools. Instead, the only fact which would automatically change the boundaries of the taxing district of such free library would be a change in the boundaries of the city itself.

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It is true that the "board," to which reference is made in Burns' 28-1434, *supra*, is "the board of school trustees, board of school commissioners, or whatever board may be established by law to take charge of the public or common schools of said city or incorporated town" as provided by the Acts of 1881, Ch. 27, Sec. 1, as amended, as found in Burns' (1948 Repl.), Section 28-1433, *supra*. Thus, while the board of the new community or united school corporation would be the governing board of such city library contained therein, such board would, nevertheless, have only the authority contained in the Acts of 1881, Ch. 27, as amended, *supra*, to levy a library tax.

While such board derives its powers with respect to the operation of the new community or united school corporation from "The School Corporation Reorganization Act of 1959," *supra*, it should be reiterated that the powers in said 1959 Act relate to the operation of schools which are reorganized under such school reorganization act, particularly "school corporations," "community school corporations," and "united school corporations," none of which terms is defined to include a library district.

See: Burns' 28-6102, *supra*.

Moreover, the assets of the type of library with which your request is concerned are not assets of any school corporation, but, under the statute, the real estate upon which such a free public library may have been established was authorized to be purchased, taken and held by the city instead of some school corporation. My understanding of the facts with reference to one of the situations giving rise to your request for this Opinion is that the statute, Burns' 28-1435, *supra*, was followed, in that the title to the real estate upon which such free public library is situated is in the name of the city as appears in the records of the recorder of the particular county involved.

Also, because under Burns' 41-905, *supra*, library districts, organized or coming under the "Library Law of 1947," are public corporations, separate and distinct from any civil or other municipal corporations, it follows that the assets of such library districts as are governed by said 1947 Act belong to
such public corporation, whose district comprises a separate and independent library taxing district, and, therefore, such assets do not belong to any school corporation. Thus, there is no basis for concluding that the assets of separate library districts were always school property and that such assets, therefore, were transferred by operation of law to the new community school corporation or united school corporation.

An examination of “The School Corporation Reorganization Act of 1959,” being the Acts of 1959, Ch. 202, as amended, as found in Burns’ (1964 Supp.), Section 28-6101 et seq., supra, discloses that there is no basis in its title, nor in any section thereof, for the assumption that it was intended to affect the operation of libraries which operate under separate statutes, and absolutely no authority is contained in such “The School Corporation Reorganization Act of 1959” for the levy of a library tax to be imposed upon all of the property situated within the confines of the newly-formed community or united school corporation.

One of the well-known rules of statutory construction and of especial applicability here is that which states that repeal or amendment of a statute by implication is not favored in the law. Reference is made to the “Library Law of 1947,” being the Acts of 1947, Ch. 321, as amended, as found in Burns’ (1952 Repl.), Section 41-901 et seq., supra. Section 1 of the “Library Law of 1947” clearly evidences legislative intent to establish a unified law governing public libraries and to discontinue the effect of all existing laws with respect to the establishing of public libraries thereafter—Section 1, as found in Burns’ (1952 Repl.), Section 41-901, providing as follows:

“It is hereby declared to be the policy of the state, as a part of its provision for public education, to promote the establishment and development of public library service throughout its various subdivisions, and it is the purpose of this act to establish a unified law governing public libraries of the state which will promote efficiency and economy in the administration of such public supported libraries.”
Moreover, Section 21 of said "Library Law of 1947," as found in Burns' (1952 Repl.), Section 41-921, provides as follows:

"On and after the passage of this act no public library shall be established in this state except under the provisions of this act." (Our emphasis)

The "Library Law of 1947" also contains detailed provisions, authority and procedures for the extension of library services, the creation of new library districts and the merger of any library district operating under said act with a county library district. The manifest purpose of the "Library Law of 1947" is to codify all of the library laws into a single body of law applicable as to all then-existing libraries and library districts to be formed in the future. It would be directly contrary to the legislative intent to now say that such libraries are affected automatically and solely by operation of law merely by the formation of a new school corporation pursuant to "The School Corporation Reorganization Act of 1959."

There is absolutely nothing in "The School Corporation Reorganization Act of 1959" which authorizes the levy of a library tax when a newly-formed school corporation comes into existence pursuant to the provisions of such act and the governing board of such school corporation also happens to inherit the powers of a former city school board which previously governed a free library of a city. The only authority for a library tax is found either in such acts as referred to in your request (Acts of 1881, Ch. 27, as amended, as found in Burns' [1948 Repl.], Section 28-1434 et seq.) or in the "Library Law of 1947," itself, which creates library districts separate and distinct from civil or municipal corporations and empowers the library boards thereof to levy such a tax.

That the administration or operation of a public library by a school board does not automatically make such public library an integral part of the common school corporation has been decided by the Indiana Supreme Court by its decision in the case of Datisman, etc. v. Gary Public Library et al. (1960), 241 Ind. 83, 170 N. E. (2d) 55, wherein the Indiana Supreme Court stated, on p. 90 of 241 Ind.:
"The history of the operation and maintenance of public libraries in this State does not sustain the allegation that they are a part of the common school system of the State. Historically, public libraries in Indiana have been under the control of various units of government. Some have been administered by school cities, others by civil cities or civil townships, and some by special Library Boards such as those provided by the Acts of 1903, ch. 52, p. 193.

"It may be said that the establishment and maintenance of public libraries is a suitable means of encouraging 'moral, intellectual, scientific and agricultural improvement' within the State. However, it does not necessarily or logically follow that this makes public libraries a part of the common school system of the State. If the Legislature, in its discretion, provides for the establishment and maintenance of public libraries in a manner different from that of public schools, it is within its power so to do. If appellant here would have public libraries in the State administered by public school authorities his remedy is with the Legislature and not in the courts." (Court's emphasis)

Thus, the Indiana Supreme Court has held specifically that even in those instances in which the public library is administered by the school city, it does not necessarily or logically follow that this makes the public library a part of the common school system of the state.

Just as "The School Corporation Reorganization Act of 1959" is for the purpose of reorganization of school corporations in order to establish and maintain a more uniform and thorough system of public schools, so also is the "Library Law of 1947" for the purpose of establishing and maintaining a more uniform system of public libraries, codifying the library laws under one statute and providing that newly-created public libraries be established under the provisions of the "Library Law of 1947" and not under some other statute.

Therefore, for answer to your first question, it is my opinion that the process of reorganization of school corporations under
"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.