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.

Your letter sets forth certain procedures which are being used in mechanizing the custom mixing of fertilizer in this state. Since your office is charged with the policing and enforcing compliance with the law, you have heretofore sanctioned custom mixing without registering and labeling only after actual possession of the fertilizer has passed to the buyer. Your position has been based upon the 1953 Opinions of the Attorney General, No. 97, page 453, in which the Commercial Fertilizer Law was interpreted as requiring that the buyer must have actual possession before the fertilizer could be custom mixed without registering and labeling.

Since the mechanized processes now being used raise a problem as to when the buyer has actual possession, you have asked the following questions.

> "We request your opinion as to whether a buyer can be said to have actual possession of fertilizer materials prior to mixing when the procedure as diagrammed and described above is followed, or whether fertilizer mixed by this system is, in fact, 'constructive delivery' and the resultant mixture subject to complete labeling, registration and inspection as to the plant food content of the mixture.
>
> "A second item on which we request your opinion concerns the circumstance of obtaining a buyer's agent. Rule No. 8 reads in part '. . . when the buyer or his agent has made a *bona fide* purchase . . .' If a farmer phones the custom mixer to inform him of the mixture desired, and, if the custom mixer then engages a third person who operates a truck for hire to load and deliver the fertilizer mixture to the farmer, under this Rule, can the third person be considered as an agent of the farmer when the delivery charge is paid directly to this third person by the farmer, even though the farmer did not engage him initially?"

The "Commercial Fertilizer Law of 1953" is found in Acts of 1953, Ch. 30, Sec. 1 *et seq.*, as found in Burns' (1959 Supp.), Section 15-1007 *et seq.* This act is designed to provide an adequate method of inspection of fertilizers by the state chemist and his agents and to protect buyers of fertilizer from mis-

branding and adulteration of the product which they purchase. In carrying out this purpose, Section 4 of the Act, *supra*, as found in Burns' (1959 Supp.), Section 15-1010, requires each brand of commercial fertilizer offered for sale to be properly registered and approved by the state chemist. Section 5 of the Act, being Burns' (1959 Supp.), Section 15-1011, requires labeling of the various types or brands of fertilizers, and subsection (b) thereof, pertaining to sales in bulk, reads as follows:

> "(b) If distributed in bulk, a written or printed statement of the weight and the information required by items 1, 2, and 3 of paragraph (a) of section 4 [§ 15-1010], shall accompany delivery and be supplied to the purchaser at time of delivery."

The provisions of items 1, 2 and 3 of paragraph (a) of Burns' 15-1010, Section 4, *supra*, are as follows:

> "(1) The name and address of the person registertering the fertilizer.
>
> "(2) The brand and grade.
>
> "(3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:
>
> Total Nitrogen ..... — per cent
> Available Phosphoric Acid (P_2O_5) .. — per cent
> Soluble Potash (K_2O) ..... — per cent
>
> "Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid, and the degree of fineness. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphoric acid need be guaranteed. Additional plant food elements or other additives, determinable by chemical methods, may be guaranteed only by permission of the state chemist who shall grant such permission only if he shall determine that the granting of such permission would not constitute a misrepresentation and is correct with the advice of the director of Purdue University Agricultural Ex-

periment Station. When any such additional plant foods are claimed, they shall be included in the guarantee in the form of the element, and shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the state chemist."

The buyer of a custom mixed fertilizer is generally attempting to obtain certain percentages of various fertilizer materials to fit the need of his particular soil problem. As a rule, he can do this only by ordering certain percentages of various fertilizer materials. Most orders of this type are sold in bulk because of the impossibility of anticipating the particular need of each purchase.

Burns' 15-1011 (b), *supra,* seems to be designed primarily with this problem in mind. It permits a sale or distribution of fertilizer in bulk provided a written or printed statement of weight and the percentage ratio of fertilizer materials, required by Burns' 15-1010, *supra,* is given to the purchaser.

