legislative action, and not for the decision of the courts."

Therefore, in answer to your Question No. 2, it is my opinion that there is no statute which provides a means of disposal for unclaimed surplus items received under Burns’ 64-2208, supra, and such items should be paid into the county treasury until the Legislature makes provision for their disposal and/or distribution.

OFFICIAL OPINION NO. 61
December 1, 1959

Mr. J. B. Kohlmeyer, Director
State Commission for the Reorganization of School Corporations
Room B-4, Senate Chambers, State House
Indianapolis, Indiana

Dear Mr. Kohlmeyer:

Your letter of November 6, 1959 has been received and reads as follows:

“As you know, Chapter 202 of the Acts of 1959, commonly called The School Corporation Reorganization Act of 1959, became effective July 20, 1959. As a consequence, County Committees for the Reorganization of School Corporations were not appointed and organized in sufficient time to prepare budgets and requests for funds as budgets are regularly prepared.

“In some counties, the Board of County Commissioners made provision for funds for the County School Reorganization Committee in their budget; in some counties the County Superintendent of Schools made provision for funds for the County Committee for the Reorganization of Schools in his budget. But in the main, most County Committees are without funds.

“County Committees for the Reorganization of School Corporations are asking us the following questions:
“1. Where no provision has been made for funds by either the County Superintendent or by the Board of County Commissioners, what procedure should the County Committee for the Reorganization of School Corporations follow in having funds made available to them so that they can carry out the duties prescribed for them in the Act?

“2. Where funds were provided for in the budget of the Board of County Commissioners, what procedure should be followed in making funds available for the County Committee for the Reorganization of School Corporations?

“3. Where funds were provided for in the budget of the County Superintendent, what procedure should be followed in making funds available for the County Committee for the Reorganization of School Corporations?”

Acts of 1959, Ch. 202, is found in Burns’ (1959 Supp.), Section 28-6101 et seq. In an Official Opinion of this office, being 1959 O. A. G., No. 5, issued April 17, 1959, it was held that the functions and duties of both the County Committee and the State Commission were of a “substantial and serious nature” and that the statute should be considered as requiring the actions for the appointment of the County Committee to be made by the Judge of the Circuit Court within a specified time from the effective date of the act rather than from the date of approval of the act by the Governor. This was due to the fact there was no emergency clause in the statute and the appointment of the County Committee by the Circuit Court Judge within the time specified in the statute could not be made since at that time the statute was not in full force and effect. It was held time was not of the essence of the appointment but that the appointments had to be made in order to give effect to the requirements of the statute.

Under Section 5 of said Act as found in Burns’ (1959 Supp.), Section 28-6104 to Section 28-6112, supra, numerous duties are specified which the County Committee shall perform within the various times specified, including preliminary plans for reorganization of all the school corporations
of the county, to consist among other things, of studies and surveys of each school corporation in the county as to: "the adequacy of the educational program; the number of pupils attending school and the population of each corporation, existing and proposed; the assessed taxable valuation of existing corporations per corporation and per pupil and the difference in such valuations under possible reorganization plans; the location, condition, and future use of existing school buildings and equipment; natural community areas; location and condition of highways, and natural barriers within school corporations; transportation of pupils; geographic and economic conditions within the county; and such other matters as afford greater equilization of educational opportunities for the inhabitants of the county, more efficient and economical administration of the public schools, and a more equitable distribution of public school revenues."

In addition to the foregoing, the County Committee is required to determine the value and amount of all school property and all bonded and other indebtedness of each school corporation affected and to include in the reorganization plan an equitable adjustment of all property, assets, debts and liabilities among the corporations involved. It shall conduct public hearings and make a report to the State Commission covering the foregoing and the other many detailed requirements of the statute, as the foregoing constitutes only a part of the many required duties and functions of the County Committee. These acts must be performed and reasonable expenses necessarily must be incurred in carrying out such duties. While Section 15 of the Act appropriated $50,000.00 for the carrying out of the provisions of the act, from the terms of the statute this was to be used, and necessarily will be exhausted, in administering the statute on a state level. Under Section 13 of the Act, being Burns' (1959 Supp.), Section 28-6124, it is provided:

"For the purpose of defraying the expenses of the county study, a county committee may prepare and submit to the county council on or before August 1, 1959, and on or before August 1 of each succeeding year during the life of this act a budgetary request. The county council may upon receipt of such request, establish a uniform ad valorem tax levy on all real and
personal property situated within the county, in such amount as shall be sufficient to raise an amount of money not to exceed the amount of such budget request.

“In any county in which the county council shall have established a tax levy pursuant to the provisions of this section prior to August 1, 1959, the county auditor shall, during the calendar year 1959, advance to the county committee from the county general fund, sufficient funds to permit the county committee to begin its work. Provided, however, that such advancements shall not exceed one-half \( \frac{1}{2} \) of the estimated amount of revenue which will be realized from the levy established by the county council for the 1959 taxes payable in 1960. Provided further, that all such advancements shall be returned to the county general fund during the calendar year 1960 from the proceeds of the county levy established by the county council pursuant to the authority vested in it by this section.”

