following the application of Indiana statutory law as required by 12 U. S. C. A., § 36(c), *supra.*

Although again stressing that this is a matter for the Comptroller of the Currency to decide, and over which the Department of Financial Institutions of Indiana has no control, I wish to emphasize that if this proposal is approved by the Comptroller's office, then it may establish a precedent and means by which all national banking associations may circumvent state laws concerning location of branch banks in violation of 12 U. S. C. A., § 36(c), *supra,* merely by the expedient of opening a new office in competition with a pre-existing bank and designating and establishing it as the main office, rather than as a branch.

OFFICIAL OPINION NO. 48

December 9, 1960

Dr. James B. Kessler
Resident Director
Commission on State Tax and Financing Policy
Room D-4 State House
Indianapolis, Indiana

Dear Dr. Kessler:

This is in reply to your letter on behalf of the Commission on State Tax and Financing Policy concerning a recommendation that legislation be enacted to authorize the assessment and/or collection of the property tax on one or more classes of mobile property (e.g. motor vehicles, mobile homes, pleasure boats, airplanes, etc.), by different procedures than those used for other classes of property in which my Official Opinion is requested in response to the following questions:

"1.) Can local units of government, or the State of Indiana, impose and collect registration fees, use and/or excise taxes levied on such property *in lieu of* ad valorem taxes?

"2.) Can local units of government, or the State of Indiana, impose and collect registration fees, use and/or excise taxes levied on such property *in addition to* ad valorem taxes?

"3.) Would a statute authorizing the collection of a property tax on motor vehicles be unconstitutional because it provided for the collection of the tax on a current year basis at the time of registration when such a system would require the application of the previous year's tax rate established in the taxing jurisdiction involved to current year valuations so that the entire registration fee and property tax could be collected at the time the license is issued?

"4.) If the answer to (3) is no, would the enactment of the statute be unconstitutional because it provided for the collection of a pro rata share of the annual tax on motor vehicles and/or other classes of mobile property which were registered in subsequent months of the year? For example, would legislation authorizing the collection of one-half of the annual tax on a new car registered in July of a given year be unconstitutional for that reason?

"5.) Without constitutional amendment, and in view of Official Opinion No. 18, of the Attorney General, dated March 8, 1954, can household goods, or one or more classes of mobile property legally be omitted from the scope of property taxed on an ad valorem basis?

"6.) Would it be legal for a statute to provide that automobiles, trucks, trailers, airplanes, motorboats, etc., be valued for tax purposes on any day in the year, notwithstanding the fact that March 1st may remain the legal assessment date for other classes of property?"

Because of the scope and generality of your questions, it is impossible to foresee all of the theories which might be advanced in an attack upon the constitutionality of such legislation. It is probable that reliance upon the 14th Amendment to the Constitution of the United States and other provisions of that Constitution would be attempted as well as upon provisions of the Indiana Constitution. However, the starting point for consideration of any question involving or related to a property tax in Indiana is Article 10, Section 1, of the Constitution of the State of Indiana, which reads as follows:

> "The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law."

This provision was discussed in my Official Opinion No. 18, issued March 8, 1954, to which you refer in your fifth question, which was issued in response to the following specific questions presented by your Commission:

> "1. Would a system of classification of tangible personal property for assessment for the purpose of taxation under the *ad valorem* tax laws comply with the 'uniform and equal' provisions of the Constitution?
>
> "2. Would it be possible to exempt household furnishings and equipment from the personal property tax rolls specifically by statute?"

