Mr. Joda G. Newsom, Chairman
State Board of Tax Commissioners
404 State House
Indianapolis 4, Indiana

Dear Mr. Newsom:

This is in response to your request for my Official Opinion in answer to a number of questions generated by reason of the enactment of the Acts of 1959, Ch. 354, as found in Burns' (1959 Supp.), Sections 64-234 to 64-238, inclusive. The said 1959 Act provides for the filing of a certified statement in duplicate with the county auditor on forms to be prescribed by the State Board of Tax Commissioners "in order" for "persons" to avail themselves of the tax exempt status "in accordance with the provisions of the Constitution of the State of Indiana," and with the Acts of 1919, Ch. 59, Sec. 5, as amended, as found in Burns' (1951 Repl.), Section 64-201. In form, the said 1959 Act was enacted as an independent statute, because of which fact it would be possible for said statute to be so interpreted as to cause a drastic deviation from past procedure with respect to property previously considered as tax exempt. Your letter requests an Opinion concerning the meaning, effect, and practical application of this law. Because your questions are necessarily detailed and numerous, resulting in an extended letter, they will be presented and considered by groups.

Your first and second questions are as follows:

"1. Since the last previous enactment providing the procedure for acquiring tax exemptions is the Acts of 1937, Ch. 294 which has not been expressly repealed by said 1959 Act, does Chapter 354 of the Acts of 1959 completely supersede the Acts of 1937, Ch. 294, as found in Burns' Indiana Statutes (1951 Repl.), Sections 64-213 to 64-215, inclusive?

"2. If Chapter 354 of the Acts of 1959 does not supersede the Acts of 1937, Ch. 294, supra, will the whole of said 1937 Act remain effective and if not, which part or parts, if any, of the said 1937 law will
remain effective after the effective date of Chapter 354 of the Acts of 1959 and how may said Acts be administered together?"

The Acts of 1959, Ch. 354, supra, is one entitled simply "An Act concerning tax exemptions," the provisions of which in toto are as follows:

"SECTION 1. As used in this act, the term ‘person’ shall mean and include any individual, firm, association or corporation.

"SEC. 2. Any person who holds the fee simple title to any property, both real and personal, which property the person claims to be exempt from taxation in accordance with the provisions of the Constitution of the State of Indiana, and with Section 5 of Chapter 59 of the Acts of the Indiana General Assembly of 1919, as the same has been amended or may hereafter be amended, shall, in order to avail himself of such constitutional and statutory exemption, between the first day of January and the first day of March, inclusive, of each year, file with the auditor of the county wherein said property is situated, a certified statement in duplicate on forms to be prescribed by the state board of tax commissioners: Provided, That such a claim for tax exemption shall not be required to be filed with the auditor more than one time in any four year period. The certified statement shall contain a description of the property, claimed to be tax exempt, sufficient enough to be properly identified, a statement showing the use of the property and the reason for the tax exemption, and a recital of the full name and complete address of the applicant. The authority for signing the certified statement for tax exemption shall not be delegated by the record title holder to any other person except upon duly executed and recorded power of attorney.

"SEC. 3. The county auditor, with whom such statement is filed, shall, prior to the convening of the county board of review, list and arrange the original copies of tax exemption applications in alphabetical order by
taxing units, and shall list and arrange the duplicate copies in alphabetical order for the entire county without regard to taxing units; and the board of review shall ascertain from such alphabetical lists whether or not more than one application has been filed by the same person. This list, including a statement of the assessed valuation of all exempted property owned by each person granted an exemption, shall be forwarded on or before the first day of August to the State Board of Tax Commissioners.

“For each application filed pursuant to the provisions of this act, the various county auditors shall, on behalf of their respective counties, collect a fee of fifty cents, which fee shall be accounted for and paid into the county treasury at the close of each month, in the same manner as are other fees due the county, and no other fee or fees shall be charged by the county auditors, or their employees, either for the filing or the preparing of such applications.

“SEC. 4. In the event any person owning tax exempt property fails, neglects or refuses to apply under the provisions of this act, for a tax exemption for property owned by such person, the auditor of the county in which the property is located shall, within ten days after the first day of March of each year, notify the owner of said property by certified mail that unless, within fifteen days after the sending of such notice, the owner applies for a tax exemption for such property, the property will be placed on the tax duplicate of the county. If no claim for tax exemption is made by such person within fifteen days after the sending of such notice, the auditor of the county shall place the property owned by the person on the tax duplicate of the county.

“SEC. 5. Any person who shall willfully make a false statement of the facts provided for in section 2 of this act shall be guilty of a felony and, upon conviction, shall be fined in any sum of not more than one thousand dollars to which shall be added imprisonment for any determinate term of not less than one year nor more than five years.”
As your letter points out, the above act appears to be very broad in scope, so much so as possibly to make the filing of claims for exemption "in many instances unworthy of serious consideration, not to mention the additional duties and expense imposed upon local tax officials, some of whom may not have either the time, personnel or money to carry out the additional requirements imposed upon them." As your letter further notes, if the said 1959 Act were to be considered as completely superseding all previous legislation, it might be thought to be conceivable to construe this act to apply to properties of government, both federal and state, to properties of municipal corporations, extending to public parks, city hospitals, public libraries, and an extensive classification of tax supported properties previously considered as automatically tax exempt.

As stated in your first and second questions, the previous statute providing the means by which to acquire the exempt status provided by the Acts of 1919, Ch. 59, Sec. 5, as amended, supra, is the Acts of 1937, Ch. 294, as found in Burns' (1951 Repl.), Sections 64-213 to 64-215, inclusive. As your letter points out, the said 1937 law has not been expressly repealed by the said 1959 Act, the 1959 Act containing no repealing clause of any nature and not even mentioning the Acts of 1937, Ch. 294, supra. Therefore if the Acts of 1959, Ch. 354, supra, completely supersedes the Acts of 1937, Ch. 294, supra, such repeal could only be by means of a "repeal by implication."

However, it should be stated generally that repeal of a prior statute by implication is not favored unless two statutes are so irreconcilable that meaning and effect cannot be accorded to both, in which event the provisions of the latter statute will control. As stated in Sutherland, Statutory Construction, 3rd Ed., Vol. 1, Sec. 2012, p. 461:

§ 2012. The determination of a repeal by implication.

"The enactment of legislation presupposes some consequential change in the existing law, either by the addition to the pre-existing law, or by the qualification or deletion of an existing provision. The extent of the repeal of the prior law by a subsequent enactment poses the problem of implied repeals.

"The legislature is presumed to intend to achieve a
consistent body of law. In accord with this principle subsequent legislation is not presumed to effectuate a repeal of the existing law in the absence of that expressed intent, and conversely, where a consistent body of laws cannot be maintained without the abrogation of a previous law, a repeal by implication of previous legislation or of the common law is readily found in the terms of a later enactment. It is the necessary effect of the later enactment construed in the light of the existing law, regardless of whether such an effect is the child of the legislative mind or a creature of fortuity, that ultimately determines an implied repeal. As the legislative intent defines the operation of the statute and divulges the purpose and limitations of the enactment, it may establish or deny a repeal by implication, and therefore in the process of construing a statute the intent of the legislature is always of prime importance. Where there is an ambiguity in the statute, the legislative intent is the source of the compromise, but where a conflict is readily seen by an application of the later enactment in accord with that intent, it is clear that the later enactment is intended to supersede the existing law, and the language used by the courts will usually stress the conflict rather than the legislative intent.

“When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict.” (Our emphasis)

Applying the various rules enunciated in the foregoing quotation from Sutherland, Statutory Construction, it is my opinion that the Acts of 1959, Ch. 354, supra, does not completely supersede the Acts of 1937, Ch. 294, supra. Two reasons support the conclusion that the Acts of 1937, Ch. 294, is to be given effect whenever possible and whenever not expressly conflicting with the 1959 Act. These reasons are the following:

A. Although Section 3 of the 1959 Act provides that, prior to the convening of the county board of review, the certified statements which are to be filed in duplicate, shall be listed
and arranged in alphabetical order both by taxing units and also for the entire county without regard to taxing units, there is no place in the 1959 Act stating what administrative authority has the power to act upon, approve or disapprove, the applications for tax exemption. Section 3 of the 1959 Act, supra, does provide that the board of review shall ascertain whether more than one application has been filed by the same person and provides that the list, including a statement of the assessed valuation of all exempted property owned by each person "granted an exemption," shall be forwarded on or before the first day of August to the State Board of Tax Commissioners. The 1959 Act presupposes that the exemptions will be granted or denied prior to forwarding such lists to the State Board of Tax Commissioners, but does not state whether it is the function of the county auditor or of the county board of review to act upon the applications for tax exemptions.

This void in the 1959 Act is supplied by reference to the Acts of 1937, Ch. 294, Sec. 1, as found in Burns' (1951 Repl.), Section 64-213, which among other things provides in part:

"* * * The county board of review, after careful examination, shall approve or disapprove such application and shall note its action thereon. If the county board of review approves such exemption, in whole or in part, the same shall be noted by the county auditor upon the margin of the tax duplicate and such notation shall be notice to the county treasurer that the property therein exempted by the board of review shall not be taxed for the current year unless otherwise ordered by the state board of tax commissioners. * * *"

It is, of course, not reasonable to assume that the 1959 Legislature meant that every person merely by filing the statement provided by the 1959 Act should automatically be entitled to tax exemption without approval by some tax official or body of tax officials. Even though the statement provided by the 1959 Act shall be certified, rather than verified under oath as prescribed by the 1937 Act, and even though Section 5 of the 1959 law imposes severe penalties for the making of a false statement of facts in such certified statement, it is not to be presumed that the Legislature intended for each property owner to be the sole and ultimate judge as to whether his
property qualifies for exemption, pursuant to the Acts of 1919, Ch. 59, Sec. 5, as amended. For this alone, it is necessary to resort to the Acts of 1937, Ch. 294, Sec. 1, supra, to determine the authority empowered to grant or deny the exemption claimed by the applicant.

B. It is further to be noted that the Acts of 1959, Ch. 354, makes no provision for the right of review of a denial of the claim for exemption. Referring again to the Acts of 1937, Ch. 294, Sec. 1, supra, it will be seen that said section provides among other things, in part, as follows:

"* * * If such application is disapproved, the owner or the agent of the owner may appeal to the state board of tax commissioners, within thirty [30] days after the adjournment of the board of review, and such appeal shall be made in like manner as other appeals from the board of review. The action of the state board of tax commissioners shall be final and conclusive."

It is not to be presumed that the 1959 Legislature meant to deny a person whose claim for exemption has been disapproved some right of review which, particularly in the field of taxation, is a prerequisite to due process of law and from a practical standpoint is necessary to prevent personal considerations from affecting the denial of an application for exemption and further necessary in order to attain uniformity on a statewide basis. Therefore, the Acts of 1937, Ch. 294, Sec. 1, supra, further supplies this defect in the said 1959 statute.

The subject matter of the 1937 and 1959 Acts is so substantially identical that it might be claimed with some merit that the latter Act completely supersedes the former. However, the 1959 Act evidences no intention to withdraw from the County Board of Review the authority and duty to initially decide the eligibility of the property in question for the exemption claimed, which authority is derived from the former Act. Nor does the 1959 Act evidence any intention to take away the applicant's right to administrative review by the State Board of Tax Commissioners. In fact, in a particular of the 1959 law hereinafter discussed, that law provides greater protection to the owner of tax exempt property from overzealous tax officials than formerly found in the 1937 Act.
least in the two particulars noted above, the said Acts are not in conflict but the 1959 Act is dependent to some extent upon the 1937 Act, so that if the Legislature had clearly intended to repeal the 1937 law, a provision expressly repealing the former law would surely have been considered as necessary. Therefore, my answers to questions Nos. 1 and 2 are that the Acts of 1959, Ch. 354, *supra*, does not completely supersede the Acts of 1937, Ch. 294, *supra*, but only to the extent that the later act is in conflict with the former. The difficulty in construing the two Acts together is apparent in the following section of this Opinion and is evidence of the need for greater care in the drafting of bills designed to become independent statutes.

Your third and fourth questions are as follows:

"3. In Chapter 354 of the Acts of 1959, the term ‘person’ is defined to mean and include ‘any individual, firm, association or corporation.’ Does this statutory definition of the term ‘person’ mean that the requirements of the 1959 Act of filing a claim for tax exemption apply to each of the twenty-two classifications of otherwise tax exempt property, as provided by the Acts of 1919, Ch. 59, Sec. 5, as amended, as found in Burns’ (1951 Repl.), Section 64-201? By way of illustration, Section 5 of the aforementioned 1919 Act, as amended, specifically exempts property of the State of Indiana, property of the United States, its agencies and instrumentalities to the extent that Indiana is prohibited by law from taxing said property of the United States; also exempted is property of counties, cities, towns and townships and many other tax-supported public properties. Does the definition of ‘person’ above referred to include such owners of property as for instance the State of Indiana and the United States Government, and if the said 1959 Act does not apply to the State of Indiana and the United States Government, what other classes of owners of tax exempt property are not included within the definition of the term ‘person’ as contained in the 1959 Act?