As stated in your letter, the effective date of the act was July 20, 1959, and under the terms of the statute as construed in the foregoing referred to Official Opinion, County Committees were not and could not be appointed in time to organize and prepare and submit budget requests for funds for the operation of the County Committees as contemplated by Section 13 of said statute, supra. It is therefore, necessary to determine whether the statute constitutes authority for an emergency or additional appropriation for expenses of the County Committee or whether the requirements of said statute shall fail for lack of funds.

The case of Henderson, Auditor v. The Board of Commissioners of the State Soldiers’ and Sailors’ Monument (1891), 129 Ind. 92, 28 N. E. 127, required a construction of the statute authorizing the erection of the Soldiers’ and Sailors’ Monument. A specific appropriation of $200,000 was made to be used in the erection of the monument. Certain other incidental expenses were necessarily incurred, in the amount of some $29,000, for payment of architect fees; engineering; experts; attorneys’ fees; office and miscellaneous expenses; secretary’s salary; printing and stationery; superintendence;
advertising; and for the removal of Governor Morton's monument from the monument site. The Court after determining that these incidental expenses could not be paid from the $200,000 appropriation fund found that such incidental expenses were necessarily incurred and expended in the carrying out of the requirement of said act for the erection of such monument, and, therefore, would be payable from the general fund of the state. In holding an appropriation was authorized by said statute, the Court on page 100 of the Opinion, said:

"The question remains, is there an appropriation authorizing the auditor of State to draw warrants on the treasurer of State for the payment of the incidental expenses?

"In Campbell v. Board, etc., supra, the court said. 'It is true, as claimed, that no money can be rightfully drawn from the treasury except in pursuance of an appropriation made by law, but such an appropriation may be made impliedly, as well as expressly, and in general, as well as specific terms * * * The use of technical words in a statute making an appropriation is not necessary. There may be an appropriation of public moneys to a given purpose without in any manner designating the act as an appropriation. It may be said generally, that a direction to the proper officer, or officers, to pay money out of the treasury on a given claim, or class of claims, or for a given object, may, by implication, be held to be an appropriation of a sufficient amount of money to make the required payments.' Citing Ristine v. State ex rel., 20 Ind. 328.

"It is possible, as claimed by the appellant, that the language above quoted was outside of the question before the court in that case. It, however, states the law correctly, and we fully approve and adopt it * * *"

In support of the foregoing proposition also see Carr, Auditor et al. v. The State ex rel. Coetlosquet (1890), 127 Ind. 204, 209, 26 N. E. 778, and Gafill v. Bracken, Auditor of State (1925), 195 Ind. 551, 558, 561, 145 N. E. 312, 146 N. E. 109.

I am of the opinion the present statute under consideration authorizes an appropriation for the necessary expenses of
carrying out the functions and duties of the County Committee for the Reorganization of Schools, provided that facilities and procedures are available under other statutes for the local appropriation of, and obtaining of, such funds for such purpose.

Authority for the obtaining of such funds is in my opinion available under the procedures outlined in Acts of 1919, Ch. 59, Sec. 200, as amended, as found in Burns' (1951 Repl.), Section 64-1331, which provides, in part, as follows:

"* * * Any such additional appropriations so made in excess of the original budget shall be limited to revenues available, or to be made available, which are in addition to and in excess of those revenues anticipated in the original budget and a showing of such excess revenues must be made before any such additional appropriations may be approved, and any such additional appropriations so made which are additional items to, or are for the purpose of increasing any items of the original budget, but not in excess of the total original budget, shall be made from and be limited to any unappropriated funds made available by reason of unexpended appropriations being declared to be available for reappropriation by officers of the municipal corporation for purposes other than for which originally made and when any such additional appropriation shall have been approved, the original appropriation or appropriations shall be reduced a like amount in order that the total original budget shall not be increased. The decision of the state board of tax commissioners upon the expenditure of such additional amount of money, or any part thereof as may have been determined upon, shall be final and conclusive * * * ."

I am, therefore, of the opinion your questions should be answered as follows:

Where no provision has been made for funds by either the County Superintendent or by the Board of County Commissioners, the County Committee for the Reorganization of
School Corporations should submit a request to the County Council for an additional appropriation to the “County Committee for the Reorganization of School Corporations” to be made available from excess revenues then available, or to be made available, in addition to and in excess of those revenues anticipated in the original budget. Also any excess and available money in the budget due to a reduction of the amount to be used for any items therein, could be reappropriated for this purpose by following the procedure outlined in answer to your second and third questions.

Your second and third questions are answered jointly. Where funds were provided for in the budget of either the Board of County Commissioners or the County Superintendent, the County Committee for the Reorganization of School Corporations should submit a request to the County Council for an additional appropriation to the “County Committee for the Reorganization of School Corporations,” to be made as an additional item to the budget and paid from unappropriated funds made available by reason of unexpended appropriations, declared to be available for reappropriation for purposes other than that for which the original appropriation was made. That when such additional appropriation is approved the original appropriation for the County Commissioner's budget, or County Superintendent’s budget, as the case may be, shall be ordered reduced by the County Council in a like amount, in order that the total budget shall not be increased.

Such additional appropriations, of course, must be submitted to the State Board of Tax Commissioners. Such proceedings above outlined shall be conducted in the same and usual manner of making an additional appropriation, together with the requirement of giving of the ten days notice, etc., all as specified in Burns’ 64-1331, *supra*.