any one [1] school year the teacher shall be absent for such illness or quarantine less than the prescribed number of days, the remaining days shall be accumulative to a total of ninety [90] days. Accumulative days accrued to the teacher as of the effective date of this act shall be credited to the teacher * * *”

In my 1962 Official Opinion, page 7, No. 3, you were advised the sick leave provisions of said statute are a minimum requirement and that additional sick leave, both as to number of days per year or total accumulative days, may be authorized by proper official action of the school corporation, which action must be consistent with the salary schedule adopted by the school board.

By the same reasoning, I am of the opinion three days’ absence per year for reasons other than illness could be provided in the salary schedule adopted by a school board as a matter of administrative discretion to be reasonably exercised governing conditions of employment. If a school corporation has already increased the allowable number of days of sick leave beyond the statutory minimum, I think it would be permissible for the board to remove the restriction on use of some of these additional days of sick leave so as to permit absence to be granted without loss of compensation for reasons other than illness or quarantine. However, the minimum number of sick leave days required by the statute could not be decreased by any rule permitting leave of absence for purposes other than sickness.

OFFICIAL OPINION NO. 17

March 8, 1962

Mr. T. Michael Smith, Administrator
Inheritance Tax Division
Indiana Department of State Revenue
100 North Senate Avenue
Indianapolis, Indiana

Dear Mr. Smith:

This is in reply to your request for an Official Opinion on the following questions:
1. "Will you please advise me by way of an Official Opinion as to whether by section 7-2413, paragraph 2, Burns Indiana Statutes, 1953 Replacement, * * * is meant that after the expiration of eighteen months, interest is to accrue at the rate of 10 per cent per annum from the date of death until the tax is paid; provided, however, the Court in the case of a resident decedent may under certain conditions by reason of which the Court cannot within the eighteen months determine the tax, reduce the interest from 10 per cent to 6 per cent; provided further that once the Court has so reduced the interest and the conditions which had theretofore prevented the Court from so determining the tax no longer exist, the interest again begins to accrue at the rate of 10 per cent per annum until the tax has been paid.

2. "I would also appreciate your advising me whether when tax and interest are both due and a partial payment is made, is such payment applied first against the interest and then the tax, or is it applied first against the tax and then the interest, or is it applied against the tax and the amount of interest due on that portion of the tax which is paid.

3. "I would further appreciate your advising me whether under section 7-2413, paragraph 1, Burns Indiana Statutes, 1953 Replacement, as interpreted by 1937 Ops-Att’y. Gen. 134 and 1955 Ops-Att’y. Gen. No. 24, page 91, it is the responsibility of the County Treasurer to compute such interest."

Acts of 1931, Ch. 75, Sec. 13, as found in Burns’ (1953 Repl.), Section 7-2413, provides as follows:

"The tax in every resident decedent’s estate shall be paid to the treasurer of the county in which the court is situated; and said treasurer shall issue receipt in duplicate. One copy thereof he shall immediately forward to the state board of tax commissioners, who shall charge the treasurer so receiving the tax with the amount thereof, and seal and countersign said receipt and return to said person paying such tax. No executor,
administrator, or trustee, shall be entitled to a final accounting of an estate, nor be discharged from liability for the amount of such tax, unless a receipt so sealed and countersigned by the state board of tax commissioners shall be attached to his final report.

"If such tax is paid in estates of resident or nonresident decedents within one [1] year from the accrual thereof, a discount of five [5] per cent shall be allowed and deducted therefrom. If such tax is not paid within eighteen [18] months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten [10] per cent per annum from the time the tax accrued, unless by reason of necessary litigation or other unavoidable cause of delay, such tax cannot be determined, in which event the court in estates of resident decedents, and the state board of tax commissioners in estates of nonresident decedents, may reduce the interest to six [6] per cent per annum, which shall be charged upon such tax, from accrual thereof until the cause of such delay is removed after which ten [10] per cent per annum shall be charged." (Our emphasis)

The provision found in the Indiana Inheritance Tax Law, as set out and emphasized above, in which it is specified that the higher rate of interest shall be charged after the cause for delay is removed, is comparable to provisions found in the inheritance tax statutes of several jurisdictions. The states of Michigan, New Jersey, Oregon and Ohio have like provisions, to name a few. The statutes of the various states in this regard seem to be so clear that very little litigation has arisen in connection therewith.

Oregon Revised Statutes, Vol. 1, Title 12, Ch. 118, Sec. 118.260, provides, in part, as follows:

"* * * If the tax is not paid within eight months from the accruing thereof, interest shall be charged and collected thereon at the rate of eight per cent per year from the time when the tax became due and payable, unless by reason of claims upon the estate, necessary litigation or other unavoidable delay, such tax could not be determined and paid * * *, in which case inter-
est at the rate of six per cent per year shall be charged upon such tax from the time when the tax became due and payable, until the cause of such delay is removed, after which eight per cent shall be charged.” (Our emphasis)

This provision is similar to the one found in the Indiana Inheritance Tax Law.

