

MUNICIPAL CORPORATIONS—LOCAL ADMINISTRATIVE LAW

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An attempt is made here to trace the developments in the law of Indiana governmental units (including, for these purposes, civil cities and towns, counties, civil townships, and school districts) since June, 1940, as those developments are manifested in decisions of the Supreme and Appellate Courts of Indiana, in legislation, and in the opinions of the Attorney General of Indiana. While opinions of the Attorney General are not binding on the Courts, or even on the officers to whom rendered, for all practical purposes they are followed, and, at least until attacked, they are expressions of law.¹ No effort is made to make a comprehensive analysis either of the various fields of public law, or even of the development within those fields since June, 1940, except in a few instances where there is apparent confusion or error. For the purpose of this review, the development has been roughly classified into the divisions which follow:

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1. *Dodd et al. v. The State*, 18 Ind. 56, 66, 67 (1862). The Supreme Court said here that the opinion of the Attorney General to a state officer was for the information of the officer; he can follow it or not. However, the Attorney General is required to give his legal opinion to the governor, any other state officer or to either house of the general assembly touching any question or point of law, or upon the constitutionality of any law or proposed law. Acts 1889, ch. 71, sec. 8; Ind. Stat. Ann. 1933, sec. 49-1908 Burns. He is required to keep a record of all opinions given by him. Ind. Stat. Ann. 1933, sec. 49-1906 Burns. The action of an officer in reliance on an opinion of the Attorney General is entitled to weight in determining the bona fides of action based thereon. *Welliver, Receiver v. Coate*, 65 Ind. App. 195, 210, 114 N.E. 775 (1917). And a practical construction given to a statute, and long acted upon and acquiesced in, is equivalent to positive law; *Board of Commissioners vs. Bunting*, 111 Ind. 143, 12 N.E. 151 (1887); and may be considered in favor of the constitutionality thereof. *Pittsburgh, etc. R. Co. v. Hoffman*, 200 Ind. 178, 193, 162 N.E. 403 (1928). Consequently, when the Attorney General renders an opinion to a state official, who in turn exercises some control over local municipal officers either by audit of their accounts, control of their budgets, or other matters, the opinion, if acquiesced in, has all the force of law, and, even though not acquiesced in, is considered by the courts.

I. CIVIL CITIES AND TOWNS.

A. THE UNIT AND ITS OFFICERS.

The office of city councilman is not a lucrative office, and is therefore not vacated by the election of a member of such Council to the General Assembly.² It has likewise been held that the office of Clerk-Treasurer of a civil town is not a lucrative office.³ In his 1944 opinion, the Attorney General indicates his belief that the opinion is contrary to a 1942 opinion.⁴ In the 1942 opinion, the Attorney General said that a member of a board of town trustees held a lucrative office, and consequently, could not act as trustee of a cemetery district without contravening Art. 2, Sec. 9, of the Indiana Constitution, which prohibits one from holding more than one lucrative office at a time. If the two opinions are based on the distinction that a lucrative office is one that is created by law, with duties to perform under the general laws of the State, then the opinions are contrary.

The common council of a city cannot appoint its own attorney and pay such attorney out of city funds from an account created by the common council by ordinance for that purpose. The city attorney, appointed by the mayor, has charge of the city's legal business.⁵

No civil town can legally establish a budget without complying with that part of Ind. Stat. Ann. 1943 Repl., section 64-1331 Burns which requires that notice be published in two newspapers.⁶

In the absence of casualty, accident, or extraordinary emergency, salaries fixed and approved as required by law are not subject to increase during the year for which the budget has been adopted, unless the legislature gives express authorization to increase the salaries of employees.⁷ A 1945 act provides for the salaries of officers in cities of

2. Op. Atty. Gen., 1944, p. 469. See also *State ex rel Platt v. Kirk*, 44 Ind. 401, 15 Am. Rep. 239 (1873); Art. 2, Sec. 9, Indiana Constitution.

3. Op. Atty. Gen. 1943, p. 693.

4. Op. Atty. Gen. 1942, p. 88.

5. Op. Atty. Gen. 1944, p. 310.

6. Op. Atty. Gen. 1943, p. 479.

7. Op. Atty. Gen. 1944, p. 221.

over 250,000 population.⁸ Ordinarily, salaries of officers cannot be raised during their term of office,⁹ except (1) where the incumbent has been appointed to fill a vacancy after the effective date of the increase,¹⁰ or (2) where additional compensation is granted by the legislature for additional duties imposed,¹¹ or (3) where a per diem is granted by the legislature in addition to salary,¹² and, (4) in some cases, where the legislature has conferred power on municipal units to grant additional salary for certain purposes by ordinance, the Attorney General having said that a salary so granted is not changing a salary fixed "by law."¹³ In 1943, provisions for compensation of officers in certain cities of the second class were amended.¹⁴ A 1945 act,¹⁵ amending a 1943 act, makes provision for officers, including city judge, in cities of the third class. The mayors of fourth and fifth class cities may receive such additional amounts as may be authorized by the common council of the city under the provisions of Ch. 277, Acts 1945, providing the mayor continues to act as the city judge of such city. This would not, of course, include mayors in cities coming within the provisions of Ind. Stat. Ann. 1943 Supp. Sec. 48-1229 Burns, nor could such additional compensation be paid to mayors whose salaries are fixed at the minimum amount fixed by statute. In such cases the minimum salary has been fixed by the legislature and is fixed "by law."¹⁶ This opinion of the Attorney General construed an act¹⁷ which provided that in cities of the fourth and fifth classes the

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8. Acts 1945, Ch. 203, p. 663, amending Ind. Stat. Ann. 1943 Supp., sec. 48-1223 Burns.
 9. Op. Atty. Gen. 1943, p. 517, holding invalid Acts 1943, ch. 305; Ind. Stat. Ann. 1943 Supp. sec. 49-1004n. in so far as it attempted to grant a salary increase to an incumbent officer; see also Art. 15, Sec. 2, Indiana Constitution, as amended by the 1926 amendment.
 10. Op. Atty. Gen. 1945, No. 30.
 11. See footnotes 21-25, post (Cities and Towns). See also Acts 1941, ch. 162; Ind. Stat. Ann. 1943 Supp., sec. 49-1021 Burns, and secs. 48-1223 to 48-1232 Burns; Op. Atty. Gen. 1936, p. 43.
 12. Op. Atty. Gen. 1945, No. 31; Op. Atty. Gen. 1943, p. 517.
 13. Op. Atty. Gen. 1945, No. 39.
 14. Acts 1943, Ch. 84; Ind. Stat. Ann. 1943 Supp., sec. 48-1226 Burns, amending Acts 1941, Ch. 74, sec. 1.
 15. Acts 1945, Ch. 232, p. 1078, amending Acts 1943, Ch. 273; Ind. Stat. Ann. 1943 Supp. sec. 48-1216 Burns.
 16. Op. Atty. Gen. No. 50, 1945.
 17. Acts 1945, Ch. 277, p. 1244.

powers and duties of city judge shall be exercised by the mayor unless he chooses not to do so, in which case he will appoint a city judge for one year, except in cities where a city court exists under Acts 1923, Ch. 52. (Ind. Stat. Ann. 1933, Secs. 4-2801 et seq. Burns.)

Under Sec. 45, Sec. 80 (Cl. 6), and Sec. 218, Ch. 129, Acts of 1905, a vacancy in the office of city judge was to be filled by the mayor. In 1909 the General Assembly amended Section 45 of said act¹⁸ but neither Sec. 80, nor Sec. 218 has been amended or repealed. Therefore, the cited Sec. 45, as amended, is in irreconcilable conflict with the other sections. During the last twenty years the records show that the governor filled sixteen such vacancies. While this interpretation is not conclusive, the Attorney General is of the opinion that it should carry some weight, that the last expression of the legislature should control, and that such vacancies should be filed by the governor.¹⁹ Under a 1945 act, elective officers of cities of the first class (Indianapolis) are enumerated, and it is provided that the city clerk is eligible for re-election.²⁰

In determining whether a city engineer of a city having a population of more than 100,000 is entitled to the salary provided by Acts of 1923, Ch. 152, Sec. 4, as amended by the Acts of 1933, Ch. 25,²¹ in addition to the salary provided for the city engineer by the Acts of 1933, Ch. 233, Sec. 11,²² it is the opinion of the Attorney General that the first section dealing with additional work in track elevation deals with such subject in a more minute way, and would prevail over the provisions of the latter section, which is a more general statute regarding salary payment of the city engineer, and that he would be entitled to the additional payment. Under Acts of 1923, Ch. 152, Sec. 6,²³ it is provided that such payment may be made without any special appropriation therefor by the city council. Under the provisions of another

18. Ind. Stat. Ann. 1943 Supp. Sec. 48-1246 Burns.

19. Op. Atty. Gen. 1945 (January 31, 1945); §§80 and 218 repealed by implication, *state ex rel Blieden v. Glasson*, — Ind. —, 65 N.E. (2d) 245 (1946).