Since my answers then are pertinent to your present questions I call your attention to the following portions of that Opinion:

> (p. 58)
>
> "At the outset, it should be emphasized that your questions relate to *property* taxes as distinguished from excise taxes. As a background to this question, it should be stated that classification for rate purposes in *excise* tax laws are generally upheld when not in conflict with the equal protection of the law clause of the 14th Amendment of the Federal Constitution and Art. 1, Sec. 23 of the Indiana Constitution, granting equal privileges and immunities. * * * With respect to *excise* taxes, these constitutional provisions are not violated if there is a natural and logical basis for classification and if the statute providing classification for rate purposes treats each person in the same class in a like fashion. * * *"
>
> (p. 59)

"With respect to the constitutionality of *property* taxation, it is most important to note that a different constitutional provision applies, namely, the Indiana Constitution, Art. 10, Sec. 1 * * *

"That the above constitutional provision is applicable to property taxes is held in the case of Miles v. Department of Treasury (1935), 209 Ind. 172, 177, 199 N. E. 372, wherein it is stated as follows:

> " 'It is well settled that Article 10, Section 1, which provides for uniform and equal rate of assessment and taxation, and forbids exempting property except for specific purposes, applies only to property taxes under a general levy. Thomasson v. State (1860), 15 Ind. 449; Bright v. McCullough (1866), 27 Ind. 223; Kersey v. City of Terre Haute (1903), 161 Ind. 471, 68 N. E. 1027; Gafill v. Bracken (1924), 195 Ind. 551, 146 N. E. 109; State Board of Tax Comrs. of Ind. v. Jackson, *supra*.' "

(p. 62)

"There is a long history of decisions in Indiana on the constitutionality of excise tax laws, in a great many of which our courts have emphasized the distinction between property taxes and excise taxes to uphold rate classification with respect to the latter. While upholding classification for rate purposes in excise tax statutes, when not in violation of the Fourteenth Amendment of the Federal Constitution, or of Art. 1, Sec. 23 of the Indiana Constitution, our courts in these decisions have indirectly, but repeatedly and consistently, recognized that rate classification is impossible in property taxation under our present Constitution."

(p. 64)

"It is difficult to conceive in what manner all household furnishings and equipment could be said to be used, 'for municipal, educational, literary, scientific, religious or charitable purposes.'

"In conclusion, a careful scrutiny of our State Constitution, Art. 10, Sec. 1, shows that it was carefully

framed and precisely worded to prohibit rate classification with respect to property taxation and to authorize exemptions only as to property used for the purposes stated therein.

"Therefore, it is my opinion that:

"1. A system of classification of tangible personal property for assessment for the purpose of taxation under the *ad valorem* tax laws as proposed in your request would not comply with the 'uniform and equal' provisions of the Constitution.

"2. It would not be possible to exempt household furnishings and equipment from the personal property tax rolls specifically by statute, without constitutional amendment."

Since the date of my 1954 Opinion, *supra,* there has been neither constitutional amendment nor court decision on these questions. However, as hereafter noted, there are distinctions between the questions answered by the 1954 Opinion and those now presented.

From the general tenor of your present questions, it does not necessarily appear that the recommendation which you are considering is for the purpose of tax rate classification as considered by me in 1954. I am not informed of the exact nature of the recommendation which is being considered except that your letter states that it is proposed to assess and collect "the property tax on one or more classes of mobile property * * * by different procedures than those used for other classes of property." If such proposal is for the purpose of equalizing the tax burden by facilitating the means of tax collecting, resulting in more nearly reaching all property subject to taxation, such goal is in harmony with equality which is the purpose of Art. 10, Sec. 1, *supra.* In this connection it should also be noted that in 1958 your Commission asked for my opinion as to whether the Constitution requires that a tax must be imposed upon property, or whether the Legislature is given permissive powers in this field. At that time I advised you in part as follows, in 1958 O. A. G., No. 35:

(p. 162)

"* * * There is a positive difference between the type of query which relates to whether certain property may be constitutionally *exempted* from an *existing* tax and a query as to whether the Constitution requires that a particular type of tax be imposed,—your question herein being of the latter character. * * *

"The above provision (Art. 10, Sec. 1) is as contained in the Indiana Constitution of 1852 at a time when the basic, if not the only, tax system used was that of property taxation. * * * However, in speaking of this constitutional provision in Lutz v. Arnold (1935), 208 Ind. 480, 503, 193 N. E. 840, the Indiana Supreme Court stated:

> " 'It must be remembered that this section has no application to an excise tax, and that neither the federal, nor the Indiana Constitution limits the General Assembly to any particular form of taxation, nor prevents the imposition of any form of excise tax.'