The act is designed to correct an evil which would occur by selling the wrong product or wrong percentage of designated fertilizers and thereby causing ultimate harm to the soil and the crops grown thereon. If the guaranteed analysis required in Burns' 15-1011 (b), *supra,* is properly presented, the purchaser is protected as much as possible under the law and the state chemist or his agents who might make a spot inspection could compare the product against the statement to determine compliance with the law.

Upon further and careful consideration of the provisions of Burns' 15-1011 (b), *supra,* which statute contains no prohibition against custom mixing, and no specific requirements of actual possession by the purchaser as a condition precedent to custom mixing, I have reconsidered my 1953 Official Opinion, No. 97, page 453, and determined that it is inapplicable.

Rule 8 of the Indiana state chemist, as set forth in your letter, was apparently promulgated as a result of my conclusion that the statute required such actual possession in the buyer prior to custom mixing without registration and labeling, and to the extent that Rule 8 itself requires such possession as a condition to custom mixing you may wish to consider

amendments to the same. However, you have asked these particular questions in regard to the situation as it now is, under Rule 8, which provides as follows:

> "Rule 8. Custom Mixing. Custom mixing of a commercial fertilizer, without registering and labeling the final product, is permitted only when the buyer or his agent has made a *bona fide* purchase and has been given actual possession of the registered and labeled fertilizer or fertilizer materials before mixing. The written or printed statement which is required to accompany delivery [Sec. 5 (b)] shall show the chemical guarantee of each of the materials or components of the mixture. A custom mixed fertilizer can be resold only when registered and labeled as a mixed fertilizer. In the distribution of bulk fertilizers, two or more fertilizer materials in the same load will be considered a mixture unless each material is in a separate compartment."

The factual situation which you outline is as follows:

When a farmer buyer gives his order to the custom mixer, the amount of the different ingredients is calculated and the buyer's truck is placed in position to receive the custom mix. An operator in the control room on the ground floor of the plant then proceeds to pull a series of ropes which release ingredients from holding bins on a higher level at the top of the plant, into a weighing bin, from which the combined materials are transferred to a holding bin and from there transferred to a mixer and delivered by belt-conveyor to the buyer's truck. It is my opinion, in answer to your Question No. 1, that upon the facts which you outline, the buyer is not in actual possession of the mixed fertilizer until it is deposited in his truck. This does not mean that the mixed fertilizer deposited in his truck must be registered and labeled. It is a sale and distribution in bulk, and a written or printed statement of the weight and the information required by items 1, 2, and 3 of paragraph (a) of Section 4 (Burns' 15-1010, *supra*) must accompany delivery and be supplied to the purchaser at the time of delivery.

Your second question presents a problem of agency, that is, whether a trucker hired by the seller to deliver a mixed load of fertilizer to the buyer who has telephoned his order can

be considered the agent of the buyer. Under such circumstances, and in the absence of an intention of both buyer and seller to the contrary, the agent selected by the seller is his agent, not the agent of the buyer.

In conclusion then, in answer to your first question it is my opinion that the system of weighing and mixing which you describe does not put the buyer in actual possession until the mixed fertilizer is deposited in his truck; but in view of the construction of the act set forth herein, this does not prohibit custom mixing by the seller. In answer to your second question, the trucker hired by the seller to make delivery to the buyer could not be considered to be the agent of the buyer unless that was the intent of both the buyer and the seller. Custom mixing and bulk distribution are two different things, and the Commercial Fertilizer Law of 1953 requires delivery to the buyer of a written or printed statement of the weight and information required by items 1, 2 and 3 of paragraph (a) of Section 4 (Burns' 15-1010, *supra*) at the time of a bulk delivery of commercial fertilizer, whether or not it has been custom mixed.

OFFICIAL OPINION NO. 50

December 12, 1960

Mr. T. M. Hindman
State Examiner
Indiana State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Hindman:

This is in answer to your request for an Official Opinion concerning the allocation of funds received by the City of Lawrenceburg and the Flood Control District of the City of Lawrenceburg, which funds represent damages paid by the federal government for injuries sustained by the City in treatment of its sewage and also by the Flood Control District caused by the construction of a dam. In written material accompanying your letter, the following is expressed with respect to the determination of the amount of damages paid by the federal government: