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:
"* * * This new condition presents a new problem of continuing expense for which we understand the Government will compensate in the payment of damages. In the computation of the damage the government has considered the additional cost on an annual basis. Using this figure there is a determination as to the required amount of money to be invested to earn sufficient money to pay the additional expense. This amount would then be paid to the City as damages with the suggestion that the money be invested as outlined above."

Based on the above, your specific questions are as follows:

"1. In the event that the City of Lawrenceburg and/or the Flood Control Commission of Lawrenceburg accepts money in payment of damages under the circumstances outlined above, does the City or the Flood District have a statutory authority to deposit the money in a Special Fund or invest the money, and to use the income received from investments to pay such expenses?

"2. Does the City and/or the Flood District have authority to receive grants from the Government with the expressed understanding that the money being invested and the income derived therefrom be used expressly for the payment of the cost of increased operation caused by the new dam?

"3. Will the acceptance of any money under question No. 2 affect the tax structure of either the City or Flood District?"

In order to answer your questions the distinction between special and general funds of a municipality should first be noted. In McQuillin, The Law of Municipal Corporations, 3rd Edition, Section 39.45, page 135, it is stated as follows:

"Municipal funds are either general or special. Certain claims are payable out of the general fund, and ordinarily general funds may be appropriated by the council to any municipal object. So when there is no requirement, by statute or otherwise, that money com-
ing into the city treasury shall be kept in a special fund and applied to a particular purpose, it is proper, of course, to place it in the general fund, and to use it for general city purposes. * * *” (Our emphasis)

Thus it has been held that profits derived from the operation of municipally-owned utilities are part of the general revenue of the city where no statute directs such funds to be applied to or kept in a special fund for the operation of the utilities.

South Texas Public Service Co. et al. v. Jahn et al. (1928) [Tex. Civ. App.], 7 S. W. 2d 942;

C. Twitchell et al. v. The City of Spokane et al. (1909), 55 Wash. 86, 104 P. 150.

I can find no specific statutory authority in this state authorizing the creation of a special fund in which these damages may be deposited. However, there is authority expressly granted to this state or any political subdivision thereof to co-operate with the federal government in order to receive benefits for itself or any of its citizens, and the state or any political subdivision thereof is “authorized and empowered to do any and all acts, and to make any rule, regulation, order, or finding, that may be necessary to co-operate with the federal government or to effectuate the purposes of any such federal law.”

Acts of 1947, Ch. 178, Sec. 1, as found in Burns’ (1951 Repl.), Section 61-1301.

In addition to the foregoing, the act creating the flood control district in question gives specific authority to the board of commissioners of such district to accept financial aid and assistance from the federal government.

Acts of 1939, Ch. 23, Sec. 8, as found in Burns’ (1950 Repl.), Section 48-4936.

I have been informed that the “damages” to be received by the City of Lawrenceburg are paid pursuant to 33 U. S. C. A. § 701q, which provides that the Chief of Engineers of the Department of the Army may utilize funds available for the construction, maintenance or operation of any dam or reservoir project under the control of the Department of the Army
for the repair, relocation, restoration or protection of any utility which has been damaged by reason of the operation of such dam or reservoir. Since these funds may be expended only for certain purposes, such funds must be accepted by the municipality subject to conditions imposed by law and the granting authority. Clearly, in such case, these moneys should be deposited in a special fund.

Therefore it is my opinion, based on the above statutory authority, that, if the funds referred to as "damages" in your question No. 1 are paid upon conditions imposed by the federal government limiting the expenditure to a particular purpose, the municipality must treat these funds as special to be expended only for such purpose. On the other hand, if these "damages" are paid without accompanying conditions thereon, there is no authority to create a special fund for such moneys and they should be deposited in the general fund of the municipality. My answer to that part of your question No. 1 concerning the flood control district is the same inasmuch as a flood control district created pursuant to Acts of 1939, Ch. 23 as found in Burns' (1950 Repl.), Section 48-4929 et seq., is a political entity separate from the city and expressly comes within the definition of a "political subdivision" as that term is used in Burns' 61-1301, supra.

My answer to your second question is in the affirmative in view of the statutory authority above cited. This authority clearly gives a city or a flood control district power to receive grants from the federal government on condition that the money be invested and expended only for a particular purpose.

In answer to your question No. 3, it is my opinion that where a city or flood control district accepts grants from the federal government under certain conditions restricting the handling and expenditure of such money, this money must be considered as a special fund and may not be appropriated for another purpose. Assuming that the funds received in grants from the federal government represent the total increased cost to the municipality caused by the construction of the dam, the existence of a special fund in which these grants are placed would not affect the amount appropriated from the general revenues of the municipality, nor create additional revenues for the general fund. Therefore, the acceptance of these moneys under such circumstances would not affect the tax rate.