The persons listed in the beneficiary form may be distinguished from any other persons having the same first names by recourse to the address given for them. In fact, your letter indicates that it has been ascertained that said names and address belong to the minor children of the decedent.

It is my opinion that the deceased teacher distinguished named persons by description and so designated beneficiaries within the meaning of Burns' Section 28-4511, supra. It is also my opinion that such designation of beneficiaries is as binding upon those administering her account as it would be if she had included surnames in the designation.

OFFICIAL OPINION NO. 2

April 1, 1959

Honorable Albert A. Steinwedel
Auditor of State
238 State House
Indianapolis 4, Indiana

Dear Mr. Steinwedel:

This will acknowledge receipt of your letter requesting an Official Opinion relative to the handling of "supplementary purchase orders" for the State Highway Department of Indiana. Your letter reads in part as follows:

"Sub-section (b) of section 20 of Chapter 279 of the Acts of 1947 states, in part, that 'Except as otherwise expressly provided herein, the provisions of this Act relating to the allotment system and to the encumbering of funds shall apply to appropriations and funds of all kinds, including standing or annual appropriations and dedicated funds, * * *."

"Sub-section (a) of section 21 of Chapter 279 of the Acts of 1947 states, in part, 'Except as specifically provided for in appropriation acts, every appropriation or part thereof remaining unexpended and unencumbered at the close of any fiscal year shall lapse and be returned to the general revenue fund; * * *.'
"We are confronted with a situation in our office which, in view of the above quoted provisions of Chapter 279 of the Acts of 1947, seems to have no clear-cut solution. The Highway Department issues annually about 180 purchase orders for the purchase and delivery of gasoline, lubricants, and fuel in the various districts and sub-districts. Due to errors in billing, receiving and processing for payment, we find on file a number of apparently unpaid claims for deliveries made against purchase orders which are now closed out and cancelled on the books of the Auditor of State, as far back as the fiscal year 1956-57.

"Could the Auditor of State legally pay these claims and charge the payment against purchase orders currently issued by the Director of Public Works and Supply as supplementary to the original purchase orders, which have been completed and cancelled out on the books of the Auditor of State, to cover payment for deliveries of materials or supplies made during the fiscal years 1956-57 and 1957-58?"

The statute pertaining to the reversion of unexpended and unencumbered appropriations to the general fund is, as your letter states, Acts of 1947, Ch. 279, Sec. 21, as found in Burns' (1951 Repl.), Section 60-1821. I call your attention to subsection (b) of Burns' 60-1821, supra, which reads as follows:

"(b) Except as otherwise expressly provided by law, the provisions of this section shall apply to every appropriation of a stated sum for a specified purpose or purposes heretofore or hereafter made from the general revenue fund, but shall not, unless expressly so provided by law, apply to any fund or balance of a fund derived wholly or partly from special taxes, fees, earnings, fines, federal grants, or other sources which are by law appropriated for special purposes by standing, continuing, rotary or revolving appropriations." (Our emphasis)

By virtue of the above act, unexpended or unencumbered appropriations will, with certain exceptions, revert to the general fund and subsequent purchase orders directed to such reverted funds would not be subject to recognition and pay-
ment. However, under the facts presented in your letter, the funds in question are not affected by the reversionary provisions of the act cited in your letter. The reasons for this are apparent in the statute itself and I have emphasized the portion of the act which leads to this conclusion.

First of all, subsection (b) of Burns' 60-1821, supra, states that "except as otherwise expressly provided by law" said funds shall revert. The funds with which you are dealing were appropriated for the use of the State Highway Department and became a part of the "State Highway Fund" subject to the provisions of Acts of 1933, Ch. 18, Sec. 25, as found in Burns' (1949 Repl.), Section 36-125. Subsection (g) of this act provides as follows:

"(g) Any portion of the state highway fund unexpended at the expiration of any fiscal year shall remain in such fund, and be available for the succeeding years. All expenses incurred in carrying out the provisions of this act shall be paid out of the state highway fund."

The above quoted subsection shows that the funds attributable to the state highway fund are to remain in said fund for use, under the provisions of the act, in succeeding years even though said funds are unexpended. Thus, Burns' 36-125, supra, is an express proviso whereby highway appropriations are not within the intent and meaning of the reversionary provisions in Burns' 60-1821, supra, and therefore the funds of the state highway account would not revert to the general fund.

