first of the following year; thus there was no emergency clause and the county council had adequate opportunity to appropriate the funds necessary to meet the new salaries occasioned by the act. This would be true for each and every year after the passage of the act, for the amount of payment is based upon the classification of the unit of government, and this classification may change from year to year. If the classification certification, made on or before July first of each year by the State Board of Accounts, causes any change in the salary due to a classification change, the county council has the opportunity to provide for this change in their September meeting. Thus, the effective date of salary payments under Acts of 1957, Ch. 319, was intended to be, always, until changed by the Legislature, the first day of January of each year following the required July certification by the State Board of Accounts. There is no indication that this situation was changed, or intended to be changed, by Acts of 1961, Ch. 166.

Therefore, it is my opinion that the effective date of Acts of 1961, Ch. 166, insofar as any increase in salary occasioned thereby, is January 1, 1962, even though the amendment became law on July 6, 1961 by operation of the Indiana Constitution, Art. 4, Sec. 28, *supra.* Any other conclusion would necessitate emergency appropriations by the counties, in some instances, in order to meet salary increases. The Legislature did not contemplate this at the time Acts of 1961, Ch. 166, was enacted.

OFFICIAL OPINION NO. 43

September 8, 1961

Honorable Dorothy Gardner
Auditor of State
State House
Indianapolis, Indiana

Dear Mrs. Gardner:

This is in response to your request for an Official Opinion concerning the question of your authority to make distribu-

tion of state funds to Vincennes University, which you have stated as follows:

> "Will you please give me an official opinion on the distribution of State funds to Vincennes University on the levy of five cents established in the year 1960 for the year 1961 as public aid to Vincennes University. This five cents had been allowed at a previous session of the Legislature and then was incorporated in an additional four cents to be effective under an emergency clause as of March 6, 1961."

The 1961 legislation to which you have reference is the Acts of 1961, Ch. 105, as found in Burns' (1961 Supp.), Section 25-3429 *et seq.* Before proceeding to an examination and interpretation of that statute, so as to fully understand the purpose of such enactment, it is necessary to relate the former statutory provisions and history which have given rise to your problem.

The Acts of 1931, Ch. 175 was an act whose title read:

> "An act authorizing the county councils of certain counties, on petition, to levy a tax to afford public aid to universities located in such counties."

This act was approved on March 13, 1931 and came into full force and effect on June 30, 1931. Section 1 of that Act, as found in Burns' (1960 Repl.), Section 25-3401, provided as follows:

> "25-3401. *Counties of 36,000 to 46,000—Appropriation by county council—Vincennes University.*—The county council of any county of this state, having a population of not less than thirty-six thousand [36,000] and not more than forty-six thousand [46,000], according to the last preceding United States census, and in which there is located a university holding a perpetual charter granted by the legislature of Indiana territory, which is nonsectarian, and which affords educational opportunities to all of the people of such county, may grant *public aid* to such university in the manner and subject to the requirements of this act. [Acts 1931, ch. 175, § 1, p. 627.]" (Our emphasis)

The only county includible within the classification designated by Sec. 1, *supra,* and having such a university is Knox County, and the university to which the act applies is Vincennes University. The 1931 statute specifies the procedure by which the county council was authorized to levy a tax on all of the taxable property of such county, both real and personal,

> "* * * *not exceeding five cents* [5¢] on each one hundred dollars [$100] worth of taxable property located in such county, to be used *as public aid* for any university located in such county, and contemplated in section 1 [§ 25-3401] of this act, * * *." (Our emphasis)
>
> [Acts of 1931, Ch. 175, Sec. 2, Burns' (1960 Repl.), Section 25-3402.]

It is pursuant to this act that the County Council of Knox County for many years has levied a tax at the maximum allowable rate of five cents on each one hundred dollars' worth of taxable real and personal property "as public aid" for Vincennes University, the proceeds of which were, by statute, paid into the county treasury into a separate fund and thereafter paid to the proper fiduciary officer of that university on warrant of the county auditor.

Another statute peculiarly applicable to Vincennes University was the Acts of 1947, Ch. 259, the title of which was as follows:

> "An act providing for state aid for any non-sectarian university chartered by the legislature of Indiana territory and receiving public aid pursuant to law from the county in which such university is located; fixing the terms and conditions upon which such state aid shall be extended; defining the duties of the county auditor and the auditor of state with respect thereto; providing for the examination of the accounts and financial affairs of such university; and declaring an emergency."