"Further, in discussing this provision of the Constitution in State Board of Tax Comrs. v. Holliday (1898), 150 Ind. 216, 220, 49 N. E. 14, the Court said:

> " 'This constitutional provision does not confer the power of taxation, because that power being sovereign, it is inherent in the legislature. But the provision is rather a limitation upon the power to tax.' "

(p. 163)

"Generally speaking, the only limitations imposed on the Legislature are those imposed by our Constitution, the Federal Constitution, and Acts of Congress which are paramount in certain fields.

Kirtley v. State (1949), 227 Ind. 175, 84 N. E. (2d) 712;

Townsend v. State (1897), 147 Ind. 624, 47 N. E. 19.

"The Legislature has its power subject only to such limitations as are contained in the Constitution. I do

> not find any provision of the Indiana Constitution which limits the Legislature to imposing taxes on property only or which expressly or by necessary implication requires the retention of any form of property taxation."

In respect to the power of taxation the Supreme Court of Indiana has this to say: State *ex rel.* Lewis *et al.* v. Smith, Auditor of Marion County (1902), 158 Ind. 543, 546, 547, 64 N. E. 18:

> "* * * The power belongs to that class of powers known as political powers, and while, in the genesis of popular government, it was occasionally exercised by the executive branch of the government, yet it is now well settled that the power of taxation is purely a legislative function. * * * This doctrine is even more forcibly stated by Judge Cooley in his work on Taxation (p. 5). He there says: 'Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right. Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes. And not only is the power unlimited in its reach as to subjects, but in its very nature it acknowledges no limits, and may be carried to any extent which the government may find expedient. It may therefore be employed again and again upon the same subjects, * * *.' "

Also, from the same case at page 548, the Court had the following comments on the meaning of the "uniform and equal" provision of the Indiana Constitution.

> "* * * It therefore follows that, when the people put the equality limitation upon the power to tax, they intended thereby to protect the owners of property. We must therefore regard the limitation that taxation must be equal as being satisfied when there is no discrimination as between taxpayers. Clearness is necessary here,

however; and we therefore suggest, by way of emphasis, that our present statements relate only to the requirement of *equality* in taxation. Still dealing with this particular portion of the limitation, we next call attention to the fact that the selection of some objects for taxation, and the omission of others, or even the selection of but a few objects for taxation, does not necessarily disturb the rule of equality provided that the result of the imposition of the burden is so to diffuse itself ultimately among those who ought to bear their share of it as not unreasonably to lay it on particular classes of taxpayers, to the ease of the rest. 'Let it reach all of a class,' says Judge Cooley, 'either of persons or things, it matters not whether those included in it be one or many, or whether they reside in any particular locality or are scattered all over the state. But when, for any reason, it becomes discriminative between individuals of the class taxed, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible.' Cooley on Taxation, 169."

The constitutional limitations which we have in Indiana are Section 1, Article 10, above set out, and Section 22, Article 4, which provides as follows:

> "The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:
>
> * * *
>
> "[12.] For the assessment and collection of taxes for State, county, township, or road purposes; * * *"

In respect to this latter constitutional prohibition, a statute which is of general and uniform operation throughout the state, and operates alike upon all persons, under the same circumstances, is not subject to the objection that it is special or local legislation.

> Gilson *et al.* v. The Board of Commissioners of Rush County (1891), 128 Ind. 65, 27 N. E. 235.

The authority of the state and all local units of government to collect any specific taxes, excise or property taxes, depends

upon specific statutory authority enacted by the General Assembly, and the registration fees, use taxes and excise taxes to which you refer in your first two questions, because they are all excise taxes, may be levied upon motor vehicles, mobile homes, pleasure boats, airplanes, etc., at any time the General Assembly so provides by legislation which is not local or special in nature, but is of general and uniform operation throughout the state and which provides a natural and logical basis for classification and treats each person in the same class in a like fashion.

