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

Dear Mr. Courtney:

Your letter has been received, wherein you request an Official Opinion upon the following question:

"The Gross Income Tax Division is confronted with the situation, wherein a municipality owning its utility, has income from sales made to a consolidated school district. The tax status of this type of transaction is in doubt, in view of the language found in Regulation No. 2503 of the 1946 Gross Income Tax Regulations, which reads as follows—

"'If the utility is owned and operated by the city itself, no tax will attach to receipts from sales of services to other departments of the city (including the school city.)'"

"The above language does not appear in the 1956 Gross Income Tax Regulations (see Instruction 8-21 (3) of that edition) and we respectfully request a ruling relative to the tax status of the income received by a municipality through its own utility from sales made to consolidated schools."

The Indiana Gross Income Tax Act of 1933, Ch. 50, Sec. 2, as amended, as found in Burns' (1961 Repl.), Section 64-2602, reads, in part, as follows:

"There is hereby imposed a tax upon the receipt of gross income, measured by the amount or volume of gross income, and in the amount to be determined by the application of rates on such gross income as hereinafter provided. Such tax shall be levied upon the receipt of the entire gross income of all persons resident and/or domiciled in the state of Indiana, except as herein otherwise provided * * *" (Our emphasis)
1962 O. A. G.

The Indiana Acts of 1933, Ch. 50, Sec. 1 (a), as amended, as found in Burns' (1961 Repl.), Section 64-2601 (a), defines the term "person" as follows:

"(a) When used in this act, the term person or the term company herein used interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, joint venture, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation or any other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context." (Our emphasis)

The foregoing excerpts from the Indiana Gross Income Tax Act disclose that said act levies a tax upon the entire gross income of every "person" engaged in any business or activity, with certain exceptions not material to the answering of your question; and said act defines the word "person" when used in the act, to include any municipal corporation engaged in private or proprietary activities or business. The operation of a public utility by a municipality for service to its inhabitants has been held to be a proprietary and not a governmental activity.

Department of Treasury v. City of Linton (1945), 223 Ind. 363, 60 N. E. (2d) 948.

The Indiana Supreme Court in the City of Linton case, at p. 367 of the opinion, supra, used the following quote from the case of City of Logansport v. Public Service Commission (1931), 202 Ind. 523, 531, 532, 177 N. E. 249:

"A city in the operation of an electric light utility, selling service to the public, acts in its private business capacity and not in its public governmental capacity. * * * When a municipal corporation engages in an activity of a business nature rather than one of a gov-
ernmental nature, such as the supply of light or water, or the operation of a railroad, which is generally engaged in by individuals or private corporations, it acts as such corporation and not in its sovereign capacity (citing authorities), and a city operates its municipally owned utility plant in its proprietary capacity as a private enterprise subject to the same liabilities, limitations and regulations as any other public utility (citing authorities)."

The Indiana Supreme Court has, therefore, determined that the operation of water, electric and/or gas utilities by a municipality is in fact carried out in the municipal corporation's private and proprietary capacity and not in its public governmental capacity, and that the income derived therefrom is properly taxable under the provisions of the Indiana Gross Income Tax Act. It is therefore apparent, from the foregoing, that utilities operated by municipalities are taxable under the Indiana Gross Income Tax Act in the same manner as would be a privately owned utility.

In your request for an Official Opinion you have quoted language found in former Regulation 2503 of the 1946 Indiana Gross Income Tax Regulations, Series VII. The Indiana Revenue Board, on the 5th day of July, 1956, adopted new Regulations, which were to apply to the Gross Income Tax Act and to the Gross Income Tax Division in the enforcement and administration of said act. Upon said date, at the time of the adoption of the new Rules and Regulations, the Indiana Revenue Board specifically repealed any and all of the Rules and Regulations previously adopted by the Indiana Revenue Board, the Gross Income Tax Division, the Commissioner of Revenue, the Director of the Gross Income Tax Division, or any other predecessor of said Indiana Revenue Board. The Rules and Regulations adopted on July 5, 1956, are to be found at page 97 of the 1957 Edition and Revisions of the Rules and Regulations (Indiana). Therefore, in determining the question, we cannot rely upon any provisions of the Gross Income Tax Regulations in effect prior to July 5, 1956.