Section 1 of that Act, by reason of the eligibility requirements provided therein, indicates again that the act was meant specifically to authorize matching state aid in support of Vin-

cennes University, said section, as found in Burns' (1960 Repl.), Section 25-3426, reading as follows:

> "25-3426. *Vincennes University—State aid authorized—Conditions.*—Whenever any county shall extend *public aid* to a non-sectarian university chartered by the legislature of Indiana territory and located therein, pursuant to a petition of freeholders thereof and an order of the county council as provided by law, such university shall also be entitled to receive state aid for its support, to the extent and in the manner prescribed in section 2 [§ 25-3427] of this act. [Acts 1947, ch. 259, §1, p. 1049.]" (Our emphasis)

Up to this point it is crystal clear that the 1947 Legislature was authorizing state aid upon the basis of the county aid authorized by Burns' 25-3401, *supra,* under which such county aid consisted of the proceeds resulting from a county tax levy of not to exceed *five* cents. The Acts of 1947, Ch. 259, Sec. 2 outlined the procedural requirements which were to be prerequisite to the right of such university to receive state aid, upon compliance with which required the auditor of state promptly to

> "* * * draw and forward to such university a warrant on the treasurer of state in the *same* amount as that shown by such certificate of said county auditor to have been paid as public aid to said university * * *." (Our emphasis)

Section 2 of the 1947 Act, *supra,* was amended by the Acts of 1955, Ch. 158, Sec. 1, as now found in Burns' (1960 Repl.), Section 25-3427, which provides as follows:

> "25-3427. *State aid, procedure—Amount and source.*—At the time the county auditor of any county referred to in section 1 [§ 25-3426] hereof makes his regular semi-annual settlement with the proper fiduciary officer of such university for the proceeds of the special tax levy that may be then due such university, such county auditor shall also forward to the auditor of state a certificate showing: (a) the total valuation of the taxable property of such county; (b) the special tax rate duly

> established by the county council for the support of such university for the current year; and (c) the aggregate amount paid on behalf of such county as public aid to such university at such semi-annual settlement. Hereafter, semi-annually, upon receipt of any such certificate the auditor of state shall promptly draw and forward to such university a warrant on the treasurer of state in *double* the amount as that shown by such certificate of said county auditor to have been paid as public aid to said university at such semi-annual settlement, which said warrant shall be charged to and paid out of the state school tuition fund. [Acts 1947, ch. 259, § 2, p. 1049; 1955, ch. 158, § 1, p. 309.]" (Our emphasis)

The only purpose of the 1955 amendment was so that the amount of state aid theretofore authorized was thereafter to be in "*double* the amount" of that shown by the certificate of the county auditor to have been paid *as public aid resulting from the five-cent tax levy,* whereas, in the 1947 statute, the state aid was to be in "the *same* amount" as that received from the five-cent levy. It is important to note at this point that the Acts of 1947, Ch. 259, *supra,* and that act, as amended by the Acts of 1955, Ch. 158, *supra,* made the amount of state aid for the support of Vincennes University to depend upon the amount paid to such university by the county auditor, and which the certificate showed "to have been paid *as public aid* to said university * * *."

For many years prior to April 6, 1957 the Board of Governors of the Good Samaritan Hospital, a county hospital of Knox County, had operated a nurses' training school in connection with said Hospital as duly authorized to be established and maintained in connection with such a county public hospital pursuant to the Acts of 1917, Ch. 144, Sec. 14, as amended, as found in Burns' (1950 Repl.), Section 22-3233, which provides as follows:

> "22-3233 [4393]. *Training school for nurses.*—The board of trustees of such county public hospital may establish and maintain, in connection therewith *and as a part of said public hospital,* a training school for nurses, the curriculum of which shall conform to the

> curriculum and requirements of the Indiana state board of nurses, as such curriculum and requirements are set forth in section 6 [Repealed] of chapter 182 of the Acts of the General Assembly of 1921, and, in connection with the said training school for nurses and as a part of said public hospital property, such board of trustees may purchase, build or otherwise acquire a suitable home for the housing of the graduate and student nurses employed in said hospital. [Acts 1917, ch. 144, § 14, p. 527; 1923, ch. 115, § 2, p. 311.]" (Our emphasis)