Your first and fifth questions are both concerned with the question of relieving household goods or one or more classes of mobile property from the scope of property taxes on an *ad valorem* basis. A single statute which purported to levy an *ad valorem* property tax upon certain classes of property, providing for a specific exemption or exemptions of these classes of personal property *per se,* and not of the constitutional class eligible for exemption, would be in direct violation of Article 10, Section 1.

1954 O. A. G., page 58, No. 18 and cases there cited.

This would logically be true whether such a statute provided for an excise tax of some kind in lieu of the *ad valorem* property tax, since the two types of taxes are not in any sense mutually exclusive. However, the Supreme Court of Indiana has heretofore sustained the validity of separate statutes which levy an excise tax upon certain classes of intangible property and provide for the relief of those classes of property from the personal property taxes levied by earlier enactments.

In 1866 the Supreme Court of Indiana held that Section 1, Article 10 required that the rate of assessment and taxation must be uniform and equal throughout the locality in which the tax is levied—if for state purposes, then uniform and equal throughout the state.

Bright v. McCullough, Treasurer, *et al.* (1866), 27 Ind. 223.

In 1892 that Court held that there is uniformity and equality of assessment and taxation when all the property is to be

assessed at its true cash value, and the same rate is fixed on all property subject to assessment for the tax.

> Pittsburgh, Cincinnati, Chicago & St. Louis R. Co. v. Backus, Treasurer, *et al.* (1892), 133 Ind. 625, 33 N. E. 432.

In this same case the Court held that although different *methods* of valuation and assessing were provided for different classifications of personal and real property, the distinctions were valid since they applied alike to all persons holding and owning the same class of property, applying alike to all persons under like circumstances and conditions.

Six years later the Supreme Court of Indiana held that if certain property not within the constitutional exemptions was omitted from the provisions of tax legislation, or if its valuation and assessment was necessarily complicated and difficult and no special regulations are provided by the General Assembly, the personal property cannot be taxed, and there is no question of the constitutionality of the tax law for failure to carry out in full the constitutional mandate.

> State Board of Tax Comrs. *et al.* v. Holliday *et al.* (1898), 150 Ind. 216, 49 N. E. 14.

The treatment of different kinds of personal property in different ways for assessment and valuation has long been recognized. Although no deduction of debts from the value of tangible personal property was allowed, the deduction of all *bona fide* debts from the credits of any person, company or corporation was upheld as valid classification, and the Supreme Court quoted as follows with approval from Judge Cooley, Taxation, p. 127:

> Florer, County Treasurer, *et al.* v. Sheridan (1894), 137 Ind. 28, 38, 36 N. E. 365.

> " 'Perfect equality in the assessment of taxes * * * is unattainable. Approximation to it is all that can be had. Under any system of taxation, however wisely and carefully framed, a disproportionate share of the public burdens will be thrown on certain kinds of property, because they are visible and tangible, while others

> are of a nature to elude vigilance. It is only where statutes are passed which impose taxes on false and unjust principles, or produce gross inequality, so that they cannot be deemed, in any just sense proportional in their effect on those who are to bear the public charges, that courts can interpose and arrest the course of legislation by declaring such enactments void.' Cooley on Taxation, 127.
>
> "Perfect equal taxation will remain an unattainable good as long as laws and government and man are imperfect. * * *"

In two cases decided in 1901 and 1905, the Appellate Court of Indiana upheld the assessment of property of transient merchants at different times during the year when such property is offered for sale, although they held that such assessment could not be made against a *resident* of Indiana who had already listed as required, his personal property owned as of April 1st in the county of his residence.

> Woodward, Treasurer v. Jacobs (1901), 27 Ind. App. 188, 60 N. E. 1015;
>
> Simoyan v. Rohan, Treasurer, *et al.* (1905), 36 Ind. App. 495, 76 N. E. 176.

