Mr. Richard L. Worley, Chairman
State Board of Tax Commissioners
201 State Office Building
Indianapolis 4, Indiana

Dear Mr. Worley:

This is in response to your request for my Official Opinion in answer to the problem presented by your letter which reads as follows:

"Pursuant to the provisions of Section 5, Chapter 247, Acts of 1949, as last amended by Section 1, Chapter 284, Acts of 1961, Burns Indiana Statutes, 1961 Pocket Supplement, Section 28-1025, a ratio study is required to be made by the State Board of Tax Commissioners once in each four (4) year period, which ratio study is used in the distribution of state funds under the foundation program for local school corporations. The last ratio study was made in the year 1959, which means that the next ratio study will not be made until the year 1963.

"As you are aware, the General Assembly in 1959 enacted Chapter 316 requiring the reassessment of all real estate in the state, and Chapter 267 requiring the adoption of rules and regulations to govern the assessment of personal property, both of which were to become effective with assessments for the year 1962 for taxes payable in 1963. The contents of these two laws were then embodied in the 1961 Assessment Act, the same being Chapter 319 of the Acts of 1961, and by the terms of the latter Act it is now required that all real estate and personal property in the State of Indiana be assessed at the same ratio of 33⅓% of the true cash value of the property.

"In view of the provisions of the 1961 Assessment Act requiring the assessment of all real estate and personal property at 33⅓% of true cash value, effective with assessments for the year 1962 for taxes payable
in 1963, your official opinion is requested on the following questions:

"(1) Should the assessment ratio and the adjusted valuation factor determined by the State Board of Tax Commissioners in 1959 continue in effect and be applied to the distribution of state funds for the school year 1962-63, in view of the provisions of Chapter 319, Acts of 1961?

"(2) Would your answer to Question No. 1 also be applicable to the maximum tax levies which may be levied by a school corporation under Section 1, Chapter 386, Acts of 1959, Burns 1961 Pocket Supplement, Section 28-1106?"

In order to determine the answer to each of your questions, it is important that the law and facts regarding the assessment of real and personal property for taxation be stated and considered as of the time that the Acts of 1949, Ch. 247 was enacted. In addition to said act, the same session of the Legislature had enacted the Acts of 1949, Ch. 225 (repealed by Acts of 1959, Ch. 316, Sec. 12), which required a state-wide reassessment of all of the real estate within the State of Indiana to be made, effective as of March 1, 1950, on which to base taxes for the year 1950, payable in the year 1951, and thereafter. Section 5 of the Acts of 1949, Ch. 225, as found in Burns’ (1951 Repl.), Annotation following Section 64-1019, provided as follows:

"The reassessments shall be based upon a consideration of all the elements provided for in section 3 hereof, but the rate of assessment on lands shall not exceed thirty-three and one-third per cent of the market or sale value as of March 1, 1949, and the rate of assessment on improvements shall not exceed thirty-three and one-third per cent of the average reproduction cost of improvements based on construction costs as of March 1, 1949.

"The taxing officials of any county may adopt such lower rates of assessment as they shall deem just and proper for such county, subject, however, to equalization by the state board of tax commissioners in the
event a state property tax is levied and collected. Before any such lower rate is adopted, the county assessor shall call and hold a meeting of the county board of review and all township assessors and such lower rate shall be approved by a majority thereof. The county assessor shall keep a copy of the minutes of such meeting on file in his office and furnish a copy of the same to the state board of tax commissioners, county board of review, county auditor and each township assessor.

"If the reassessment to be made under this act should reduce the total assessed value of all property in any county below the total assessment of all such property in any county for the year 1948, then the taxing officials of any such county may adopt a higher rate of assessment above the maximum assessment rate fixed in this act as they shall deem just and proper for any such county, provided such higher rate of assessment established shall not result in a total assessment on all such property in excess of the total assessment for the year 1948, exclusive of the assessments on omitted property or on property not assessed in 1948. Any assessment so established shall be subject to equalization in the event a state property tax is levied and collected. Before any such higher rate is adopted, the county assessor shall call and hold a meeting of the county board of review and all township assessors and such higher rate shall be approved by a majority thereof. The county assessor shall keep a copy of the minutes of such meeting on file in his office and furnish a copy of the same to the state board of tax commissioners, county board of review, county auditor and each township assessor." (Our emphasis)