Secondly, I again direct your attention to Burns' 60-1821(b), supra, wherein it is stated that the provisions of the act "* * * shall not * * * apply to any fund or balance of a fund derived wholly or partially from special taxes * * *." In this connection, the following act is important: Acts of 1943, Ch. 73, Sec. 25, as amended, as found in Burns' (1957 Supp.), Section 47-1556, provides for the use and disposition of taxes collected by virtue of the "Motor-Vehicle Fuel Tax" and the "Fuel Use Tax." After designating certain expenses which are to be paid out of the tax, the statute then says:

"* * * The remainder of any balance in the motor fuel tax fund, after the aforesaid transfer, shall be
transferred to the motor vehicle highway account for
distribution as provided by law * * * *.

The "Motor Vehicle Highway Account Act" is Acts of 1941,
Ch. 68, Secs. 1 to 10, as amended, as found in Burns' (1949
Repl.), Sections 36-2815 to 36-2824. Section 3 of this Act, as
amended, and as found in Burns' 36-2817, provides in part as
follows:

"* * * (d) On the first day of April of each year
and quarterly thereafter the remainder of the net
amount in the motor vehicle highway account shall be
credited to the state highway fund for the use of the
state highway commission."

In accordance with the various provisions of the acts
herein cited, it is clear that the "state highway fund" in
Burns' 36-125, supra, is supported, at least partially, by funds
derived from a special tax and therefore the reversionary
provisions of Burns' 60-1821, supra, do not apply and the
unused highway funds do not revert to the general fund but
remain in the state highway fund for use in subsequent years.
In 1948 O. A. G., page 61, No. 14 the Attorney General dis-
cussed a similar problem and concluded that funds derived in
whole or in part from a special tax would not revert to the
general fund by virtue of Burns' 60-1821, supra.

Finally, we have the problem of the unexpended nature of
the appropriated funds upon which the original purchase
order is drawn. The statutory provision with respect to unex-
pended funds is found in Burns' 60-1821 (a), supra. In order
to simplify the task of defining "unexpended and unencum-
bered," I refer you to an Opinion of the Attorney General
wherein these problems are subjected to cogent consideration.
In 1945 Opinions of the Attorney General, page 554, No. 128,
the Attorney General stated that if a contract existed for the
payment of money from a specific appropriation, then the
funds were no longer "unexpended" and would not revert to
the fund against which the appropriation was made even
though actual payment on the contract did not occur until a
subsequent calendar year. Thus, the contract itself would bind
the funds so as to constitute a type of expenditure or encum-
brance sufficient to prevent any reversion of the appropriated
funds.
Within the pattern of facts suggested by your letter, it would seem that once the funds for the payment of highway gasoline and oil supplies have been appropriated and once a valid purchase order is drawn against said funds, then, at that time, a binding contractual obligation exists which does in fact encumber the appropriations made therefor. Thus, an obligation exists that the funds remain ready for the payment of said purchase order at the time delivery is made and a valid invoice is received.

Your facts indicate that the original purchase orders were subsequently canceled when deliveries were not made within the same or succeeding fiscal years. Once the purchase order has been allocated to the appropriate funds, the passage of time would not necessarily operate to cancel out either the purchase order or the funds against which such order is drawn. It may, however, become a matter of procedural expediency to “cancel” the order and transfer the funds to another account or fund to prevent confusion with the level of current appropriations. Such a process would not make the original appropriation any the less available when actual delivery is made and an invoice is received for payment. The fact that a so-called “supplementary purchase order” is received would not permit you to draw against current appropriations and the payment must be from the original appropriation provided the order does not exceed the amount originally appropriated.

Therefore, it is my opinion that it is not necessary to obtain a deficiency appropriation to cover the “supplementary purchase orders” referred to in your letter. The funds in the state highway fund remain available for the payment of expenses authorized under the act and the fact that specific amounts may have been removed from a designated account due to the passage of time does not vitiate the obligation secured by the original purchase order, nor does it destroy the source or identity of funds available for such purchase orders. Thus, the subsequent orders will not be charged against current appropriations but will be paid for out of the funds available in the state highway fund account which can be transferred to the specific account originally designated for the purchase order in question.