In 1902 the Supreme Court of Indiana held that the omission of the General Assembly to extend its taxing power as far as it might did not invalidate the provisions of the existing laws, when such omission was for the purpose of securing "a just valuation" which is also a requirement of Article 10, Section 1 of the Indiana Constitution.

> State *ex rel.* Lewis *et al.* v. Smith, Auditor of Marion County (1902), 158 Ind. 543, 63 N. E. 214.

This case concerned the validity of the mortgage deduction law of 1899. The Court emphasized on page 551 that: "The enactment in question cannot be supported as an exemption law." However, the Court upheld the statute on the basis of its being aimed toward securing "a just valuation" since it "amounts to an apportionment of the land value for taxation, as between the mortgagor and mortgagee."

The Court also stated as follows: (pp. 549 and 550)

> "We may freely grant that, with this act in force, it will produce inequalities as between taxpayers in any given year, but we confidently affirm that it is beyond the ken of the most astute to say who will receive the most benefit from the act in the future. If one man gains an advantage over his neighbor this year by means of this statute, it cannot be said that the latter's property affairs may not hereafter be in such condition that he will not receive more of benefit from the statute than the former. * * *
>
> "If the power of taxation is a legislative function, and if it be true that in any system of taxation, however wisely framed, disproportionate shares of the public burden will occasionally be thrown on some persons, it must needs follow that the courts must admit that there exists in the General Assembly a large measure of discretion in the enactment of a scheme of taxation. * * *
>
> "As to the requirement of uniformity, we have to say that the act in question purports to be a law that is uniform throughout the State, and, as it permits all persons to take advantage of it when their circumstances bring them within its operation, we are of the opinion that it does not violate that requirement of the Constitution."

In 1909 the Supreme Court of Indiana upheld the allowance of deductions of debts from all personal property of both incorporated and unincorporated banks although comparable deductions by individuals in other businesses were not so authorized.

> Board of Comrs. of the County of Johnson v. Johnson *et al.* (1909), 173 Ind. 76, 89 N. E. 590.

Here again, the Court's decision was based upon securing "a just valuation" rather than upon the basis of exempting property from taxation. The decision stressed the nature of the banking business, the history of the taxation of banks and that of the deduction allowed for indebtedness by the statute, including such as current deposit accounts. The Court stated on page 90:

> "The spirit of the taxing laws is not the taxation of apparent values, disassociated from all else, nor the taxation of all property at its gross value, but by securing a just valuation upon principles of uniformity, equality and justice."

In 1935, for the first time, the Supreme Court of Indiana held valid, by a three to two decision, an enactment by which intangible personal property theretofore taxed was relieved from assessment of property taxes and subjected to an excise tax with different rates.

> Lutz, Attorney General *et al.* v. Arnold, Attorney and Trustee *et al.* (1935), 208 Ind. 480, 193 N. E. 840.

In attempting to understand this decision, the history of the difficulties encountered in the taxation of intangibles should not be overlooked, since such history was so clearly considered by the majority as evidenced on page 506 wherein it was stressed:

> "We think the history of the adoption of the act in question is a matter of common knowledge. It was known to every taxpayer and the members of the General Assembly, that the greater part of all intangibles were escaping taxation. Owners of intangibles did not give them in for taxation. They satisfied their conscience in failing to give them in to the assessor for the reason they knew that their neighbors did likewise and through the course of years it became the practice by the great majority of the owners of intangibles, to apparently forget they owned them. Prior to the enactment of the present act, it is estimated by the taxing authorities, that less than five per cent of the intangible wealth of the state was given in for taxation. This condition relative to taxation became intolerable. Owners of intangibles became perjurers in self-protection, because the rate of taxation, in many instances, exceeded the gross return on the same. It is claimed by the taxing authorities of the state that since the present act went into effect it has created a large return of taxes and has added to the tax duplicate twelve times

> the amount formerly listed. That one bank of Indiana alone returned $56,000,000 of cash on deposit, which approximated the total of notes and cash formerly listed by all taxpayers for the entire State of Indiana. So apparently the effect of the small excise tax upon intangibles has justified the expectations of the lawmakers, and a proper equivalent for the taxes obtained in a different mode."