The power of acquisition of hospitals by a county, and the authority to levy a tax to acquire, equip and maintain such hospitals, is found in the Acts of 1903, Ch. 86, Sec. 10, as found in Burns' (1950 Repl.), Section 22-3210, which provides as follows:

> "22-3210 [4372]. *Appropriations — Tax levy.*—If any board of county commissioners in any county in this state shall provide or acquire a hospital in such county under this act, the county council of such county is hereby authorized to make appropriations from the county treasury of such county, *to levy an additional tax* upon the taxable property of such county, to issue bonds, and to do all and singular the things necessary *to raise the funds necessary to fully provide, acquire, equip and maintain such hospital.* [Acts 1903, ch. 86, § 10, p. 167.]" (Our emphasis)

Pursuant to this section and Burns' 22-3233, *supra,* the County Council of Knox County had levied a tax at the rate of four cents on each one hundred dollars' worth of taxable property solely for the maintenance and operation of that part of the Hospital which was devoted to the education of student nurses, from which student and graduate nurses the Hospital authorities drew in fulfilling the need for trained nurses. However, it is my understanding that shortly prior to April 6, 1957 the nurses' training program was about to be discontinued because it could no longer be accredited, yet the demands remained constant for trained nurses essential to the operation of that county hospital.

As a consequence of this situation, a contractual arrangement was consummated between the Board of Governors of the Good Samaritan Hospital and the Board of Trustees of Vincennes University, the substance of which was that the University would assume the training of nurses upon the discontinuance by the Hospital of its nurses' school, that the Hospital would make available to the University, without charge, the Hospital's clinical facilities for the training of the University's nursing students under the guidance and supervision of the University's clinical instructors in consideration of the Hospital *assigning* to the University the proceeds from the four-cent tax in Knox County which was then being levied *for the maintenance and operation of the nursing school by the Hospital.* Although the administration of nursing service and patient care at the Hospital remained the responsibility of the Hospital, administered through the hospital staff and under its sole control and supervision, nevertheless, under the contract Vincennes University agreed to establish a nurses' training program in accordance with standards approved by the Indiana State Board of Nurses Registration and Examination and the National League of Nursing, *such program to be under the exclusive management and control of the University.* In this sense, the situation was much the same as if the University were to have established its own college for nurses' training, except that the arrangement was contractual and not of any degree of permanency at that time, in that if the arrangement were not mutually acceptable to the administration of the Hospital, then it could be terminated by one year's notice, but not to be effective with respect to students then enrolled and participating in the program. In this latter respect, although the nurses' training program was said to be under the exclusive management and control of the University, nevertheless, under the contract, the University, in effect, was the agent of the Hospital in conducting the program for the benefit of the county and its hospital, so that technically the proceeds of the four-cent tax levy, payable by the Board of Governors of the Good Samaritan Hospital to the University, was pursuant to contract, and this levy was clearly earmarked by statute for county hospital purposes for nurses' training pursuant to the authority of the county to maintain and operate a training school for nurses in connection with its hospital, pursuant to Burns' 22-3233, *supra.* In this sense the

four-cent tax could not be construed as having been levied as and for public aid to Vincennes University; in reality, the proceeds from the four-cent tax were paid to the University as the contract price in consideration of it conducting the nurses' training program for and on behalf of the county hospital.

I am informed by reliable information that this arrangement has worked very successfully and to the complete satisfaction of both the University and the Hospital; that a sufficient supply of nurses with adequate training has been available from this source to the Hospital, and that the program has, in fact, received national commendation so that there is now no question that the nurses' training program complies with all the standards required for proper accrediting.