20. Acts 1945, Ch. 100, p. 220.

21. Ind. Stat. Ann. 1943 Supp., sec. 48-3404 Burns.

22. Ind. Stat. Ann. 1933, sec. 48-1223 Burns.

23. Ind. Stat. Ann. 1943 Supp., sec. 48-3406 Burns.

section,²⁴ where a city employee is paid from two or more appropriations, the total sum of such appropriations being more than the salary of such employee as fixed by the mayor, with the approval of the common council, the salary paid cannot exceed the amount fixed by the mayor, subject to the approval of the common council. This would not apply, however, to the salary provided for under Ind. Stat. Ann. 1943 Supp. Sec. 48-3404 Burns cited above, since that was fixed by the legislature.²⁵

Professional services required by a governmental unit may be paid out of a general appropriation, providing funds for the project in connection with which the services were required, when the appropriation is not broken down into detailed items going to make up the whole.²⁶

A 1945 act, amending prior legislation, provides for the appointment and payment of the several city employees, and is the section referred to above in the Attorney General's opinion of March 14, 1945.²⁷ The 1945 act expressly excepts the appointive power of the mayor in cities of the first class (Indianapolis) in connection with parks, and as to the appointment of a deputy city clerk. The appointive power of mayors of third class cities was already restricted in the latter respect, before the amendment. The 1945 amendment also removes the stipulation that salaries fixed shall not be increased during the ensuing year.

A firm or corporation, of which a member of a city park board is a member, stockholder, or officer, is prohibited from selling supplies or materials, or otherwise entering into a contract with the park board of said city, but may contract with some other independent department of such city of which said person is not a member.²⁸

Cities of the third, fourth, and fifth classes may purchase buildings and land for municipal purposes, and bonds

24. Ind. Stat. Ann. 1943 Supp., sec. 48-1222 Burns. Amended by Acts 1945, Ch. 32, p. 54.

25. Op. Atty. Gen. 1945 (March 14, 1945).

26. Moore v. City of Kokomo — Ind. App. —, 60 N.E. (2d) 530 (1945).

27. Acts 1945, Ch. 32, p. 54, amending Ind. Stat. Ann. 1943 Supp., sec. 48-1222 Burns.

28. Op. Atty. Gen. 1943, p. 430. For a discussion of the regulation of purchases by Cities and Towns, see sub-section G. Purchases and Sales, under Counties herein, and see also Acts 1945, Ch. 99, p. 215.

may be issued therefor to pay the purchase price, and to adapt and equip such buildings.²⁹

Surplus property of the federal government may be leased, purchased, or hired for any unit of government of the State by the State Director of the Division of Procurement and Supplies acting as agent for such unit under prescribed procedure, and by giving the prescribed notice if such unit has a valid appropriation therefor. Units may receive gifts and grants of federal property under the same procedure.³⁰

Under certain specified conditions land may be purchased for prescribed purposes in cities of the fifth class.³¹ Under specified conditions, cities of the third class shall have a city treasurer separate from the office of city clerk, except when the city is the county seat, in which case the county treasurer shall act as ex-officio city treasurer in the collection of civil and school taxes, and shall make settlement of the same to the city clerk.³²

B. THE LAW MAKING POWER OF THE MUNICIPAL UNIT.

A statute conferring power on the state fire marshal to regulate theaters does not invalidate municipal ordinances which also regulate them, except in so far as such ordinances conflict with the statute and exercise of power thereunder in making less stringent regulations.³³ A city ordinance licensing milk dealers and producers and providing that distributors deduct from the amount due a producer the sum necessary to pay the producer's license does not violate any state regulatory acts.³⁴ Municipal ordinances regulating traffic

29. Acts 1945, Ch. 41, p. 86.

30. Acts 1945, Ch. 219, p. 1014. In section 7 of this Act, concerning the necessary appropriation, reference is made that if the property "shall be transferred on conditional sale . . ." appropriation shall be necessary. Since general purchasing rules would apply otherwise, and since the state director is acting only as agent for the unit, investigation should be made to ascertain under what conditions municipal units can enter into conditional sales contracts.

31. Acts 1945, Ch. 11, p. 241.

32. Acts 1945, Ch. 232, p. 1078 amending Acts of 1943, p. 273, Ind. Stat. Ann. 1943 Supp. Sec. 48-1216 Burns.

33. Hollywood Theatre Corporation v. City of Indianapolis, 218 Ind. 556, 34 N.E. (2d) 28 (1941).

34. Sullivan, Mayor, et al. v. Catt et al., 219 Ind. 344, 38 N.E. (2d) 568 (1942).

and controlling streets are valid so long as they regulate within reasonable limits, and do not prohibit or unreasonably impair or interfere with the right of motor vehicle utilities, which have received certificates of convenience and necessity from the Public Service Commission, and the orders of such Commission will be interpreted, in so far as possible, to prevent conflict with city ordinances.³⁵ Where the legislature has expressly or by reasonable inference failed to grant a power to regulate to a municipal unit, an ordinance, passed in the absence of such power, is ineffective, and, even though the power to regulate has been once granted, it may be removed by subsequent legislation.³⁶ The power of a city to regulate parking by installing parking meters on a street in front of a privately owned lot does not deprive the owner of a property right without just compensation, and is a reasonable and proper exercise of police power.³⁷ The Attorney General in an opinion in 1944³⁸ in recognizing the *Andrews* case said that the fund created from the receipts from such meters is subject to the provisions of statute³⁹ requiring an appropriation, and cannot be expended without an appropriation for such purpose being first made by an ordinance passed by the common council. The opinion also observed that deputies and employees of the city, or of one of its departments, in performing services in connection with, or growing out of, a parking meter ordinance are performing the same in a governmental and not a proprietary capacity. They cannot be paid a separate salary from the parking meter fund, in addition to their salary fixed in accordance with applicable statutes for performing a governmental service. The receipts from such meters should be handled as other license fees, and the provision of Ch. 129, Acts 1943⁴⁰ apply to purchases made from funds received from parking

35. *Poparad v. Indianapolis Railroads, Inc.*, 111 Ind. App. 314, 321, 39 N.E. (2d) 781 (1942).

36. *Southern Railways v. Harpe*, — Ind. —, 58 N.E. (2d) 346 (1944) (when town had passed ordinances regulating speed of trains prior to grant of any power to do so.)

37. *Andrews v. City of Marion*, 221 Ind. 422, 47 N.E. (2d) 968 (1942).

38. Op. Atty. Gen. 1944, p. 419.

39. Ind. Stat. Ann. 1943 Supp., Secs. 48-1406 and 48-1411.

40. Ind. Stat. Ann. 1943 Supp., Sec. 53-510. (Repealed and superseded by Acts 1945, Ch. 99, p. 215). (See discussion of this act, governing purchases by cities and towns, under Counties, subsection G. Purchases and Sales.)

meters. Any unused part of said fund may be transferred to the general fund of said city. In this opinion, the Attorney General observed that the provisions which provide for any unexpended items of appropriation reverting to the general fund at the end of the calendar year does not apply to cities,⁴¹ and that no other statutes make the unexpended balance of appropriations of cities revert to the general fund at the end of the year. However, in 1945 the legislature⁴² provided that when any item of appropriation under the provisions of the 1905 Cities and Towns Act⁴³ remains unexpended in any fund at the end of a calendar year, the amount thereof shall immediately revert to the fund against which it was appropriated, and no warrant shall be drawn on such appropriation after the end of such year, except that this shall not apply to any balance of funds appropriated for the use of any board of aviation commissioners of any city, remaining unexpended at the end of any calendar year, and that there shall be no reversion for one year if there is a pending suit to enjoin or restrain the expenditures of any such money so appropriated. In 1945 the legislature expressly authorized the so-called parking meter devices⁴⁴ and empowered cities of the second, third, and fourth classes to regulate by ordinance the standing or parking of vehicles on or off the streets or highways within their respective cities by the use of mechanical parking devices, provided for the collection of fees for the use of such devices, and legalized the ordinances of such cities which authorize them. The legislature also authorized any city of the first class to acquire, establish, construct, maintain, and operate municipal parking facilities, authorizing condemnation, leases, purchases, and improvements, providing for the financing of the same, and designating administrative officers.⁴⁵ In an opinion of the Attorney General⁴⁶ it is said that ordinances carrying penal provisions must be published in a newspaper in addition to pamphlet or book form. The Attorney General cited the ef-

41. Ind. Stat. Ann. 1943 Supp., Sec. 26-524.

42. Acts 1945, Ch. 128, p. 273.

43. Acts 1905, Ch. 129, Sec. 84, Ind. Stat. Anno. 1933, sec. 48-1506 Burns.

44. Acts 1945, Ch. 236, p. 1084.

45. Acts 1945, Ch. 237, p. 1087. *Quaere*: Are parking meters now authorized in cities of the first class (Indianapolis)?