It is very important always to keep in mind that the Court's expressed basis for upholding the intangibles tax legislation was *not* upon the theory of exemption. Rather it was upon the theory that the Legislature was attempting to "plug a loophole," to overcome a factual but unauthorized exemption brought about by inability to enforce the regular property tax law as applied to intangibles; and that the effect of the substituted excise tax in lieu of the property tax on intangibles tended to equalize the tax burden by reaching a class of property which theretofore had been escaping such burden because of failure of enforcement. Therefore, the effect of this decision in other cases testing the validity of excise taxes enacted in lieu of *ad valorem* taxes is highly speculative. Also, because of the strong dissenting opinion and of the basis for the majority opinion, the case is of uncertain reliability if the question were one of the constitutionality of omitting non-exemptable property from taxation in the absence of some substitute measure reaching the same property.

However, based upon such background, the Supreme Court justified its action then in the following words:

> (p. 504)
>
> "If the General Assembly of 1935, in its wisdom, sees fit to change the plan of taxation and leaves out of the scheme of taxation the species of property heretofore covered, then under the foregoing authorities such property could not be taxed. In a sense this would amount to an exemption of such property, but such an exemption as this court has held proper. It is not done, however, on the theory of exemption, but on the theory and for the reason that it is a legislative power to select the subjects for taxation subject to the limitation of the Constitution."

In the same year the same Court in Davis v. Sexton, County Treasurer *et al.* (1935), 210 Ind. 138, 161, 200 N. E. (2d) 233, stated as follows:

(p. 161)

> "The provision of said section and article of the Constitution (Section 1, Article 10) is complied with when all property is assessed at its true cash value and at the same rate; there is then uniformity and equality of assessment and taxation. Our tax system here involved is based upon the true cash value of all property."

If your questions concerning the enactment of new legislation to relieve some classes of personal property entirely from a pre-existing levy of the property tax were questions of first impression, without benefit of decided cases in our Supreme Court, I would be inclined to advise you that as a matter of constitutional construction, such new legislation would be invalid. Under such circumstances it would also be my conclusion that the requirement of uniformity would prevent the enactment of provisions for different dates of assessment of different classes of personal property. However, in the light of the above-cited decisions and the resulting tax administration over many years, my conclusions in response to your several questions are as follows:

Questions Nos. 1 and 2: Yes, the imposition of registration fees, use taxes and excise taxes may be made by the General Assembly regardless of the imposition of *ad valorem* taxes.

Questions Nos. 3 and 4: The collection of the property tax on motor vehicles at the time of registration would not be unconstitutional merely because of the application of the previous year's tax rate, if some provision is also made for the subsequent allowance of credit for the amount paid, and the subsequent imposition of the tax rate for the current year, with rebate or additional payment to be made according to the difference in tax rates, or if some other provision is made or authority granted to effect an equalization to overcome the inequality caused by such difference.

Referring specifically to Question No. 4, it is observed that your question refers merely to "the annual tax on motor vehicles and/or other classes of mobile property." Your ques-

tion does not refer to the type of tax about which you are inquiring. With respect to excise taxes such as registration fees, there is legislative precedent of long standing for prorating such license fees on a half year's basis. *Ad valorem* taxes, on the other hand, have required a valuation for tax purposes as of a particular assessment date so that property acquired after that date is not subject to assessment until the following year. However, although of short duration, the mobile homes tax statute, Acts of 1953, Ch. 169 as amended, as found in Burns' (1959 Supp.), Section 64-3301 *et seq.*, provides for prorating an *ad valorem* tax. It is my opinion that the prorating of the tax to be collected at different times during the current year would not raise any serious question of constitutionality.

Question No. 5: Unless the Supreme Court of Indiana reversed its approach and basic attitude, or distinguished between different types of omissions on some basis that does not occur to me, it might uphold the validity of new legislation which omitted rather than exempted household goods or mobile property from the scope of property taxed on an *ad valorem* basis.