This was the state of affairs at the time House Bill 26 was introduced in the 92nd Regular Session of the General Assembly of Indiana which resulted in the enactment of the Acts of 1961, Ch. 105, as found in Burns' (1961 Supp.), Section 25-3429 *et seq.* That act, as taken from the 1961 Acts, provides as follows:

> "AN ACT authorizing the county council of the county of Knox to levy annually a special tax to afford public support for Vincennes University, providing for state aid for Vincennes University, fixing the terms and conditions upon which such county and state aid shall be extended, defining the duties of the county auditor and the state auditor with respect thereto, and providing for the examination of the accounts and financial affairs of this university.
>
> "WHEREAS, Vincennes University, located in the City of Vincennes, county of Knox, State of Indiana, is a junior college, a public school corporation, and a part of the educational system of the State of Indiana: Therefore
>
> *"Be it enacted by the General Assembly of the State of Indiana:*
>
> "SECTION 1. The county council of the county of Knox is hereby authorized to fix and establish annually the rate of a special tax levy to be imposed on the tax-

able property of such county, for the support of Vincennes University. This levy shall not, however, exceed in any year, nine cents on each one hundred dollars of the taxable property in said county. All revenue accruing from any tax levy so imposed shall be paid into the county treasury as a separate and distinct fund, and shall be paid to the proper fiduciary officer of the university on warrant of the county auditor.

"SEC. 2. At the time the county auditor of Knox County makes his regular semi-annual settlement with the proper fiduciary officer of Vincennes University for the proceeds of the special tax levy that may be then due the university, *as provided in section 1 of this act,* such county auditor shall also forward to the auditor of state a certificate showing: (a) the total valuation of the taxable property of such county; (b) the special tax rate duly established by the county council for the support of such university for the current year; and (c) the aggregate amount paid on behalf of such county as public aid to such university at such semi-annual settlement.

"Thereupon, and semi-annually thereafter, upon receipt of any such certificate, the auditor of state shall promptly draw and forward to such university a warrant on the treasurer of state in double the amount shown by such certificate of said county auditor to have been paid as public aid to the university at such semi-annual settlement, which warrant shall be charged to and paid out of the state school tuition fund.

"SEC. 3. The accounts and financial affairs of Vincennes University shall be subject to inspection and examination by the state examiner.

"SEC. 4. All laws and parts of laws in conflict herewith are hereby repealed and Acts 1931, Chapter 175 and the Acts 1947, Chapter 259 as well as all acts amendatory thereof or supplemental thereto are hereby specifically repealed.

"SEC. 5. Whereas an emergency exists for the more immediate taking effect of this act, the same shall be

in full force and effect from and after its passage." (Our emphasis)

The 1931 and 1947 statutes above-referred to as being specifically repealed are those heretofore discussed by which the five-cent tax as public aid by Knox County and by which state aid in double the amount of the county aid were authorized. Because of the provisions of Section 4 and Section 5 of the 1961 statute, *supra,* you are faced with two problems concerning your authority to pay state aid to Vincennes University, which are as follows:

1. Does the repeal of the Acts of 1931, Ch. 175, *supra,* by which the five-cent county levy to the University as public aid was authorized, and the repeal of the Acts of 1947, Ch. 259, as amended, *supra,* by which state aid based upon such county public aid was authorized, and the repeal of those acts as of March 6, 1961, the effective date of the Acts of 1961, Ch. 105, *supra,* prohibit the payment of any state aid in the year 1961, based upon the five-cent tax levied in 1960, the proceeds of which are payable in 1961?

2. If the answer to Question No. 1 is in the negative, do the Acts of 1961, Ch. 105, *supra,* operate retroactively to the extent that the state aid therein authorized is to be based for 1961 upon double the amount received by the University from the proceeds of the two tax levies heretofore referred to, being the combined proceeds of both the five-cent and the four-cent levies, or is state aid for 1961 to be computed at double the proceeds received from only the five-cent tax as in the past?

For answer to your first question, it is a basic rule of statutory construction that an act of the Legislature should not be construed in such a way as to result in a ludicrous situation, if such a construction can be avoided. It is regrettable that a fuller correlation of the 1961 enactment with the Acts of 1931, Ch. 175, *supra,* and the Acts of 1947, Ch. 259, as amended, *supra,* was not made a part of the 1961 statute. You are fully justified in questioning your authority to make *any* payment as state aid to Vincennes University because of the