"4. If it is your opinion that the State of Indiana is not included within the definition of the term ‘person’
as contained in said 1959 Act, then to what extent would such an exclusion reach? Particularly, this Board must know whether properties such as Indiana University, Purdue University and other so-called state schools would be considered as being property owned by the State of Indiana or whether such Universities and Colleges would be required to file the claim for exemption as provided by the said 1959 Act? Also in particular, would the 1959 Act apply to other school property which is commonly regarded as part of the public school system of the State of Indiana, but operated and governed either by a local political subdivision or operated and governed by a public school corporation?"

The determination of the answer to these questions discloses the area in which there is perhaps the most marked conflict between the provisions of the former 1937 law and the Acts of 1959, Ch. 354. This is evidenced by reference to Sec. 3 of the 1937 law, being the Acts of 1937, Ch. 294, Sec. 3, as found in Burns’ (1951 Repl.), Section 64-215, which provides as follows:

“There shall be excluded from the provisions of this act any property which is owned by the state of Indiana, or by the government of the United States, or by a church, school corporation, state accredited school, state accredited charitable institution, university, college, university or college fraternity or sorority, hospital or any municipal corporation or political subdivision of the state of Indiana, and both occupied by such institutions and used for such purposes; and all annuities payable by religious or charitable organizations, or by educational institutions located in this state, to any person or persons who have made gifts, bequests or devises to any such organization or institution and which shall have been offered and accepted prior to the passage of this act.”

By contrast, Sec. 1 of the 1959 law, being the Acts of 1959, Ch. 354, Sec. 1, as found in Burns’ (1959 Supp.), Section 64-234, provides that the term “person” shall mean and include “any individual, firm, association or corporation” and
that act contains no provision excluding any property owner owning tax exempt property from the application of the said 1959 law. It is plain to see that several classes of owners of tax exempt property specifically excluded from the applicability of the Acts of 1937, Ch. 294, by Sec. 3 thereof, supra, are includible within the all-embracing definition of the term “person” as evidenced by the Acts of 1959, Ch. 354, Sec. 1, supra.

However, not all of the owners of tax exempt property which were excludible from the applicability of the said 1937 law are within the classification of “any individual, firm, association or corporation,” to which the 1959 Act applies and it is not probable that the 1959 Legislature intended such an absurdity as requiring that the State of Indiana and the United States should be required to file a certified claim for exemption as a prerequisite to acquire the exempt status applicable to property owned by each of said sovereigns. Ordinarily, if the Legislature means for an enactment to apply to the sovereign, specific reference of such intention is found in the particular enactment involved.

As stated in 82 C. J. S. Statutes § 317 at page 554:

“The government, whether federal or state, and its agencies are not ordinarily to be considered as within the purview of a statute, however general and comprehensive the language of [the] act may be, unless [the] intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication.

“This general doctrine applies, or applies with special force, to statutes by which prerogatives, rights, titles, or interests of the government would be divested or diminished, or to statutes under which liabilities would be imposed on the government. Although the rule with respect to the exclusion of the sovereign is less stringently applied where the operation of the law is on the agents or servants of the government rather than on the sovereign itself, it also applies where a reading which would include public officers in the operation of the statute would work obvious absurdity * * *.” (Our emphasis)
To like effect see also: 49 Am. Jur., States, Territories, and Dependencies, §§ 14 and 15, pp. 235, 236.