46. Op. Atty. Gen. 1944, p. 121.

fect of the 1927 Legal Advertising Act⁴⁷ on the Cities and Towns Act of 1905⁴⁸ and cited the case of *Bartley v. C. & E. I. R. Company*, 216 Ind. 512, 24 N.E. (2d) 405 (1939). The Attorney General did not mention Sec. 6 of Chap. 248 Acts of 1937⁴⁹ which substantially re-enacted the pertinent provisions of the 1905 act. However, the 1937 act provided that it did not repeal any existing law relating to the passage of ordinances which, of course, would leave effective the 1927 Legal Advertising Act. Since both the 1905 and 1937 act provided only that publication in book or pamphlet form shall be presumptive evidence of the regularity of passage of the ordinance, it merely placed on the opposing party the burden of proof that the 1927 act had not been complied with. However, the Attorney General likewise did not mention, in giving this opinion in 1944, the effect of Acts of 1941 Ch. 206, p. 630, which act is carried as an annotation to the Legal Advertising Act⁵⁰ and is evidently regarded by the editor of Burns as affecting Sec. 3, Ch. 96, Acts of 1927, the Legal Advertising Act. The Supreme Court gives some weight to the interpretation of the editors of Burns Ind. Stat. Ann. when subsequent sessions of the General Assembly fail to act in the face of such interpretation.⁵¹ Whether the ordinances contemplated in the Attorney General's opinion were enacted subsequent to the effective date of the 1941 act, herein referred to, is not revealed. However, the effect of the 1941 act could not have been considered, and it is doubtful whether the 1939 act was pertinent in the cited case⁵² and this case is used as the only case authority for the 1944 opinion. A general application of the opinion to such ordinances published in pamphlet or book form prior to the effective date of the 1941 act seems questionable. If the opinion is limited to the publication in pamphlet or book form of ordinances after the effective date of the 1941 act where newspaper publication was dispensed with, the opinion was correct at the time it was rendered and would then apply only to ordinances published in pamphlet form after

47. Acts 1927, Ch. 96, Ind. Stat. Ann. 1933, Sec. 49-704 Burns.

48. Ind. Stat. Ann. 1943 Supp., Sec. 48-1506 Burns.

49. Ind. Stat. Ann. 1943 Supp., Sec. 48-8306 Burns.

50. Ind. Stat. Ann. 1943 Supp., Sec. 49-704 Burns.

51. State ex rel. Watson v. Pigg, 221 Ind. 23, 31 (6) 46 N.E. (2d) 232 (1943).

52. *Bartley v. C. & E. I. R. Co.*, 216 Ind. 512, 24 N.E. (2d) 405 (1939).

March 11, 1941, and these published prior to such date would appear to be within the considerations above stated. However, the legislature settled the question as to cities, but not as to towns, in 1945,⁵³ and provided that the publication of ordinances of all cities in book or pamphlet form makes them effective without other publication.

C. ELECTIONS.

In 1945, an act was passed providing for the holding of elections and primary elections, for the election of the elective officers of the several civil and school towns of the State, fixing the time for holding such elections and primaries, and the procedure in reference thereto.⁵⁵ The legislature likewise enacted a comprehensive election code governing procedure of city and town elections.⁵⁵

D. FIRE FIGHTING FACILITIES.

Fire fighting equipment of cities may be used outside the corporate limits of the cities maintaining it, on the request of the executive officer or officers of another public corporation, and an immunity was provided for such subdivisions, and officers and employees thereof, when it was so used.⁵⁶ But the immunity from liability so provided is affected by Acts 1945, Ch. 197, p. 635, which is discussed hereafter under the section devoted to tort liability.

E. POLICE AND FIREMEN.

In all first and second class cities, any police chief or superintendent appointed after March 5, 1945, shall have had at least five years continuous service on such force, and any person appointed to any rank, other than chief or superintendent, at least two years of such service, except that this shall not be applicable to cities operating under civil service law.⁵⁷

In 1941 the procedure was provided for the appointment and dismissal of police in cities having a metropolitan police

53. Acts 1945, Ch. 241, p. 1102.

54. Acts 1945, Ch. 229, p. 1071 amending Ind. Stat. Ann. 1933, Secs. 29-1801 to 29-1810 Burns.

55. Acts 1945, Ch. 208, p. 680. See discussion under Counties, Sub-section I, Elections.

56. Acts 1943, Ch. 123; Vol. 11, Appendix 1 (B) Burns 1943 Supp.

57. Acts 1945, Ch. 161, p. 383.

force where the population of such city was not less than 10,000 nor more than 35,000.⁵⁸ A city is liable for medical and hospital expenses of such employees as policemen and firemen injured in the performance of their duties.⁵⁹ In 1941⁶⁰ the Attorney General in recognizing the duty of the city under this act ruled that it did not authorize the payment of premiums for insurance to cover such contingent liabilities. The fact that a city is liable for medical and hospital expenses under this act⁶¹ does not relieve a third party who has caused the injury from being liable in tort to the injured fireman for all these expenses. The contract between the firemen and the city is a matter in which the tort-feasor has no concern.⁶² However, municipal corporations are empowered to carry liability insurance on motor vehicles used by them, and on any real and personal property used by them,⁶³ and any city, town, or township having a volunteer fire company which serves without compensation or fore a nominal compensation shall procure for the benefit of each member of such company a policy of insurance for the protection of said members in the performance of their duties.⁶⁴

A contract is created by the appointment of a person to the police department of a city by the Board of Public Works, recorded in its records, and when such appointee executes a bond, subscribes to an oath, and enters into the performance of his duties, there is a valid written contract which incorporates all the terms of the act under which he is appointed.⁶⁵ Failure of a city to appoint a police board where the city is subject to the terms of the metropolitan

58. Acts 1941, Ch. 128; Ind. Stat. Ann. 1943 Supp., Sec. 48-6302 Burns.

59. Acts 1941, Ch. 71, Ind. Stat. Ann. 1943 Supp., Sec. 48-6168 et seq. Burns.

60. Op. Atty. Gen. 1941, p. 343.

61. Ind. Stat. Ann. 1943 Supp., Secs. 48-6168, 48-6169 Burns. In Op. Atty Gen. 1940, p. 163 it was said that a city is liable for medical and hospital expenses of policemen and firemen.

62. *Mullins v. Ballinger*, — Ind. App. —, 56 N.E. (2d) 496, (1944).

63. Acts 1941, Ch. 52, Ind. Stat. Ann., 1943 Supp., Sec. 39-1818 et seq. Burns.

64. Acts 1941, Ch. 196 amending Ind. Stat. Ann., 1943 Supp., Secs. 48-6163 and 48-6165 Burns.

65. *Kirmse v. City of Gary*, 114 Ind. App. 558, 51 N.E. (2d) 883, (1943).

police board act,⁶⁵ cannot deprive a police officer of his right to a hearing before such board and will not change the status of his employment into one at sufferance.⁶⁷ The Board of Public Works and Safety of a city, in determining questions presented by charges against an employee, acts in a ministerial capacity and as a fact-finding board, and a court will not weigh the evidence, if the finding of the board is supported by substantial evidence.⁶⁸ The Supreme Court has reviewed the effect of certain acts⁶⁹ on the rights of police officers, and points out that, while local civil service commissions have the power to make reasonable rules, which will have the force and effect of law, nevertheless their failure to act pursuant to their own rule is illegal, and the courts will review such action without statutory authority to do so in an action for mandatory injunction.⁷⁰ The Supreme Court has also considered the right of a police officer under statute⁷¹ where the officer had been absent from duty without leave, and found that his failure to demand a hearing on charges, or to "appeal" to the circuit court within the time prescribed by statute, precluded him from seeking subsequent judicial relief, and that limitation of the time for appeal by the legislature, after the inception of the officer's employment, had deprived him of no vested right.⁷²

In 1941 the legislature enacted a comprehensive act dealing with police pension funds in cities other than first class cities,⁷³ which were dealt with in another act passed by the same session.⁷⁴ In 1942⁷⁵ the Attorney General gave an opinion that a policeman who has retired from active service on

66. Ind. Stat. Ann. 1943 Supp., Sec. 48-6301 Burns.

67. *City of Frankfort v. Easterly*, 221 Ind. 268, 46 N.E. (2d) 817, 47 N.E. (2d) 319, (1942).

68. *Zellers v. City of South Bend*, 221 Ind. 452, 48 N.E. (2d) 816 (1942).