At present, there is no regulation governing the question which you have raised by your letter. However, the Indiana Revenue Board and the Gross Income Tax Division at the
time they issued their publication of the Regulations adopted in 1956, included certain additional material designated as "Instructions." These instructions cover various factual situations which are at times presented to the Gross Income Tax Division for determining the tax status of various taxpayers.

Included in the 1956 volume of the Gross Income Tax Regulations is Instruction 8-21, which you have also cited in your request for an Official Opinion. Said instruction deals with several categories used in determining the taxation of municipally owned utilities. The question now presented by the Gross Income Tax Division would fall into the category enumerated in the third paragraph of said instruction, which reads as follows:

"3. If a municipal utility is owned and operated by the municipality itself as a department or division thereof and is not a separate corporation, its income is required to be reported on the tax returns of the municipality and no tax will attach to such utility's receipts from any transactions whatsoever between departments or divisions of the municipality."

Instruction 8-21. Municipal Utilities, Basis for Separate or Consolidated Returns, Indiana Gross Income Tax Division's Regulations (1956) Series VIII, Ch. 8, Part F.

From the language contained in said instruction, it is apparent that those transactions, of a wholly-owned municipal utility, which create gross receipts from sales or service to other departments of the municipality are subject to elimination from taxation. In construing this instruction, we must determine, in order to answer your question, whether a consolidated school is a departmental unit of the municipal corporation (city).

In relation to your question, whether a school corporation is a departmental unit of a municipal corporation in the city, we refer to the case of Adar v. Pagin (1906), 39 Ind. App. 567, 79 N. E. 379, in which the court stated at page 573 of its opinion, as follows:

"Having briefly noticed the duties and obligations resting on school boards and the purposes of the cor-
poration they officer, we can but conclude that they are not 'officers and employees of the government of' a civil city. Nor is a school corporation accountable to the common council of the civil city in the sense in which the word 'corporation' is used in §3478, supra, for the reason, as we have seen, that it is engaged in carrying out the legislative will in the furtherance of the general system of common schools in this State as centralized, but apportioned into political divisions for the convenience of government * * *"

Also, in the case of Hummer v. School City of Hartford City (1953), 124 Ind. App. 30, 112 N. E. (2d) 891, the court stated, at page 36 of its opinion, as follows:

"It is true that the generic term 'municipal corporation' has been applied to both civil cities and school cities * * * However, it is also true that civil cities, which are voluntary corporations of the state, and school cities, counties and townships, which are involuntary subdivisions of the state, are entirely distinct corporations possessing many divergent characteristics, with respect to suits filed by and against such cities * * *"

These cases are cited for the purpose of showing that Indiana courts view school cities and school corporations as being separate legal entities from civil cities (municipal corporations).

The Acts of 1955, Ch. 334, Sec. 14, Burns' (1962 Supp.), Section 28-5934, which concerns the consolidation of schools, states as follows:

"Any such consolidated school corporation is hereby declared to be and is hereby made a school corporation for school purposes, separate and distinct from any civil corporation."

From the foregoing authorities, it is apparent that consolidated schools are not departments or divisions of the municipality within the purview of paragraph 3 of Gross Income Tax Instruction 8-21.
OFFICIAL OPINION NO. 46

July 11, 1962

Hon. William E. Wilson
State Superintendent
Department of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter of June 29, 1962, has been received requesting an Official Opinion on the following question:

"May school busses be used to transport 4-H Club members and leaders to meetings and events which are educational in nature and which are approved by local school administrators?"

School bus contracts are let by competitive bid under the provisions of Acts 1945, Ch. 210, as amended, as found in Burns’ (1948 Repl., 1962 Supp.), Section 28-3930 et seq., or Acts 1957, Ch. 150, as amended, as found in Burns’ (1962 Supp.), Section 28-3938 et seq. Such school bus contracts constitute the school bus driver an independent contractor.


Ordinarily such contracts are only given for a specific route and specified services. They may be altered or extended with a pro rata increase in cost for any additional miles of travel thereby occasioned. The school bus driver is required to furnish insurance covering the operation of said bus in an amount satisfactory to the school officials. Under other statutes consideration is extended them as to the cost of the purchase of their license plates and numerous requirements are made by