Such omission to tax certain classes of property could conceivably be justified on the basis of the Legislature's power to select the classes of property which shall be subject to taxation. For a complete explanation of this reasoning, reference is made to the concurring opinion of Judge Treanor in the case of Lutz *et al.* v. Arnold *et al., supra,* which opinion is reported in 208 Ind. at p. 512, 196 N. E. 702. As his opinion shows, in opposition to the petition for rehearing, the state filed a brief contending that the withdrawal of intangible property from property taxation did not constitute an exemption, stating: (208 Ind. 516)

> "Exemption as permitted by Section 1 of Article 10 of the Constitution is a discrimination *within* a taxable class on the basis of municipal, educational, literary, scientific, religious or charitable purpose. Selection, on the contrary, is the determination of the taxable class, and unless impressed with such arbitrary methods of classification as violate the equal privileges and immunities provision of the Constitution, it is valid. When

> the class has been determined and subjected to the tax by the legislature—and no property is taxable unless so selected by the legislature—any exemptions must be such only as are authorized by the Constitution. If the class is withdrawn from property taxation, as is the case under consideration, there is nothing upon which the exemption limitation of the Constitution can operate."

Judge Treanor asserted that the foregoing argument was sound and he stated his interpretation of Article 10, Section 1 as follows: (208 Ind. 518)

> "The requirement that the General Assembly 'shall provide, by law, for a uniform and equal rate of assessment and taxation' cannot be the source of an implied restriction of the legislative power to select subjects of taxation; and the clause 'prescribe such regulations as shall secure a just valuation [for taxation] of all property, both real and personal,' cannot be said reasonably to constitute a constitutional mandate to the General Assembly to select all property, both real and personal, as subjects of taxation. It seems more reasonable to assume that it is a mandate to prescribe regulations to secure a just valuation for taxation of all property which is subject to taxation. And since Section 1, Art. 10, does not purport to select subjects for taxation, it follows that the power of the General Assembly in that respect is full, unimpaired and continuing."

However, there is always the distinct possibility that the Court would determine to reverse the trend in legislation in order to preserve the material effect of Article 10, Section 1, and your consideration should, therefore, certainly include the possibility of constitutional amendment to support such tax reformation which is the only sure means of guaranteeing the constitutionality of such legislation.

Question No. 6: As I have indicated, it appears to me that entire classes of personal property may be valued for tax purposes at times other than the date for valuation of other personal property, provided, however, that the entire class in each case is included, and that there is some reasonable basis for

the distinction. There is a material difference as to the need for registration because of the mobility of those classes of personal property which you mention, as distinguished from other classes of personal property, and therefore such distinction for time of valuation would probably be upheld.

Certainly the Constitution does not require the valuation of property for tax purposes to be made on March 1st nor does it in terms require that the date for valuation be the same for all classes of property. Only in cases of an obviously unequal valuation resulting from different dates for valuations would such legislation be in peril. Here again a provision granting the authority to equalize should be considered. However, to accelerate the valuation date from March 1 to January 1, for example, would not necessarily result by such two months advancement in an increased valuation so as to make the change in valuation date unconstitutional because other property continued to be valued on March 1.

As my final observation in answer to your sixth question, since the change in valuation date about which you are inquiring would necessitate a statutory amendment, all questions of inequality and discrimination because of using two or more different valuation dates would be obviated if the statutory amendment were to change the valuation and assessment date of all property to some other single date which would apply uniformly to all property.

OFFICIAL OPINION NO. 49

December 12, 1960

Dr. F. W. Quackenbush
State Chemist and Seed Commissioner
Department of Biochemistry
Purdue University
Lafayette, Indiana

Dear Dr. Quackenbush:

This will acknowledge receipt of your letter requesting my Official Opinion on questions concerning the interpretation and application of the "Commercial Fertilizer Law of 1953" in regard to custom mixed fertilizer.