69. Acts 1905, Ch. 129, Sec. 160, Ind. Stat. Ann. 1933, Sec. 48-6105 Burns; Acts 1935, Ch. 80, Ind. Stat. Ann. 1943 Supp., Sec. 48-6136 Burns and Acts 1939, Ch. 37, Sec. 4, Ind. Stat. Ann., 1943 Supp., Sec. 48-6155 Burns.

70. *Coleman v. City of Gary*, 220 Ind. 446, 44 N.E. (2d) 101 (1942).

71. Ind. Stat. Ann. 1943 Supp., Sec. 48-6105 Burns.

72. *Wilmont v. City of South Bend*, 221 Ind. 538, 48 N.E. (2d) 649 (1942)

73. Acts 1941, Ch. 188, Ind. Stat. Ann. 1943 Supp., Sec. 48-6401 et seq. Burns.

74. Acts 1941, Ch. 154, Ind. Stat. Ann. 1943 Supp., Sec. 48-6419 et seq. Burns.

75. Op. Atty. Gen. 1942, p. 53.

account of disability, prior to the effective date of the 1941 pension act,⁷⁶ may be allowed an increase in his pension, but that the board of trustees could not make such increase retroactive. The Attorney General gave an opinion⁷⁷ that a city of 35,000 and less than 50,000 population does not operate under the state metropolitan police law⁷⁸ but is controlled by an act of the 1933 session.⁷⁹ A town marshal within the territorial limits of the town has the powers of a constable and is charged with the duties and obligations of that office. When there is a justice of the peace in the town, and the town marshal arrests a person and takes him to the county seat and causes him to be jailed there without warrant or judicial order, his act cannot be justified because of necessity, nor does the subsequent release of the arrested person relieve him of liability for false imprisonment. In making an arrest within his view, he cannot legally detain the person longer than is reasonably necessary to obtain a proper warrant or order for his further detention from some tribunal or officer authorized by law to issue such warrant or order.⁸⁰ Cities of the first, second, and third class shall, and cities of the fourth and fifth class may furnish for the use of active members of the police department one-half of all the necessary equipment and uniforms required by the department on and after January 1, 1946.⁸¹

In an action against a city by members of the city fire department for reinstatement, the court had the right to order the payment of the salaries of the reinstated members from the time of their dismissal, and such an order would not constitute a money judgment. The section of the statute to which reference is made in the opinion of the court applies to both firemen and policemen, and is a subsequently amended section of Acts of 1905, Ch. 120 entitled "An Act Concerning Municipal Corporations."⁸² The section now includes police

76. Acts 1941, Ch. 188 Ind. Stat. Ann. Supp., Sec. 48-6403 Burns.

77. Op. Atty. Gen. 1941, p. 21.

78. Ind. Stat. Ann. 1941 Supp., Sec. 48-6301 to Sec. 48-6315 Burns.

79. Acts 1933, Ch. 233, Ind. Stat. Ann. 1943 Supp., Secs. 48-1226 to 48-1238, Burns, (Sec. 48-1233 was amended by Acts 1945, Ch. 271, p. 1210, discussed elsewhere.)

80. Hall v. State ex rel. Freeman, 114 Ind. App. 328, 52 N.E. (2d) 370, (1943).

81. Acts 1945, Ch. 320, p. 1493.

82. Ind. Stat. Ann. 1943 Supp., Sec. 48-6105.

radio operators, and police signal and fire alarm operators.⁸³ In construing the statutes relating to the tenure of firemen, the Supreme Court found that a fireman retired by the chief of the fire force is not discharged, which could only be effected by the Board of Public Works and Safety, but such fireman will be estopped from asserting that his retirement was involuntary when he has not availed himself of his remedy at the time of retirement, and has accepted pension funds for more than a year before bringing an action.⁸⁴ In 1943 the legislature dealt with rights of firemen and policemen in military service, and suspended retirement rights for the duration of the war.⁸⁵ The act is limited on the duration of armed hostilities, and the rights thereunder to sixty days from the discharge and release "of all who are members of fire departments or police departments on temporary leave and covered by the provisions of this act." Reinstatement of firemen and policemen after army and navy service has been directed.⁸⁶ A 1945 act⁸⁷ provides for a board of trustees for firemen's pension funds, defining their powers and duties and providing operational procedure. Part-time firemen have a right to participate in the pension fund under a proper construction of Acts of 1937, p. 156, Ind. Stat. Ann. 1941 Supp., Secs. 48-6518 to 48-6539 Burns.⁸⁸ In cities of the first, second, and third class where there is a legally organized and permanent fire department, provision has been made for the payment of firemen, and their qualification for employment and the hours of duty of such persons is regulated.⁸⁹ The Attorney General⁹⁰ has given his opinion that policemen's and firemen's pension funds, and library funds, are subject to public depository laws.⁹¹ Likewise the public deposits insurance fund act is applicable to such funds.⁹²

83. *City of Lebanon v. DeBard*, 110 Ind. App. 49, 37 N.E. (2d) 718 (1941)

84. *City of Muncie v. Horlacher*, 222 Ind. 302, 53 N.E. (2d) 631 (1943).

85. Acts 1943, Ch. 59, Vol. 11, Appendix 6 (A) Burns.

86. Acts 1941, Ch. 46, Ind. Stat. Ann. 1943 Supp., Sec. 48-6167 Burns.

87. Acts 1945, Ch. 79, p. 172 amending Ind. Stat. Ann. 1943 Supp., Sec. 48-6519 Burns.

88. *Board of Trustees v. State ex rel. Hyatt*, 221 Ind. 110, 46 N.E. (2d) 595 (1942).

89. Acts 1945, Ch. 319, p. 1492.

90. Op. Atty. Gen. 1940, p. 166.

91. Ind. Stat. Ann. 1943 Repl., Sec. 61-657 Burns.

92. Ind. Stat. Ann. 1943 Repl., Sec. 61-622 et seq. (For firemen's pension funds, see Sec. 48-6533 Burns.)

Minimum compensation to be paid any fireman or policeman of cities of the first, second, third, fourth, and fifth class has been fixed by the legislature.⁹³ The Workmen's Compensation Act shall not apply to any fireman or policeman of units of municipal government who are also members of a firemen's pension fund or a policemen's pension fund.⁹⁴ The Supreme Court held previously that city firemen or policemen are employees and not public officers within the meaning of the Workmen's Compensation Act.⁹⁵ Provision has been made for the investment of funds held by the board of trustees of the firemen's pension fund.⁹⁶ In 1945 minimum salaries were established for the chiefs of the police department and the fire department in civil cities of the first, second, third, fourth, and fifth class.⁹⁷ Members of the police and fire departments of cities of the first, second, third, and fourth class must reside within the corporate limits of such city, except that any such person who has served fifteen or more years may live outside the corporate limits within fifteen miles thereof, and any have served ten or more years, but less than fifteen years, may reside outside any such city limits within five miles thereof, if he has adequate means of transportation to such city, and telephone service with such city.⁹⁸

F. HEALTH.

Provision has been made for a more comprehensive system for the collection of vital statistics by city and county health officers.⁹⁹ Private corporations may be established for the purpose of slum clearance, their plans to be subject to the approval of the city, town or township planning commission, or board having jurisdiction, which if approving the plans, shall require bond to insure completion of the project.¹⁰⁰

93. Acts 1943, Ch. 102, Ind. Stat. Ann. 1943 Supp., Sec. 48-6150 Burns.

94. Acts 1943, Ch. 114, Ind. Stat. Ann. 1943 Supp., Sec. 40-1202 Burns.

95. *City of Huntington v. Fisher*, 220 Ind. 83, 40 N.E. (2d) 699 (1942).