It is important to note that Section 5 of the Acts of 1949, Ch. 225, supra, imposed a "ceiling" upon the assessment of lands at not to exceed thirty-three and one-third per cent of the market or sale value as of March 1, 1949, and on improvements at not to exceed thirty-three and one-third per cent of the average reproduction cost of improvements based on construction costs as of March 1, 1949. However, reference to the second grammatical paragraph of Section 5, supra, discloses.
that under the circumstances therein provided, the taxing officials of any county could adopt a rate of assessment lower than thirty-three and one-third per cent. Also, by reference to the third grammatical paragraph of Section 5, supra, the circumstances were provided under which the reassessment could be made and property assessed in excess of thirty-three and one-third per cent, but not in excess of the total assessment for the year 1948 for the particular county involved. Thus, the statute recognized that the state-wide rate of assessment provided by the 1949 Act could vary, and, in fact, authorized a variance so that such rate was not, necessarily, to be thirty-three and one-third per cent of the market or sale value of such real estate and improvements as of the date of assessment. Not only did that law authorize such a fluctuation in the rate of assessment, but I am reliably informed that studies made of the taxation picture in Indiana for years subsequent to 1950 disclosed that the rate of assessment in all of the counties in Indiana varied considerably.

Although the Acts of 1949, Ch. 225, supra, referred only to the reassessment of real estate, the then current statute regarding the rate of assessment of personal property was the Acts of 1919, Ch. 59, Sec. 3, as amended, as found in Burns' (1951 Repl.), Section 64-103. Under this statute, personal property was to "be assessed and valued for taxation purposes, at a rate which is uniform and equal and on a just valuation basis and at the true cash value as determined by the cost price, book value, the earning capacity of such property, replacement cost, depreciation, if any, and all other facts and circumstances which may give any information concerning such valuation, as of the first day of March in each year * * *." Even though this section of the former tax law theoretically provided for a uniform rate of assessment of all personal property, in that such was to be assessed "at the true cash value," nevertheless, I am reliably informed that studies on a state-wide basis disclosed that substantially similar personal property was valued for assessment purposes at differing rates in different counties, and also that different classes of personal property were assessed at rates differing from the rate used in the assessment of other classes of personal property within the same county.
Therefore, the situation existing as of the time of the enactment of the Acts of 1949, Ch. 247, supra, was one of lack of uniformity of the rate of assessment on a state-wide basis, even though a uniform rate of assessment may have been maintained on a county basis by the county board of review in each county. This explains the purpose and function of the Acts of 1949, Ch. 247, supra, with respect to the distribution of state funds for local school purposes. That act clearly acknowledged the lack of uniformity of the rate of assessment on a state-wide basis, and, so that state funds would be distributed fairly to local school units, set forth the requirements in Section 5 of the Acts of 1949, Ch. 247, as amended, as found in Burns' (1962 Supp.), Section 28-1025, which reads as follows:

"In computing the amount of money to be derived from the minimum foundation tuition, special, and transportation tax rates provided herein to be levied by each local school corporation, there shall be applied to the assessed valuation of such school corporation an adjustment percentage factor which shall be computed for each county by the state board of tax commissioners in a manner as follows:

"A. The ratio of the assessed valuation to the sales price of real estate sold in each county and also for the state at large shall be computed.

"B. The statewide ratio shall then be divided by the ratio for each county and an assessment ratio factor for each county thus be determined.

"C. The assessed valuation of each school corporation shall then be multiplied by the assessment ratio factor and the resulting figure shall be used as the adjusted assessed valuation for the purpose of computing state distribution of funds under this act [§§28-1021—28-1028] and the actual rate to be applied to the actual assessed valuation in order to provide the amount of the levy.

"The formula for computations provided in this section is as follows: Statewide assessment ratio divided by a county assessment ratio, multiplied by school corporation assessed valuation, equals adjusted school cor-
poration assessed valuation to be used as basis for computing local effort in supporting minimum foundation program of education. Variations of less than one percent [1%] from the statewide ratio shall not be recognized.

"The state board of tax commissioners at least once in each four [4] year period beginning with 1947 and more often as deemed desirable by said board shall investigate the ratio of assessed valuation to sales price in the various school corporations of the state and shall establish new assessment ratios for the same.

"Whenever the state board of tax commissioners has tentatively established an assessment ratio for any county the state board of tax commissioners on or before the third Tuesday of June shall provide to the county auditor a copy of the data used in arriving at the factor. This data shall consist of the following: description of properties, including acreage and/or number of lots, date of recording, grantor, grantee, volume and page in county record of deeds, consideration, and assessed valuation.

"The county auditor shall verify or cause to be verified the accuracy of the recorded data and shall also verify the total considerations and the total assessed valuations. Within thirty [30] days the county auditor shall notify the state board of tax commissioners that he has examined the data and verified its accuracy and shall also inform them of any transfers which local information indicates are entirely out of line with actual worth of the property.

"The state department of education shall compute the amounts of money to be distributed to each city and town school corporation, to each metropolitan corporation, to each joint and consolidated city and town school corporation, to each county school corporation, and to township school corporations in counties where such townships have not consolidated into a county school corporation."

The intended effect of Section 5, supra, was that by the ratio studies therein provided, and the determination of the “adjust-
ment percentage factor" applied to the assessed valuation of each local school corporation, the product of such assessed valuation, multiplied by such factor, would result in an "adjusted assessed valuation," which would be upon a uniform basis throughout the entire state. Thus, the purpose of the Acts of 1949, Ch. 247, supra, and particularly Section 5 thereof, was to equalize the rate of assessment of property statewide for the purpose of distributing state funds under the minimum foundation program for local school purposes. The Acts of 1949, Ch. 247, Sec. 1, as found in Burns' (1962 Supp.), Section 28-1021, provides, in part, as follows:

"It shall be the purpose of this act [§§ 28-1021—28-1028], in accordance with the constitution of Indiana, to promote the best interests of all the children of this state by distributing to local school corporations certain amounts of money to aid in financing a program of education to be known as the minimum foundation program of education. It shall be the established policy of the state of Indiana to assist local school corporations in making it possible for every child within such local school corporations to have access to such minimum foundation program."

Thereafter, Sections 2, 3 and 4, as found in Burns' (1962 Supp.), Sections 28-1022, 28-1023 and 28-1024, all contain the identical language—"Subject to the provisions of sections 5 [§28-1025] and 6½ [§28-1027] hereof, whenever any local school corporation shall levy a * * * tax levy and rate equivalent to * * * cents on each one hundred dollars [$100] of adjusted assessed valuation, then to such levy there shall be added from * * *." (Our emphasis) Thus, the addition from state funds, provided by Burns' 28-1022, 28-1023 and 28-1024, supra, is, in each instance, dependent upon the local school corporation levying a certain kind of a local property tax and rate equivalent to a certain amount on each one hundred dollars "of adjusted assessed valuation." It is clear that this adjusted assessed valuation, computed by means of the adjustment percentage factor, was for the purpose of requiring the particular local school corporation to levy a minimum local tax proportionately equal to that imposed by other local school corporations throughout the entire state. The receipt by local school corporations of state aid is made dependent upon such
corporations' qualifying for the same by contributing certain minimum amounts to the costs of education. In order that the contribution by the local school corporation, required to qualify it for such state aid, is fairly determined, it is necessary that the tax rate levied by it be equivalent to the minimum cents on each one hundred dollars applied to the assessed valuation of property in the local school corporation computed by means of a uniform standard. Thus, the adjustment of the assessed valuation of each school corporation, by application of the adjustment percentage factor, is the means of determining a tax base, uniform in proportion to the sales price of real estate throughout the state. The minimum levy required by statute, imposed upon such an adjusted base, assures a minimum "local effort" computed by use of uniform standards based upon the same proportion of actual value of the property of each school corporation. This, then, is the function of the adjustment percentage factor—so that the minimum tax levied by the local school corporation will be imposed upon a base determined by the application of uniform standards of evaluation.

As your letter states, the "Property Assessment Act of 1961," Acts of 1961, Ch. 319, as found in Burns' (1961 Repl.), Section 64-301 et seq., embodies the provisions of former statutes requiring a state-wide reassessment of all real estate in the State of Indiana to be effective as of March 1, 1962, upon which 1962 taxes, payable in 1963, are to be computed. Section 202 of that Act, as found in Burns' (1961 Repl.), Section 64-402, provides as follows:

"Except as otherwise provided by law, all tangible property of every kind and nature, both real and personal and wherever situated, owned or possessed, shall be valued on a just valuation basis and at a uniform and equal assessed valuation as defined by this act, as of the assessment date in each year in which it is subject to assessment and valuation." (Our emphasis)

Section 109 of that Act, as found in Burns' (1961 Repl.), Section 64-309, defines "assessed valuation" as follows:

"When used in this act, the terms 'assessed value' or 'assessed valuation' mean an amount equal to thirty-three and one-third per cent [\(33\frac{1}{3}\%\)] of the true cash value of property."
From the above-quoted two sections of the "Property Assessment Act of 1961," it is noticeable that it applies to both real and personal property, and that the assessment required of each class of property is to be, theoretically, in an amount "equal to thirty-three and one-third per cent [33\(\frac{1}{3}\)\%] of the true cash value of property." This standard of thirty-three and one-third per cent is not stated to be a "ceiling," as in the Acts of 1949, Ch. 225, supra—rather, in the technical sense, the assessment is to be precisely thirty-three and one-third per cent of the true cash value. Of course, this is a goal which will be difficult, if not impossible, to attain with precision. Yet, the answer to your basic question lies in the success of township assessors, county assessors, county boards of review and the State Board of Tax Commissioners in attaining this goal of precise equality in the evaluating of all tangible property for taxation purposes at exactly thirty-three and one-third per cent of the true cash value.