Also in 82 C. J. S. Statutes § 317, p. 557, is the following concerning the meaning of the words “person” and “corporations” as applied to the sovereign:

“In general, the word ‘person’ used in a statute will not be construed so as to include the sovereign, whether the United States, or a state, or an agency thereof, or a city or town. * * * Generally the word ‘corporations’ as used in statutes is construed to refer to private corporations and not to include municipal corporations, unless the statute clearly indicates an intention to the contrary. * * *” (Our emphasis)

The above rules of statutory construction, which are supported by many cases and other texts to which reference need not be made, afford sufficient basis for concluding that the term “person” as defined in the 1959 Act does not include the State of Indiana or the United States or the agencies and instrumentalities of either of said sovereigns. There is some difficulty in determining the extent to which this exclusion reaches, but it is my opinion that the said 1959 law does not apply to the United States and the State of Indiana, nor to any board or body which is designated by statute as an agency of the United States or of the State of Indiana, nor to any political divisions and subdivisions of state government such as counties, cities, towns and townships. The property controlled by such divisions and subdivisions is public rather than private and in most instances has been acquired and is supported by tax moneys.

Referring particularly to your specific question concerning the applicability of the said 1959 law to properties such as Indiana University, Purdue University and other state schools I do not believe that they are included within the meaning of the term “person” as used in the 1959 Act. There is authority for holding that these universities are state universities. See: Russell v. Trustees of Purdue University (1929), 201 Ind. 367, 168 N. E. 529. By reason of the public character of the properties held by them, of the fact that they are tax supported and subject to more state regulation and public repre-
sentation than strictly private universities, it is my opinion that such universities are not required to claim an exemption as provided by the act.

Also, it is my opinion that the properties of any school which is a part of the public school system of the state are sufficiently public property and of such a sovereign nature that the title holder of any such property is not required to comply with the 1959 law.

Therefore, in answer to your third and fourth questions, it is my opinion first, that the 1959 Act does not apply to the United States, the State of Indiana, their agencies or instrumentalities, nor to counties, cities, towns, townships, or to other political divisions or subdivisions of the state; the Act does not apply to the title holder of any property which is a part of the public school system of the State of Indiana, whether operated by a local political subdivision or operated and governed by a public school corporation; nor does the said Act apply to Indiana University, Purdue University and other so-called state schools.

However, as the second part of my answer to your questions Nos. 3 and 4, it should be emphasized that the remainder of the classes of property owners excluded from the provisions of the 1937 Act by Section 3 thereof, are required to comply with the provisions of the Acts of 1959, Ch. 354, since they are included within the meaning of the term "person" as defined in Section 1 of that Act. I wish to state at this point that since churches, private school corporations, private schools, charitable institutions, privately owned and governed universities and colleges, fraternities, sororities and hospitals, which formerly were not required to claim exemption upon property owned by them, are now required to file such a claim for tax exemption, it is most regrettable that the 1959 Act is not more specific as was the 1937 law, as to the particular classes of tax exempt property owners intended to be covered by the 1959 law. Particularly is this so in view of the fact that these organizations have not been lawfully required to file a written application for the tax exemption to which they are otherwise entitled by the Acts of 1919, Ch. 59, Sec. 5, as amended, for more than twenty years past.
In concluding the answers to your questions Nos. 3 and 4, this Opinion is not to be construed as implying my approval or disapproval of the policy of requiring organizations such as churches and hospitals to file an application for tax exemption, but since the 1937 and 1959 Acts are so radically dissimilar with respect to the question of who must claim the exemption, I can only apply the rules of statutory construction which obviously require that the later Act controls. It should further be said that, due to the uncertainty caused by the 1959 law, in any case of doubt the safe procedure is for the property owner of tax exempt real or personal property to file the written certified application for exemption as provided by the 1959 law, listing all property claimed to be tax exempt, whether real or personal property.

Your fifth question is as follows:

"5. In the said 1959 Act, Section 2 requires the filing of such a claim for exemption 'between the first day of January and the first day of March, inclusive, of each year, * * *' whereas it is also provided in the same section that such a claim for tax exemption 'shall not be required to be filed with the auditor more than one time in any four year period.' If the filing of such a claim for exemption is necessary only one time in any four year period, is the State Board of Tax Commissioners authorized within its discretion to determine which year in any four year period such a claim for exemption is required and if said Board does not have such power, how is the time or the year within which such claim is to be filed to be determined?"

This question is further evidence of the confusion caused by the language of the Acts of 1959, Ch. 354, whereby in the same section, i.e. Section 2, is the requirement that the certified statement be filed each year between the first day of January and the first day of March, inclusive, and also the proviso that the claim shall not be required to be filed "more than one time in any four year period." Since the later limitation is contained within a proviso, it should be construed as limiting and qualifying the earlier provision contained within the same section which purports to require an annual filing. Therefore, the proviso would prevail and require that the
certified statement be filed not oftener than once in any four year period. There is no provision in the 1959 law for any agency to adopt rules or regulations interpreting this act.