96. Acts 1943, Ch. 143, Ind. Stat. Ann. 1943 Supp., Sec. 48-6505, Burns.

97. Acts 1945, Ch. 255, p. 1174.

98. Acts 1945, Ch. 43, p. 88, amending Acts 1941, Ch. 202, p. 619, Ind. Stat. Ann., 1943 Supp., Sec. 48-6170 Burns.

99. Acts 1945, Ch. 154 repealing Acts 1943, Ch. 306, Ind., Stat. Ann. 1943 Supp., Sec. 35-130 et seq. Burns.

100. Acts 1943, Ch. 306 Ind. Stat. Ann. 1943 Supp., Sec. 25-5401 Burns.

The quarantine and isolation of a tubercular patient removed from a tenement house by the department of health is controlled by Ch. 83, Acts of 1903; Ind. Stat. Ann. (1933) Burns Sec. 35-408, and isolation must be in the city or county of residence.¹ Provision has been made for quarantine, and report by the city health officer of tubercular patients, and a procedure established for their committment to hospitals.²

A 1945 act provides for the appointment, qualifications, term, salary and duties of a health officer.³ City boards of health or county commissioners, if unable to secure the service of a physician, may employ persons other than physicians as part-time health officers subject to the approval of the State Board of Health until March 15, 1940.⁴

All cities have been expressly authorized to provide for the prevention and control of venereal diseases, to provide for the hospitalization and quarantine of persons afflicted with any venereal disease, and to levy a special tax and appropriate money out of the general fund of such city for such purposes.⁵ City councils of any city are authorized to accept gifts for the construction and equipment of buildings for city health departments.⁶ In 1945 the legislature provided for a department of public health and hospitals in cities of the first class, over 300,000 population (Indianapolis), prescribed its functions, powers, management, and major subdivisions, provided for financing, and the creation of a public health and hospital taxing district.⁷ Every city and town may enact an ordinance to prevent the deposit of any unwholesome substances, except for the enrichment of the soil, on public or private property, and compel its removal to designated points, or require occupants to place it for removal. Any person failing to pay the charge of such expenses will

1. Op. Atty. Gen. 1944, p. 212. Quaere: May the proper local authorities designate a cell-block of the county jail as an isolation ward for persons suspected of having venereal disease pending determination? In larger counties with no other detention facilities this procedure has been productive of numerous petitions for writ of habeas corpus against sheriffs by those so confined. See footnote 5 below.
2. Acts 1945, Ch. 193, p. 612.
3. Acts 1945, Ch. 173, p. 406 amending Ind. Stat. Ann. 1943 Supp., Secs. 35-118, 35-131, 35-124 Burns.
4. Acts 1945, Ch. 67, p. 150.
5. Acts 1943, Ch. 297, Ind. Stat. Ann. 1943 Supp., Sec. 35-413 Burns.
6. Acts 1945, Ch. 289, p. 1272.
7. Acts 1945, Ch. 200, p. 639.

be required to pay the same upon certification of the amount to the county auditor, who shall place the same on such person's tax duplicate, to be collected as taxes are collected.⁸ In cities of the second class, over 115,000 population a pension fund, and pensions for sanitary officers and inspectors of the city board of health have been provided.⁹ In cities with a population of not less than 101,000 nor more than 112,000, public funds may be appropriated for the use of non-profit hospitals.¹⁰

G. LIBRARIES AND ART GALLERIES.

Cities and towns may levy a tax for the maintenance of public libraries.¹¹ In cities over 50,000 and less than 200,000 population, which may have a library, established by private donations, and containing 25,000 volumes or more, and property of the value of \$100,000.00 or more, and which is open and free for the use of all inhabitants of the city, a tax may be levied and collected as other taxes, and paid over to the trustees of such library for its support, operation, and maintenance, such tax to be kept separate from all other funds of the library.¹² The act concerning library boards¹³ does not authorize the establishment of pension funds for library employees.¹⁴

In cities of more than 75,000 where there is or may be a non-profit corporation organized for the purposes of maintaining an art gallery, and promoting education in the fine and industrial arts, and which owns a building or buildings, grounds, works of art, and other proper equipment, it shall be the duty of the school city to provide a sum by a tax levy computed under the provisions of a 1945 act.¹⁵ A separate classification for payment is made for cities with not less than 115,000 nor more than 250,000 population. Any

8. Acts 1945, Ch. 252, p. 1156.

9. Acts 1945, Ch. 36, p. 65.

10. Acts 1941, Ch. 207 Ind. Stat. Ann. 1943 Supp., Sec. 48-7412, Burns.

11. Acts 1945, Ch. 40, p. 84, amending Ind. Stat. Ann. 1940 Repl., Sec. 41-301 Burns.

12. Acts 1945, Ch. 115, p. 245, amending Ind. Stat. Ann. 1940 Repl. Sec. 41-219. Burns.

13. Ind. Stat. Ann. 1940 Repl., Sec. 41-213 Burns.

14. Op. Atty. Gen. 1940, p. 224.

15. Acts 1945, Ch. 281, p. 1253 amending Ind. Stat. Ann. 1933, Secs. 48-7701 and 48-7703 Burns.

such corporation may qualify upon the filing of a certified copy of its resolutions of acceptance of all the provisions of the act with the school city.

H. PARKS AND RECREATION.

Parks in cities of the second class are defined, and the powers of the park commissioners are enumerated, and all acts of such officers adopted or passed under and pursuant to Acts 1923, ch. 67; Ind. Stat. Ann. 1943 Supp., Sec. 48-5605 are legalized.¹⁶ In second class cities, with a population of more than 51,000, members of the board of park commissioners shall receive a compensation of \$300.00 a year, and their actual expenses incurred in attending meetings and conferences, held for the purpose of discussing matters relating to parks.¹⁷ Cities of the third, fourth, and fifth class are empowered to receive gifts and levy taxes for playgrounds.¹⁸ Under certain conditions a tax may be levied on the assessed valuation of property in cities of the fourth and fifth class, and in incorporated towns, for the establishment of recreation centers for youths, and a board of control has been created to supervise such activities.¹⁹ Provision has been made for the exchange of real estate and title of real state for civil cities and school cities of the fifth class. Such school city may exchange unimproved land with such civil city to be used for park purposes, receiving in turn unimproved land of the civil city which is more useful for school purposes.²⁰

I. PUBLIC UTILITIES.

If a sewage treatment plant is operated by a city as a revenue producing service it is a public utility, and if any additional salaries have been provided because of the operation of any other public utility, the common council may pass an ordinance increasing the salaries of the mayor, city attor-

16. Acts 1945, Ch. 280, p. 1252, amending Ind. Stat. Ann. 1933, Sec. 48-5605 Burns.

17. Acts 1945, Ch. 280, p. 1252.

18. Acts 1943, Ch. 130, Ind. Stat. Ann. 1943 Supp., Sec. 48-5906 Burns.

19. Acts 1945, Ch. 127, p. 271.

20. Acts 1943, Ch. 183, Ind. Stat. Ann. 1943 Supp., Sec. 28-1339 Burns.

ney, city engineer, city controller, and clerk-treasurer, in an amount not to exceed \$600 a year, and not to be less than \$480 a year, under the provision of Acts 1933, Ch. 233, Sec. 21.²¹ This was the opinion of the Attorney General in 1942.²² At approximately the same time the Attorney General gave his opinion²³ that a *clerk* of a city which operates and owns a public utility is not entitled to additional salary under the section above cited,²⁴ and under succeeding sections which are applicable to different class cities and towns. The 1941 amendment, Acts 1941, Ch. 19, p. 51 had added "*clerk-treasurer*." The Appellate Court held that it was discretionary with the common council of a fifth class city whether an extra compensation should be paid the mayor of such city for extra services rendered in connection with the city-owned utility, under the above cited section.²⁵ Apparently confusion existed in some cities concerning the construction of these sections of the statutes and in 1945²⁶ the Legislature enacted legislation providing that in a city of the fifth class, operating one or more utilities, all payments of salary to a clerk-treasurer out of general funds were legalized, and the board of trustees of the utility was required to reimburse the general fund for such salaries which should have been paid under the Acts of 1933, Ch. 233 as amended. Legislation was also enacted²⁷ providing for the fixing of salaries of officers, and that where a city operates a utility the mayor, city attorney, city con-

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21. Ind. Stat. Ann. 1943 Supp., sec. 48-1233 Burns as amended by Acts 1941, Ch. 13, sec. 1, and Acts 1943, ch. 131, sec. 1, p. 393, and by Acts 1945, Ch. 271, p. 1210.
 22. Op. Atty. Gen. 1942, p. 66.
 23. Op. Atty. Gen., 1942, p. 60. See Acts 1945, Ch. 271, p. 1210, amending Ind. Stat. Ann. 1943 Supp., sec. 48-1233 Burns for amendment to include "clerk" within the class entitled to compensation under the statute.
 24. Ind. Stat. Ann. 1943 Supp., sec. 48-1233 Burns (amended by Acts 1945, Ch. 271, p. 1210, as stated in Footnote 23.)
 25. *City of Lebanon v. Dale*, 113 Ind. App. 173, 46 N.E. (2d) 260 (1943).
 26. Acts 1945, Ch. 139, p. 306.
 27. Acts 1945, Ch. 271, p. 1210, amending Ind. Stat. Ann. 1943 Supp., sec. 48-1233 Burns. The 1945 amendment expressly adds the proviso concerning sewage disposal plants, a proviso covering cities of the fifth class with three utilities, not including a sewage disposal plant, omits, except as to city engineer, additional compensation for other previously enumerated officers in connection with street and park departments, and adds provision for additional employment of city engineer in connection with street and park departments.