The Oregon Court had occasion to comment on the above provision in In re Perkins' Estate, Kay, State Treasurer v. Meyers (1925), 115 Ore. 178, 186, 236 Pac. 1064, wherein the court said:

“As stated, the decedent died September 9, 1923. The liability to inheritance tax attached at that time. By virtue of the statute it became due in eight months thereafter, namely, May 9, 1924. Under ordinary circumstances interest would begin to run at that date at the rate of 8 per cent per annum; but it is averred and in fact conceded that extensive litigation was planned and was pending against the estate which might have entirely consumed it. Hence, though the estate was liable for the inheritance tax, the amount could not be computed until the claims and litigation were settled, which occurred October 27, 1924. Until that date, however, under the statute mentioned, the rate was properly charged at 6 per cent and thenceforward at 8 per cent.”

There seems to be some authority for a court to reduce interest on the condition that the tax and interest be paid within a stipulated time after the entry of the order, which time is usually ten days. This practice has been followed in New York.

Estate of A. A. Brandt, Surr. Ct., Bronx Co., N. Y. L. J., July 20, 1940;

Estate of C. Stollberg, Surr. Ct., N. Y. Co., N. Y. L. J., May 9, 1940;

However, there is no provision in the Indiana Inheritance Tax Law authorizing the court to reduce interest on condition that the tax and interest be paid within a certain time.

It would, therefore, seem that the language of Burns' 7-2413, supra, being Section 13 of the Indiana Inheritance Tax Law, is clear in this regard and is not subject to doubt as to its meaning.

In Indiana, as in many other jurisdictions, the law seems well settled that when a partial payment is made, where both principal and interest are due, the partial payment is first applied to the interest and the balance thereof, if any, to the principal. This question was first settled in the case of Harvey v. Crawford (1827), 2 Blackford 43, and has been followed in Indiana without exception ever since. In Wasson v. Gould (1832), 3 Blackford 18, the court, in its holding, quoted Chancellor Kent as follows:

"* * * 'The rule for casting interest, where partial payments have been made, is to apply the payment, in the first place, to the discharge of the interest then due. If the payment exceeds the interest, the surplus goes towards discharging the principal, and the subsequent interest is to be computed on the balance of principal remaining due. If the payment be less than the interest, the surplus of interest must not be taken to augment the principal; but interest continues on the former principal until the period when the payments, taken together, exceed the interest due, and then the surplus is to be applied towards discharging the principal; and interest is to be computed on the balance of principal as aforesaid.' * * *"

The holding in the Wasson case, supra, has been consistently followed and cited with approval in all subsequent cases dealing with this problem.

Markel's, Admr. v. Spitler's, Admr. (1867), 28 Ind. 488;
McCormick et al. v. Mitchell (1877), 57 Ind. 248;
The most recent inheritance tax case in which this question was involved is Darr v. Kervick (1960), 31 N. J. 476, 158 A. 2d 42, wherein the court held as follows:

"Appellants’ argument that their second payment on account was not properly applied is without merit. The general rule is that payments on account should be applied to the satisfaction of interest due and only then to the principal, if any of the payment be available. 47 C. J. S. Interest § 66. And in these circumstances the matter is not one for determination of the debtor. Cf. State v. Erie Railroad Co., 23 N. J. Misc. 203, 215 (Sup. Ct. 1945)."

The Circuit Court of Appeals for the Second Circuit, in Ohio Savings Bank & Trust Company v. Willys Corporation (1925), 8 F. 2d 463, 467, cited Jacobs v. Ballenger, supra, with approval, along with a long list of other cases from many jurisdictions in accord therewith. It would, therefore, appear that the law is well settled in regard to the application of partial payments against principal and interest.

The provisions of Burns’ 7-2413, supra, of the Indiana Inheritance Tax Law would seem to make the county treasurers the collectors of the Indiana inheritance tax, in light of the language contained therein, as follows:

"The tax in every resident decedent’s estate shall be paid to the treasurer of the county in which the court is situated; * * *"

This conclusion is further substantiated by the language of Section 15 of the Indiana Inheritance Tax Law, Burns’ (1953 Repl.), Section 7-2415, wherein it is made incumbent upon the treasurer to notify the prosecuting attorney in those cases where the treasurer has reason to believe that any inheritance tax is due and unpaid in estates of resident decedents. After directing that the tax shall be paid to the county treasurer, Burns’ 7-2413, supra, further provides that interest shall be charged and collected at a certain rate unless, by reason of necessary litigation or other unavoidable delay, the tax cannot be determined, in which case it is made the exclusive prerogative of the court to determine whether the interest shall be reduced to a lesser rate. From a careful reading of the statute
it would, therefore, appear that the court fixes or determines the rate of interest to be charged, but the treasurer computes the amount of interest to be charged, based upon such rate.

In view of the above and foregoing it is my opinion that your questions should be answered as follows:

1. After the Order Determining Value of Estate and Amount of Tax has been entered, interest should be charged on any unpaid inheritance tax at the rate of 10 per cent per annum, provided eighteen months have elapsed from date of decedent's death.

2. When both inheritance tax and interest thereon are due, any partial payment made must be applied first to the satisfaction of interest before any part of such payment is applied to principal.

3. It is the duty of the county treasurer to compute the interest due on the tax.

OFFICIAL OPINION NO. 18

March 9, 1962

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in answer to your request for an Official Opinion concerning a contract between a county and a consulting engineering firm in connection with highway improvement.

Your questions are stated as follows:

"1. Would the specific instance, namely a contract at 8 per cent under date of 2-11-60 be superseded by the contract at 5 per cent dated 2-23-60?"

"2. Can there be two valid contracts covering the same subject matter at different rates of compensation?"