fact that the Acts of 1947, Ch. 259, as amended, *supra,* which has been your authority heretofore for the payment of such state aid, was specifically repealed by the Acts of 1961, Ch. 105, *supra,* as of March 6, 1961, and the 1961 enactment on its face appears to be a new, separate and independent statute, seemingly *increasing* the maximum aid to the University by county levy from five cents to nine cents. Thus, arises the question as to whether there is any authority for the payment by you in 1961 of state aid based upon county taxes levied in 1960, the proceeds of which are payable in 1961. However, applying the rule of statutory construction heretofore referred to, it would be most unusual for the Legislature to have enacted this statute authorizing the county to levy a tax, not to exceed nine cents on each one hundred dollars of taxable property, to have authorized state aid in double the amount of the proceeds received from such county tax, to have enacted an emergency clause so that the act became effective on March 6, 1961, but to have entirely cut off state aid for the year 1961 which the University had been receiving ever since the enactment of the Acts of 1947, Ch. 259, *supra.* Although the language of the 1961 statute in Section 4 thereof, could, by an ultra strict interpretation, be so construed, I find nothing else which would support such a result, and I believe that it was clearly the intent of the Legislature not only to extend state aid to Vincennes University, but not to do so by depriving it of any state aid for the year 1961 and until June of 1962. Therefore, in answer to your first question, it seems that the intent of the Legislature was that some state aid should continue to be paid to the University without interruption.

For answer to your second question, again it should be stated, in fairness to you, that the situation arises because of failure to correlate the 1961 statute with the history of this problem, and, in fact, the language of Section 2 would seemingly justify the conclusion that the state aid authorized by the new statute, based upon double the amount of the proceeds received from the nine-cent levy, should apply for the first time in 1962, because it explicitly provides that the certificate of the county auditor of Knox County, upon which the state aid is to be computed, is to reflect "the proceeds of the special tax levy that may be then due the university as provided in section 1 of *this* act * * *", "section 1" clearly having refer-

ence to Sec. 1 of Ch. 105 of the Acts of 1961, *supra,* which authorizes a nine-cent tax to be levied by the county council of Knox County on and after March 6, 1961. (Our emphasis)

Because tax statutes generally operate prospectively, if this were to be considered as a new and independent statute, it would follow that it could not be applied retroactively so as to refer to taxes levied in 1960 payable in 1961. A strict construction of this act would result in the conclusion that since Section 1 of this Act provides the authority for a nine-cent rate to be levied, that this reference cannot be legally applied to an assessment prior to that levied in 1961, payable in 1962. *Furthermore, there can be no conclusion other than that the taxes levied in 1960, payable in 1961, obviously were not levied pursuant to an act which came into force and effect for the first time on March 6, 1961.*

However, it is to be noted that statutes which are classified as curative acts may sometimes, and under some circumstances, be said to be of retroactive effect. For a discussion of the nature and operation of curative acts, reference is made to Martin v. Ben Davis Conservancy District (1958), 238 Ind. 502, 153 N. E. (2d) 125 at p. 130, where it is stated:

> "[6-8] A curative act should be liberally construed. It is true it acts retrospectively, but that does not make such a curative act unconstitutional unless violating some constitutional provision such as impairing the obligation of a contract or the taking of property without due process. There is no showing in this case that there is any violation of such rights. Curative acts are often necessary to protect the public who have dealt in good faith with officers or political subdivisions. The legislature may recognize a *de facto* condition or status although it cannot authorize unconstitutional acts. The curative section does not authorize a 'new and novel court,' which was one of the constitutional defects in the Act of 1947. The legislature only offered a curative act for a *de facto* condition which this court has recognized."

Furthermore, reference is made to the discussion of curative acts in Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 2213, which defines a curative act as follows:

> "A curative act is a statute passed to cure defects in prior law, or to validate legal proceedings, instruments, or acts of public and private administrative authorities which in the absence of such an act would be void for want of conformity with existing legal requirements, but which would have been valid if the statute had so provided at the time of enacting."

Also, for a discussion of the law concerning curative acts relating to taxation, see Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 2219.