troller, city engineer, and *city clerk or clerk-treasurer* are entitled to additional compensation. This expressly added "city clerk" to the class of officers covered by the act. Apparently to clear up past confusion, an additional enactment²⁸ legalized all payments made to any mayor, city attorney, city clerk, or city civil engineer by any municipally owned utility under the provision of Acts 1943, Ch. 304.²⁹ However, in the opinion of the Attorney General³⁰ a city treasurer of a city which owns and operates a sewage disposal plant or utilities is not eligible to receive additional compensation from the funds of such sewage disposal plant or utility even though the common council would authorize the same by an ordinance under the provisions of Acts 1945, Ch. 271,³¹ because a city treasurer was not enumerated in any of the amendments. The Attorney General also gave his opinion that whether an incumbent official be elected or appointed,³² Ch. 271, Acts 1945 authorizes the common council of a city within the classification of the Act, which owns and operates a sewage disposal plant, or any other utility or utilities, to provide by ordinance additional compensation for the mayor, city attorney, city engineer, city controller, and city clerk or city clerk-treasurer either as a per diem or a salary, whether said named persons have a fixed term or not; the salary for the remainder of 1945 would be pro-rated from the effective date of the act. The Attorney General's rationale of this interpretation was that a salary fixed by ordinance is not "fixed by law" within the constitutional prohibition against increasing the salary of an officer during his current term of office. In cities of the second class, over 35,000 population, with property of the assessed value of not less than \$30,000,000.00 nor more than \$75,000,000.00, and owning four or more public utilities, additional compensation is provided for city councilmen.³³ The city or town treasurer should have the custody of the funds of a municipal waterworks plant under Ind. Stat. Ann. (1943

28. Acts 1945, Ch. 167, p. 394.

29. Ind. Stat. Ann. 1943 Supp., sec. 48-1227 Burns.

30. Op. Atty. Gen. 1945, No. 96.

31. An act amending Acts 1933, Ch. 233, as subsequently amended, and being Ind. Stat. Ann. 1943 Supp., sec. 48-1233 Burns referred to in Footnotes 21, 24 and 27, ante.

32. Op. Atty. Gen. 1945, No. 39.

33. Acts 1945, Ch. 239, p. 1098.

Supp., Sec. 48-5365 Burns.³⁴ Another 1945 Act³⁵ empowered the common council of cities to provide by ordinance for control and maintenance of a sewage disposal plant. The Appellate Court held that where a city-owned utility was acquired under Acts 1921, Ch. 94,³⁶ Sec. 16,³⁷ which makes no provision for notice or hearing before dismissal of the superintendent thereof by the board of trustees, then the provisions of Acts 1933, Ch. 235, do not apply. Under Sec. 11³⁸ of the latter act a procedure was provided for notice and hearing in such cases, where the utility has been acquired under the 1933 Act. However, the Appellate Court found that the 1933 Act did not repeal the former act.³⁹ In the light of this decision, in 1945 the Legislature enacted legislation amending Ind. Stat. Ann. 1933, Sec. 48-5311 Burns which is Sec. 11 of Acts 1933, Ch. 235,⁴⁰ providing for the employment of a superintendent of waterworks, defining his duties, and providing that he shall hold office until removed by the board of trustees, and omitting the previous procedural requirements for dismissal.

In the opinion of the Attorney General⁴¹ it is the duty of the Board of Trustees of the Water Department created under Ind. Stat. Ann. 1943 Supp., Sec. 48-5316 Burns, which section was amended in 1945,⁴² as heretofore mentioned, to manage, regulate and control the waterworks, to collect any delinquent rental for hydrants from the city, and to fix the rates, subject to the jurisdiction of the Public Service Commission. Cities of the third, fourth, and fifth classes are authorized by a 1945 Act⁴³ to own and operate water plants,⁴⁴ and such cities are further authorized to extend their mains a reasonable distance outside the corporate limits to furnish water

34. Op. Atty. Gen. 1942, p. 25.

35. Acts 1945, Ch. 205, p. 672, amending Ind. Stat. Ann. 1933, sec. 48-4316 Burns.

36. Ind. Stat. Ann. 1943 Supp., sec. 48-5345 et seq. Burns.

37. Ind. Stat. Ann. 1943 Supp., sec. 48-5365 Burns.

38. Ind. Stat. Ann. 1943 Supp., sec. 48-5311 Burns.

39. Kirkpatrick v. City of Greensburg, 113 Ind. App. 402, 47 N.E. (2d) 153 (1943).

40. Acts 1945, Ch. 109, p. 234, amending Ind. Stat. Ann. 1933, sec. 48-5311 Burns.

41. Op. Atty. Gen. 1944, p. 437.

42. Acts 1945, Ch. 205, p. 672, amending Ind. Stat. Ann. 1933, Sec. 48-4316 Burns.

43. Acts 1945, Ch. 125, p. 267.

44. Acts 1945, Ch. 124, p. 265, amending Acts 1943, Ch. 313, being Ind. Stat. Ann. 1943 Supp., Sec. 48-7221, et seq. Burns.

service to any industry contributing to the war effort, without the consent of the Public Service Commission. Except as to action already taken under this Act, it seems doubtful that it will have prospective effect. Another 1945 Act provides the procedure applicable for conferring pensions on employees of any city or town-operated municipal utility, providing for contributions of such employees in amounts not to exceed 5% of their wages or salary, supplemented by like contributions out of the earnings reserve or earned surplus of such utility. Likewise certain cities of the second class of 40,000 or more population, operating two or more utilities, two of which are an electric plant and a waterworks plant, may provide a municipal utility employees' pension fund. Under a 1945 Act⁴⁵ provision is made for revenue for said fund, its management, control, disbursement, its officers, and pensions, and the rights, powers and duties in connection therewith are prescribed. Authorization and procedure for the establishment of an Improvement Sanitation District has been made for cities of not less than 115,000 nor more than 150,000 population.⁴⁶ Another 1945 enactment⁴⁷ authorizes rates or charges against owners of premises served in any way by a sewage treatment works, owned and operated by any town or city, and empowers the declaration of such charges as a lien on such premises, authorizing the collection of such charges and the enforcement of such lien, and validates all rates and charges made and procedure taken pursuant to Acts 1932, Ch. 161 and all Acts amendatory thereof and supplementary thereto.

J. PURCHASE OF PROPERTY.

Cities of the third, fourth, and fifth classes and towns may purchase buildings and lands for municipal purposes and provision has been made for the financing of such purposes and for financing and establishing and equipping of such buildings.⁴⁸ A 1945 purchasing act provides for notice and bids for any purchase in excess of \$500.00 in the case of material goods, equipment, and supplies but provides that if

45. Acts 1945, Ch. 288, p. 1267, amending Acts 1943, Ch. 170, p. 494, being Ind. Stat. Ann. 1943 Supp., Secs. 48-6602 and 48-6605.

46. Acts 1943, Ch. 77, being Ind. Stat. Ann. 1943 Supp., Sec. 48-4260 Burns.

47. Acts 1945, Ch. 299, p. 1292.

48. Acts 1945, Ch. 41, p. 86.

the total amount of any such purchase is under \$500.00 bids may be invited from not less than three prospective bidders not less than three days before the time fixed for receiving bids. Under Sec. 1, it is provided that any purchase under \$500.00 may be made on the open market without notice or bids, but Sec. 2 provides that any such purchase shall be made by inviting bids as recited above. The act expressly provides that it is supplementary to other purchasing acts.⁴⁴

K. STREETS AND ALLEYS—IMPROVEMENTS.

Title by prescription cannot be acquired by adverse possession of land that has been platted and dedicated to the public for streets and alleys because such dedication is to the public and not to the municipality. No estoppel will be raised against a municipality because of the non-action of its officers.⁵⁰ Unless proceedings are absolutely void, benefited owners are bound by assessments levied for street improvements, if they fail to present their grievances at the time, and in the manner provided by the statutes involved.⁵¹ Where a landowner executes the statutory waiver by which he waives all irregularities in regard to an assessment, in return for which he is given the privilege of paying the assessment in installments, he not only binds himself personally, but also establishes the assessment as a valid lien against the land as to a subsequent purchaser.⁵² The holder of municipal assessment bonds has the right to maintain an action on a claim in a decedent's estate based upon waivers authorized by statute, signed by such decedent in his life-time, for the benefit of himself and any and all other bond-holders in a like situation, but he is not entitled to recover the statutory penalties for himself unless the statute expressly provides that such penalties belong to the bond-holders.⁵³ Even though plans and specifications provide that a contractor shall make no alterations without the written order of the proper Board of a municipality, where the Board at a meeting informed

49. Acts 1945, Ch. 99, p. 215, repealing Acts 1943, Ch. 129, Ind. Stat. Ann., 1943 Supp., Secs. 53-501 to 53-510 Burns.

50. *Steele v. Fowler*, Mayor, 111 Ind. App. 364, 41 N.E. (2d) 678, (1942).