I can only conclude with respect to question No. 5 that if a claim for exemption is filed the first year of every four year period the owner of such tax exempt property has complied with the requirement. The claim must be filed between January 1 and March 1, inclusive, and the property will be prima facie tax exempt for the year in which the claim is filed, whenever that may be, and for three (3) years thereafter. At any time a new claim for exemption is filed, before or after four (4) years have passed since the last claim for exemption was filed (including the year in which filed), a new period of four (4) years will commence during which no new claim need be filed, although of course the continued exemption will depend upon whether there is any material change of circumstance affecting the eligibility of the property for tax exemption.

Your sixth question is as follows:

"6. Section 2 of Chapter 354 of the Acts of 1959 seems to require the filing of the certified claim or statement by any person owning property which such person claims to be tax exempt 'in order to avail himself of such constitutional and statutory exemption': Standing alone, the provisions of said Section 2 could be interpreted as meaning that the filing of such certified statement is to be a condition precedent to obtaining a tax exempt status. However, Section 4 of the same Act seems to qualify Section 2 by requiring the county auditor within ten (10) days after March 1st of each year, to notify each person owning tax exempt property, by certified mail, if such person fails, neglects or refuses to apply for a tax exemption; this notice by the county auditor must apprise the owner that the property will be placed on the tax duplicate 'unless' the owner applies for tax exemption within fifteen (15) days after the sending of such notice. Section 4 also concludes by authorizing the auditor of the county to place the property on the tax duplicate 'if' a timely claim is not filed in response to the auditor's notice. The procedure of Section 4, therefore, further raises the following closely related questions:

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"A. If the auditor should fail, neglect or refuse to send the notice required of the auditor, would otherwise tax exempt property become taxable if the owner had not been apprised of his failure to claim exemption and of the consequences? In other words, is notice by the auditor as provided by Section 4, a prerequisite before property now considered tax exempt may be placed on the tax duplicate, if no claim is filed?

"B. If the auditor’s notice, as provided by Section 4, is not heeded by the owner of tax exempt property, is the auditor required to place property on the tax duplicate in situations in which the auditor has personal knowledge that the property clearly qualifies for tax exemption, except for the failure to claim exemption as provided by the 1959 Act?"

This question should be answered by noting that the Acts of 1959, Ch. 354, purports to require the filing of such certified statement as a condition precedent to obtaining tax exempt status, which may be inferred from the choice of the language used by the act. However, as your letter specifies, if a person owning tax exempt property should fail to apply for an exemption under the provisions of the 1959 Act, the auditor cannot place the property on the tax duplicate unless he, the auditor, follows the procedure contained in Section 4 of the 1959 Act. In such a situation, notice by the auditor of such failure to file a claim for tax exemption is a prerequisite before the auditor can place such property on the tax duplicate and then only if the owner still does not file a claim for exemption. This affords the owner of tax exempt property further protection than that provided by the Acts of 1937, Ch. 294, Sec. 2, as found in Burns’ (1951 Repl.), Section 64-214, which provided among other things, in part, as follows:

"* * * If the owner or agent of the owner of such property shall neglect to file such application for exemption, all charges for taxes, penalty and interest shall be carried forward and shall become a lien against such property as is now required by law on other property which is not exempt from taxation."

Thus, under the 1959 Act the auditor cannot proceed to place the property upon the tax duplicate if no claim is filed until
such auditor has afforded the owner with the notice which the auditor is required to mail, said notice to be by certified mail and apprising the owner that he has but fifteen days "after the sending of such notice" within which to apply for a tax exemption for such property. Therefore, in answer to part A of question No. 6, it is my opinion that if no claim is filed, the notice by certified mail as required to be given by the auditor pursuant to Section 4 of the 1959 Act is a prerequisite before property now treated as tax exempt may be placed on the tax duplicate. The statute gives the auditor only ten (10) days after March first within which to send such notice.

In answering part B of question No. 6, it should be reiterated that the 1959 Act evidences the intention of affording property owners, who may possibly qualify for tax exemption, specific notice if property formerly treated as tax exempt is about to be placed upon the tax duplicate and specifically affords all such owners of potentially tax exempt property an extra fifteen days within which to supply information to the auditor supporting a claim for continued exempt status of such property.