If the tax at the rate of not to exceed nine cents, as authorized by Section 1, *supra,* of the 1961 statute, in reality constituted an increase of four cents over the rate previously authorized by the Acts of 1931, Ch. 175, *supra,* I would have no hesitancy in stating that you would be without authority to base the state aid upon the nine-cent rate until the taxes payable pursuant to Section 1, *supra,* had been collected in 1962. However, I am informed by reliable sources that in practical operation the new statute will not result in Vincennes University receiving substantially a greater amount of *county* tax revenues than it has been receiving heretofore, unless the total assessed valuation of all taxable property in the county increases. This is because the four-cent tax, authorized pursuant to the County Hospital Act for the nurses' training school, as provided by Burns' 22-3233, *supra,* will be discontinued immediately, so that the levy made in 1961, for taxes payable in 1962, if made to the full allowable rate of nine cents, will be the aggregate of the two previous rates, the proceeds of both of which have heretofore been received by the University, although the proceeds of the four-cent tax have been paid through assignment by the Hospital. It was because of the fact that the four-cent levy for nurses' training school purposes could not legally be said to have been received by the University "as public aid," that the state funds of double the amount received from county taxes, as public aid to the University, could not heretofore be based upon proceeds from the aggregate of the two taxes, resulting from the five-cent and four-cent rates. Prior to the 1961 enactment, it is clear that state aid could be based only upon the five-cent tax authorized by the 1931 Act.

It has further been represented to me by reliable sources, including the President of Vincennes University, the Chairman of its Board of Directors and its legal counsel, that the separate four-cent tax heretofore levied for the nurses' training school, will not be made in the year 1961, payable in 1962, nor thereafter, so that the University will not receive the benefit of such a levy for the nurses' training school as it has in the past, but that this levy will be absorbed into the nine-cent tax, the authority for which is provided in the Acts of 1961, Ch. 105, *supra,* which may be made by the County Council of Knox County for the year 1961, payable in 1962 and thereafter. In this sense, the Acts of 1961, Ch. 105, *supra,* does *not* represent an increase in the maximum levy which may be made as public aid for and on behalf of Vincennes University, but is a recognition by the Legislature that the four-cent tax heretofore levied for nurses' training school purposes is to be considered after the effective date of that act as being public aid for the University, the same as the five-cent tax which has heretofore been specifically so designated. Further, a comparison of the language of the 1931 statute and that of the 1947 statute, as amended by the 1955 Act, with the 1961 Act shows such a marked similarity as would tend to indicate that the Legislature was also intending to codify the former separate statutes into a single, concise and readily understandable law, instead of enacting a statute which would have the effect of disrupting the established operation of many years' standing. Thus, there is justification for classifying this act as being one of a curative nature, so that the total sum of nine cents which may be assessed upon the taxable property in Knox County may be considered as being public aid by the county, upon which basis double the amount of the proceeds thereof may be paid to the University as state aid. As a consequence, although the 1961 Act will not materially affect the amount of county aid which the University will receive from county-wide levies, it will result in a very substantial increase which the University may receive from state funds.

Therefore, upon the representations made, and particularly that by which I am assured that the increase in the tax authorized by the Acts of 1961, Ch. 105, *supra,* is not in addition to the four-cent levy heretofore authorized and collected for

nurses' training school purposes, but in lieu thereof, and upon the further assurance that the University will continue the nurses' training program as heretofore, it is my conclusion that the Legislature intended by the emergency clause that the state aid authorized by the Acts of 1961, Ch. 105, *supra,* was to be based upon the nine-cent levy, not only with respect to taxes thereafter levied but also to proceeds received from the aggregate of the five-cent and the four-cent taxes levied in 1960, payable in 1961, so that you would be authorized to pay such state aid based upon the proceeds from such two county levies. This seems to be in harmony with what the Legislature intended to accomplish by this enactment.

OFFICIAL OPINION NO. 44

September 8, 1961

Mr. David Cohen, Chairman
Indiana State Highway Commission
12th Floor State Office Building
Indianapolis 4, Indiana

Dear Mr. Cohen:

This is in response to your request for my Official Opinion concerning the constitutionality of Chapter 112 of the Acts of 1961, as found in Burns' (1961 Supp.), Section 36-2961 *et seq.,* which reads as follows:

> "SECTION 1. Recognizing that (a) part of the national system of interstate and defense highways located in Indiana are used by persons residing throughout Indiana and the United States for intrastate and interstate travel; (b) the cost of relocation of utility facilities necessitated by construction, reconstruction, change or modification of said highways is presently subject to being borne by utility rate payers only; and (c) existing federal legislation makes available a substantial portion of the funds with which said highways will be constructed, reconstructed, changed or modified, it is hereby declared that it is inequitable for rate payers of utilities to bear the cost of relocation of utility facilities necessitated by said highway construc-