51. *Varble v. O'Neil*, 110 Ind. App. 164, 37 N.E. (2d) 276 (1941).

52. *Mee v. Lafayette Loan and Trust Co.*, 112 Ind. App. 38, 41 N.E. (2d) 132 (1941).

53. *Ingram's Estate v. Gilmore*, 110 Ind. App. 298, 38 N.E. (2d) 860 (1942).

the contractor that whenever the engineer in charge determined on changes which involved additional material and work, the contractor should write a letter to such Board, and if he received no objection from the Board, should proceed with the changes, the city is liable for such extra work and material where there was a sufficient appropriation to cover them.⁵⁴ A contract made by a city without appropriation therefor is invalid. However, in the opinion of the Attorney General, if after an appropriation is made, a subsequent agreement is entered into, it may be valid if it can be separated from the prior invalid agreement, and where no serious moral wrong is thereby abetted.⁵⁵ No occupancy, use, or control of streets or alleys in cities of the first class (Indianapolis) shall create any vested private rights therein except as expressly conferred by the Legislature.⁵⁶ Cities of the first class may construct sewers, drains, and other necessary appurtenances thereto in platted subdivisions lying wholly outside the corporate limits of such cities but within four miles thereof, and the Board of Public Works and Safety of such cities may improve streets and alleys in such subdivisions.⁵⁷ This Act applies only to the City of Indianapolis, but provides that no such improvements shall be made without the approval of the County Planning Commission. Enumeration of the purposes for which allocated highway funds may be used by cities and towns, with special provisions for cities of the first class (Indianapolis), is made in a 1945 Act.⁵⁸ The enumerated purposes include construction, re-construction, repair and maintenance, including curbs; the purchase, erection and operation of traffic signs and signals, and safety zones and devices; the payment for traffic policing and traffic safety; the painting of structures, objects and surfaces in highways for safety and traffic regulation; the oiling, sprinkling and cleaning of highways and the purchase, rental and repair of highway equipment. The State Highway Commission has been empowered to select routes through cities and towns and

54. *City of Michigan City v. Witter, Trustees*, 218 Ind. 562, 34 N.E. (2d) 132 (1941).

55. *Op. Atty. Gen.* 1944, p. 464.

56. *Acts 1945, Ch. 137*, p. 296, amending *Ind. Stat. Ann.* 1933, Sec. 48-3105 Burns.

57. *Acts 1945, Ch. 309*, p. 1373.

58. *Acts 1945, Ch. 164*, p. 386, amending *Ind. Stat. Ann.* 1943 Supp., Sec. 36-2819 Burns.

to acquire and maintain such streets.⁵⁹ In cities of not less than 65,000 nor more than 100,000 population, authority has been given to provide for the alteration and repairing of the grades of public highways and railways at the intersection thereof, and provision has been made for the methods of payment therefor, including the creation of a Grade Separation District, with power to acquire land, and to do other acts in connection therewith.⁶⁰

L. CHANGE OF NAME.

Any city of the state may change its name, and the procedure for so doing has been established.⁶¹

M. CEMETERIES.

Provision has been made for the handling of funds of municipally owned cemeteries in certain towns.⁶² In certain instances, cities and towns are authorized to purchase cemeteries, and the power of eminent domain is conferred.⁶³

N. INCORPORATION AND ANNEXATION.

The act concerning the conditions and procedure for establishment of an incorporated town was amended in 1945.⁶⁴

In construing Acts 1935, Ch. 158,⁶⁵ the Attorney General has given an opinion that when a city annexes or incorporates territory under such Act the *civil* city becomes liable for such proportion of the indebtedness of the annexed *civil* or *school* township as the assessed valuation of property in said annexed or incorporated territory is to the valuation of all property in said township, except as to the unpaid indebtedness on any school building included in the territory annexed or

59. Acts 1945, Ch. 278, p. 1245, amending Ind. Stat. Ann. 1943 Supp., Secs. 36-169a and 36-2902, Burns.

60. Acts 1945, Ch. 217, p. 986, repealing Ind. Stat. Ann. 1933, Secs. 48-3701 to 48-3726 Burns.

61. Acts 1941, Ch. 137, being Ind. Stat. Ann. 1943 Supp., Sec. 48-8028 et seq. Burns.

62. Acts 1941, Ch. 20, being Ind. Stat. Ann. 1943 Supp., Sec. 48-6028 Burns.

63. Acts 1941, Ch. 94, being Ind. Stat. Ann. 1943 Supp., Sec. 21-301 Burns.

64. Acts 1945, Ch. 244, p. 1111.

65. Ind. Stat. Ann., 1943 Supp., Sec. 28-3305a Burns.

incorporated, the *civil* city must assume the entire debt.⁶⁶ Previous annexation statutes are amended in a 1941 Act.⁶⁷ There shall be no annexation of a part only of another incorporated town or city but only of the whole, and the consolidated corporation shall be bound for all the debts and liabilities of the annexed corporation.⁶⁸

O. TORT LIABILITY.

Where a city furnishes fire protection to another municipality it is still acting in a governmental capacity and not in a ministerial capacity, and the Supreme Court held in 1942 that it was not liable for the negligent operation of the fire apparatus.⁶⁹ However under 1945 legislation it is provided that whenever an injury to person or property results from negligent operation of a motor vehicle owned by a municipal corporation, operated by a member of the police or fire department, while he is engaged in the performance of his duty, and without contributory negligence on the part of the injured person, the municipality shall be liable for such injury or damage.⁷⁰ This action of the legislature changes the rule heretofore laid down by the courts. In the maintenance of a public park, a city is not engaged in a governmental function insofar as structural defects are concerned, but is engaged in the performance of a ministerial or proprietary function, and is liable for structural defects where they are due to a lack of reasonable care on the part of the city.⁷¹ Under Sec. 31, Clause 9 of Cities and Towns Act of 1905⁷² jurisdiction over streets and public ways was vested in the municipalities. Under Ind. Ann. Stats. (1943, Supp.) Sec. 31-111 Burns, provision is made that where a state highway connects with an improved street of a town of less than 3,500 population, the State Highway Commission shall maintain the same. However sidewalks of such street will not be construed to have

66. Op. Atty. Gen. No. 89, 1945.

67. Acts 1941, Ch. 69, being Ind. Stat. Ann., 1943 Supp., Sec. 48-104.

68. Acts 1945, Ch. 209, p. 969, amending Ind. Stat. Ann. 1933, Sec. 48-703 Burns.

69. City of Indianapolis v. Butzke, 217 Ind. 203, 26 N.E. (2d) 972 (1942).

70. Acts 1945, Ch. 197, p. 635.

71. City of Terre Haute v. Webster, 112 Ind. App. 101, 49 N.E. (2d) 972 (1942).

72. Ind. Stat. Ann., 1943 Supp., Sec. 48-301.

been included, and the town cannot avoid liability for injury to another by reason of a defect in such sidewalk.⁷³

P. AIRPORTS.

Three Acts of the 1943 Legislature⁷⁴ and earlier acts were repealed by a 1945 Act⁷⁵ which authorizes a municipality to acquire, establish, construct, improve, equip, maintain and operate airports and landing fields and to establish a Department of Aviation, defines its powers and duties and confers certain powers on the governing authority of such municipality in relation to said Aviation Department. The repeal of earlier acts was effective ninety days after the effective date of the 1945 Act. In the opinion of the Attorney General it is not necessary for a city to repeal any previous ordinance of such city enacted for the purpose of establishing an airport or a landing field under the provisions of a prior act of the General Assembly, before the governing body of such city enacts a new ordinance to bring such airport or landing field within the provisions of the 1945 Airport Act.⁷⁶ However, prior to the repeal of Acts 1943, Ch. 89, Sec. 3, the Attorney General gave an opinion⁷⁷ that notwithstanding the fact that the city had established a five cent levy for aviation funds under such act the city could include a sum in its budget to be paid from the general fund, or appropriate a sum to be thereafter transferred from the general fund to the aviation fund in addition to the five cent levy, subject to the general levy limitations and Ind. Stat. Ann. (1943 Supp.), Sec. 48-6708 Burns, which limit the entire levy for the general fund of such city.

In a recent opinion of the Supreme Court it was held that where the procedure for issuance of bonds under the 1931 act, an act repealed by the 1945 Act,⁷⁸ had been completely

73. *Town of Argos v. Harley*, 114 Ind. App. 290, 49 N.E. (2d) 552 (1943).

74. Acts 1943, Ch. 24, being Ind. Stat. Ann. 1943 Supp., Sec. 14-307 Burns; Acts 1943, Ch. 89, being Ind. Stat. Ann., 1943 Supp., Sec. 14-501 Burns; and Acts 1943, Ch. 237, being Ind. Stat. Ann. 1943 Supp., Sec. 14-601 Burns.