The act imposes a responsibility upon the auditor, therefore, as well as upon the property owner. The idea of this notice is obviously to attempt to prevent the taxation of property which may be eligible for tax exemption provided by the Acts of 1919, Ch. 59, Sec. 5, as amended.

In the ordinary situation in which a property owner would neglect to respond to the notice of the auditor required by Section 4, the auditor would be justified in assuming that the property is no longer eligible for tax exemption if its owner neglects to claim the exemption after such a notice. Once the auditor's notice is sent and no response is received thereto, the auditor has no discretion, for the last sentence of Section 4 of the 1959 Act clearly and specifically states:

"* * * If no claim for tax exemption is made by such person within fifteen [15] days after the sending of such notice, the auditor of the county shall place the property owned by the person on the tax duplicate of the county."  (Our emphasis)

Therefore, my answer to part B of your sixth question must be that if the owner of tax exempt property receives the notice
sent by the auditor and fails to file an application for exemp-
tion within fifteen days after the sending of such notice, then
the property involved does not qualify for tax exemption and
the auditor shall place the property on the tax duplicate, even
though he has personal knowledge of facts indicating that
such property might otherwise qualify.

In conclusion, it should be stated that a resumé of my
answers to each of your questions would be needlessly lengthy
and unduly repetitious. Generally, it may be stated that the
1959 Act applies to every owner of tax exempt property who
is an "individual, firm, association or corporation." Because
of the uncertainties caused by this enactment, the only safe
procedure in doubtful cases is to file a claim for exemption;
also, every person who must file a claim under this act may
further protect the tax exempt status of property owned by
such individual, firm, association or corporation by filing such
claim each successive year even though the act does not so
require; such procedure will obviate any question as to the
particular year in which exemption must be claimed. The 1959
Act protects the eligible property owner who has failed to
make application for tax exemption and affords him the
opportunity of claiming the tax exemption after receipt of
notice by certified mail, whereas the 1937 Act did not so
protect the owners of property which was otherwise eligible
for tax exemption.

Other changes effected by the Acts of 1959, Ch. 354, to
which reference should be made include the following:

The 1959 statute requires only a certified statement,
whereas the 1937 Act formerly required a statement verified
under oath of the applicant. However, the 1959 Act provides
severe penalties for the making of false statements of fact.
The 1959 statute requires the certified statement to be filed in
duplicate, whereas apparently under the 1937 Act it was
necessary only that one copy of the application be filed. The
1959 statute requires the collection of a fee of fifty cents
(50¢) which shall be accounted for and paid into the county
treasury at the close of each month, for the filing or prepara-
tion of such applications, whereas the 1937 Act made no such
provision. Although there may be other variations between
the two statutes, I believe that this Opinion contains the only variations which are of material importance.

OFFICIAL OPINION NO. 2

January 5, 1960

Honorable Harold W. Handley
Governor of Indiana
206 State House
Indianapolis 4, Indiana

Dear Governor Handley:

This is in reply to your request for an Official Opinion in which you ask whether the provisions of Acts of 1959, Ch. 107, apply to "recreation personnel employed and working under a Municipal Board or Commission."

Acts of 1959, Ch. 107, is an amendatory act which amends and adds to the Acts of 1933, Ch. 233, as amended. The 1933 Act is an act concerning the classification and government of civil cities, and Acts of 1959, Ch. 107, supra, concerns, in the main, the elective officers of a city, their salaries, and the creation of city courts. However, there is a provision in the Acts of 1959, Ch. 107, supra, which is pertinent to your question. A new section numbered 20a was added to Acts of 1933, Ch. 233, supra, by the Acts of 1959, Ch. 107, Sec. 6. Subsection (b) of this new section, as found in Burns' (1959 Supp.), Section 48-1233, subsection (b), reads as follows:

"(b) The salaries of each and every appointive officer, employee, deputy, assistant and departmental and institutional head shall be fixed by the mayor subject to the approval of the common council: Provided, that the provisions of this subsection [section] shall not apply to the manner of fixing and the amount of compensation paid by any city to the members of the police and fire departments. The common council may reduce but in no event is the common council authorized to increase any salary so fixed by the mayor. All such salaries shall be fixed on or before the first day of August of each year for the next succeeding fiscal year.