I must note that, although the act seems to require such a standard, there are sections comparable to the Acts of 1949, Ch. 225, supra, whereby, under certain circumstances, the rate of assessment may be either less than or greater than that provided by Burns' 64-309, supra. See: Acts of 1961, Ch. 319, Secs. 908 and 909, as found in Burns' (1961 Repl.), Sections 64-808 and 64-809.

If the reassessment of real estate on a state-wide basis, pursuant to the Acts of 1961, Ch. 319, supra, results in uniformity of evaluation at the rate of thirty-three and one-third per cent of true cash value, and if the assessment of personal property, state-wide, results likewise in such uniformity, then to apply the existing adjustment percentage factor which was computed as the result of ratio studies made in 1959, would result, not in equalizing the tax base upon which such school levies are to be imposed, but in making such tax bases unequal. This clearly was not the purpose of the Acts of 1949, Ch. 247, supra; rather, the requirement of computing an adjustment percentage factor by that act was for the purpose of equalizing the base upon which the school levy was to be imposed. Thus, if the current reassessment program is successful in maintaining assessed valuations at thirty-three and one-third per cent of true cash value, and if an assessment ratio study were made subsequent to such a successful reassessment of
real estate, the formula provided by the Acts of 1949, Ch. 247, Sec. 5 would result in an adjustment percentage factor of "one," since the theory of the present reassessment is for the same rate of assessment to apply, not only throughout each county, but throughout each county in the state; and this is to apply also, not only with respect to the assessment of real estate (upon which the adjustment percentage factor is based, Burns' 28-1025, supra), but also to the assessment of personal property. It is crystal clear that the Legislature did not intend, by the application of two separate statutes for the equalizing of assessed valuations on a state-wide basis, that a result be obtained contrary to such intention by the determination of adjusted assessed valuations which would obviously not be uniform throughout the state. The purpose of adjusting the assessed valuation in the first instance, under the Acts of 1949, Ch. 247, supra, is to acquire uniformity, not to adjust the same to acquire nonuniformity.

The Acts of 1961, Ch. 284, Sec. 1 (Burns' 28-1025, supra) which is the last amendment of Section 5 of the Acts of 1949, Ch. 247, supra, was approved March 10, 1961. The Acts of 1961, Ch. 319, supra, was approved the same date. However, although Ch. 284, supra, was filed with the Secretary of State on March 10, 1961 at 2:30 o'clock P. M., Ch. 319, supra, was not released by the Office of the Governor and filed with the Secretary of State until March 11, 1961 at 1:15 o'clock, P. M.

With respect to acts which are approved on the same day, Sutherland Statutory Construction, 3rd Ed., Vol. 1, Sec. 1609, p. 275, states the following:

"Two acts that are approved on the same day in the absence of evidence or proof to the contrary take effect at the same time. The presumption is that they were approved in numerical order, but the court will try to ascertain the facts as to the actual order of approval.

"Because the courts do not favor implied repeal, two acts on the same subject taking effect on the same day will be harmonized and construed as one act if at all possible. When two statutes on the same subject passed on the same day are absolutely repugnant, the one passed later will prevail. In the absence of evidence as
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to which act is the latest, the statute that is the clearest expression of the legislative intent will prevail.”

See also: 1957 O. A. G., page 63, No. 15.

Comparing Ch. 284, supra, with Ch. 319, supra, of the Acts of 1961, discloses that, while Ch. 284 was designed for the purpose of equalizing the assessed valuation of the property within school corporations, and Ch. 319 was designed for the purpose of equalizing assessed valuations on a state-wide basis, the requirement of Ch. 284, supra, of applying a 1959 adjustment percentage factor to the assessed valuations as of March 1, 1962, can only result in defeating the very purpose of that act, if assessed valuations as of March 1, 1962 are equalized pursuant to the assessing procedures required by Ch. 319, supra. Thus, these two acts cannot be harmonized without nullifying some of the provisions of Ch. 284, unless we are to construe Ch. 284 as having been superseded to the extent of such inconsistency.

In addition to Sec. 2011 of Ch. 319, which is a section of that act expressly repealing many previous statutes but not expressly repealing Ch. 284, supra, Sec. 2010 of Ch. 319 is a section of general repeal of acts and parts of acts now in effect which may be inconsistent with the provisions of said act, and provides as follows:

“All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby repealed and superseded to the extent of such inconsistency and so far as necessary to conform to and to give full force and effect to the provisions of this act.”

Based upon Sec. 2010, supra, it seems that the intent of the Legislature was to supersede any part or all of Ch. 284, supra, which may prove to be inconsistent with the provisions of Ch. 319, supra. As your letter states, the last ratio study, pursuant to the Acts of 1949, Ch. 247, supra, was made in the year 1959 and resulted in an adjustment percentage factor having been determined in that year. It is, of course, not feasible, between now and the time of the adoption of next year’s budgets for school corporations, for your board to conduct a comprehensive ratio study to determine what adjustment percentage factor should be applied to the assessed valuations in effect as
of March 1, 1962, many of which are not finally determined as of this date. It would be a virtual impossibility to conduct a ratio study, as required by Ch. 284, supra, in the same year in which the assessed value of real estate is being determined upon a state-wide basis,—at least in time for the results of some such ratio study to be used by local school corporations in that year. It is equally clear that the application of the adjustment percentage factor, computed in 1959, to the supposedly uniform and equal assessed valuations determined as of March 1, 1962, could only result in “adjusted assessed valuations” which would not be uniform and equal, and, therefore, would violate the obvious intent of Ch. 284, supra.

Therefore, for answer to your first question, it is my opinion that if the present state-wide reassessment is conducted as intended by Ch. 319, supra, the adjustment percentage factor will, theoretically, be “one,” so that there would be no difference between the actual assessed valuation and the adjusted assessed valuation. Therefore, such adjustment percentage factor, as determined in 1959, should not be continued in effect and applied in determining the eligibility of a school corporation for distribution of state funds for the school year 1962-1963, in view of the provisions of Ch. 319, Acts of 1961, supra. However, since repeals by implication are not favored in the law, it is my further opinion that such a ratio study is required to be made in 1963, and that if it shows a lack of uniformity and equality of assessed valuation, that from such ratio study an adjustment percentage factor should be determined in 1963 so as to comply with the intent of Ch. 284, supra. Theoretically, if the present reassessment program is conducted as the Legislature intended, the effect of such ratio study would result in the determination of an adjustment percentage factor of “one.”

For answer to your second question, the Acts of 1959, Ch. 386, Sec. 1 (to which you refer), as found in Burns’ (1962 Supp.), Section 28-1106, provides as follows:

“The tax levying bodies of [or] officials of any school township, district, town or city shall have the right to levy a tax not to exceed two dollars and fifty cents [$2.50] on each one hundred dollars [$100] of taxable property based on the adjusted assessed valuation for
the special school revenue fund of any such school township, district, town or city in addition to any other tax for said fund now provided by law; and they also shall have the right to levy a tax not to exceed two dollars and fifty cents [$2.50] on each one hundred dollars [$100] of taxable property based on the adjusted assessed valuation, for the supplementary tuition fund of any such school township, district, town or city in addition to any other tax for said fund now provided by law: Provided, however, That in no case shall the total levy for the special school fund and supplementary tuition fund, exceed the sum of four dollars and twenty-five cents [$4.25] on each one hundred dollars [$100] worth of taxable property based on the adjusted assessed valuation: Provided further, That nothing in this act shall be deemed to prevent said tax levying bodies or officials from levying any other tax provided for in chapter 126 of the Acts of 1917 [§28-1101] or chapter 45 of the Acts of 1919 [§28-1104].” (Our emphasis)

This section is an amendment of the Acts of 1945, Ch. 39, Sec. 1, as amended, and a prior amendment was made thereto in 1957, Acts of 1957, Ch. 345, Sec. 1, inserting the words “based on the adjusted assessed valuation” following the words “one hundred dollars of taxable property.” It is apparent that the Legislature, by the 1957 amendment, had in mind the same purpose as in the Acts of 1949, Ch. 247, as amended, supra, of basing the maximum total levy for the special school fund and supplementary tuition fund upon an assessed valuation which should be computed by use of the same standards throughout the state, and, for that reason, made such total levy for such funds to be dependent upon adjusted assessed valuation. Therefore, for the same reasons on which the answer to question No. 1 is based, it is my opinion that the answer to question No. 1 is also applicable to the maximum tax levies which may be levied pursuant to the Acts of 1959, Ch. 386, Sec. 1, supra, so that levies for the year 1962, payable in 1963 pursuant to that act, should be based upon the assessed valuation of property as determined by the Acts of 1961, Ch. 319, supra, until such time as such assessed valuations are shown not to be uniform and equal throughout the state.