75. Acts 1945, Ch. 190, p. 591, repealing Ind. Stat. Ann. 1943 Supp., Secs. 14-307 to 14-311; 14-401 to 14-411; 14-501 to 14-514; 14-601 to 14-607, Burns.

76. Op. Atty. Gen., No. 35, 1945.

77. Op. Atty. Gen., No. 356, 1944.

78. *Murray v. Tyndall, Mayor*, — Ind. —, 63 N.E. (2d) 703 (1945).

complied with, and the bonds sold prior to the repeal of such act by the 1945 act, but a Board of Aviation Commissioners required under the latter act delivered the bonds, the acts of this Board were only ministerial, and did not affect the validity of the bond issue, or the power of the present Board of Aviation Commissioners to use the money for proper purposes. However, the court qualified its opinion by saying that if there were any objections to the bond issue, they were not apparent on the face of the record before the court, which left an inference that other objections might be raised.

An Aeronautics Commission of Indiana had been established⁷⁹ and such Commission is empowered to approve or disapprove all purchases made by any municipality of any land for the establishment of an airport or landing field. However, in the opinion of the Attorney General⁸⁰ the approval or consent of such Commission is not required before a municipality acquires additional land or facilities for the expansion of existing airports or landing fields. Within six months after the cessation of hostilities, or on the proclamation of the President that the state of emergency has ceased, whichever is earlier, Acts 1943, Ch. 210, being Ind. Stat. Ann. 1943 Supp., Sec. 14-701 Burns, required each city and town of 600 population or over to cause the name of such city or town to be painted on a roof or any flat surface. However, this act was expressly repealed by Acts 1945, Ch. 360, Sec. 14, p. 1781, but section 11 of the 1945 act substantially re-enacted this requirement, making it immediately effective, and providing for compliance with the marking requirements of the Federal Aeronautics Authority.

Q. SLUM CLEARANCE.

A 1945 Act⁸¹ affecting only the City of Indianapolis concerns the re-development of so-called blighted areas and provides for the establishment of special taxing districts for such purposes.

79. Acts 1945, Ch. 360, p. 1781, repealing Ind. Stat. Ann. 1943 Supp., Sec. 14-701 Burns.

80. Opp. Atty. Gen., No. 81, 1945.

81. Acts 1945, Ch. 276, p. 1219 (Redevelopment Act of 1945).

II. COUNTIES.

A. THE UNIT AND ITS OFFICERS.

The publication of legal notices of budgets, levies, and rates of a taxing district is controlled by the taxing statute,⁸² rather than by the provisions of the Legal Advertising Act,⁸³ but the Attorney General has given his opinion that in the event only one newspaper is published in such taxing district, it shall be sufficient to publish such notice in such paper without publication in another newspaper published in the county.⁸⁴ The Attorney General has also given as his opinion⁸⁵ that under a proper construction of the acts involved, the Board of Commissioners has no right to veto, increase, reduce, or change any item contained in any estimate by any county officer, and that the only right of veto over any estimate which may be exercised by the Board of Commissioners is in respect to the estimate which the statute requires that such board shall prepare and submit. This opinion apparently does not contemplate the power of the commissioners to designate the number and fix the salary of the deputies and assistants of certain officers. In the same opinion it is said that the County Council has the power to fix, adopt, and enact the necessary appropriation ordinances and tax rate levies, that by a three-fourths vote the County Council may increase or include omitted items in the budget submitted.⁸⁶ It was also said that the county Board of Tax Adjustment may revise, change, or reduce but not increase any budget, tax levy, or rate; provided, that if the County Board of Tax Adjustment decides that the budget and rate as adopted are inadequate, said board is required to prepare and submit to the State Board of Tax Commissioners a written, detailed analysis and recommendation, and the State Board of Tax Commissioners is charged with the duty to review the budgets and rates as adopted and fixed, in con-

82. Ind. Stat. Ann., 1943 Repl., Sec. 64-1331 Burns.

83. Ind. Stat. Ann., 1933, Sec. 49-704.

84. Op. Atty. Gen., 1944, p. 17.

85. Op. Atty. Gen., 1943, p. 512.

86. In a later opinion in 1943 the Attorney General said at p. 543 that the county council cannot increase or make appropriations in excess of the amounts stated in the published budget, nor can the council or trustees of any city or town. Op. Atty. Gen., 1943, p. 543.

junction with such written analysis, and make a final order in such matter.

Later in 1943, the Attorney General in the opinion already noted⁸⁷ gave as his opinion that under the appropriate act⁸⁸ the Boards of Commissioners have the right to revise the estimated number of deputies of other county officials and to approve the numbers of such deputies, and to revise any such estimates which exceed statutory limitations, and to include omitted items in the requested budget of any other such official which are mandatory. It is this opinion which apparently conflicts also, as to the power of the County Council to increase or appropriate any item not included in the published budget, with the opinion previously given in 1943.

In the same year the Attorney General ruled that under existing law⁸⁹ ten or more taxpayers do not have the right to appeal from the action of the County Council on the budget of the County Department of Public Welfare. However, by a 1945 act⁹⁰ the County Board of Tax Adjustment is expressly authorized to review the budget of the County Department of Public Welfare.

In a comprehensive opinion⁹¹ the Attorney General observed that the County Council may be called either by the auditor, or by a majority of the council making a request therefor in writing to the auditor, and in either event, the auditor is the person required to give the notice of the proposed special meeting. There is no provision requiring the notice of such meetings of the County Council to specify therein the matters to be considered at any such special meeting, but under taxing law⁹² it is provided that as a prerequisite to making a special appropriation, there must be given ten days' notice by publication, as required for the budget. Therefore, it is necessary that a notice of a special meeting for the purpose of considering emergency or additional appropriations must specify therein the purpose of calling such meeting. If the meeting is called for some purpose other than the making of an emergency or additional appropriation, it would

87. Op. Atty. Gen., 1943, p. 543.

88. Acts 1927, Ch. 95, Sec. 1, Ind. Stat. Ann., 1943 Repl., Sec. 64-1331 Burns.

89. Ind. Stat. Ann., 1943 Repl. Sec. 64-1331 Burns.

90. Acts 1945, Ch. 5, p. 9.

91. Op. Atty. Gen., 1945, (March 10, 1945).

92. Ind. Stat. Ann., 1943 Repl., Sec. 64-1331 Burns.

not be necessary to specify in such notice the purpose of such special meeting. If a majority of the council requests the auditor to call a special meeting for the purpose of passing an additional or emergency appropriation, they would have to specify in their request the purpose; otherwise the auditor would be unable to set forth the purpose in his notice. The County Council in special session may act on any matter not specified in the notice mailed and published as provided, except as to any action taken by them on emergency of additional appropriation ordinances. The latter could not be acted on unless specified in such notice and publication. According to the Attorney General the County Council cannot annual or repeal appropriations previously made, because the appropriation is made by the County Council *for the purpose therein set forth*,⁹³ which action is thereafter necessarily presented to the State Board of Tax Commissioners for their action thereon, and the Board's decision is final. If the money appropriated is not fully expended by the end of the year it will revert to the general fund.⁹⁴ The statute governing the conduct of county councils does not authorize the County Council to "transfer" funds specially appropriated for one purpose to be used for another purpose, unless such transfer has been requested by the officer or officers who have the responsibility for the expenditure of the appropriation which will be thereby depleted.

The County Council in making an appropriation does not have authority "to provide a limit for its use as to quantity or number of items purchased, or to specify a maximum or minimum price for each such article." It is provided by law⁹⁵ that "the Board of County Commissioners shall have exclusive power to purchase materials and supplies of any and every sort which are to be paid for out of the county treasury." Neither the County Council nor the courts can assume the authority and discretion expressly delegated to the Board of Commissioners.⁹⁶ The County Council may only appropriate money for a specific purpose and must leave to the Board of Commissioners the duty of determining the number, quantity,

93. Acts 1935, Ch. 150, Sec. 1 being Ind. Stat. Ann., 1943 Repl., Sec. 64-1331 Burns.

94. Ind. Stat. Ann., 1943 Supp., Sec. 26-524 Burns.

95. Acts 1933, Ch. 156 being Ind. Stat. Ann., 1943 Supp., Sec. 26-536 Burns.

96. *Blue v. State ex rel. Powell*, 210 Ind. 486, 1 N.E. (2d) 122 (1936).

quality, and price of items or material purchased by said Board of Commissioners from bids submitted as required by law within the limits of the amounts so appropriated by the County Council.

It is the duty of the auditor, as ex-officio clerk of the County Council, to record the votes of the Council on appropriation measures, to prepare the minutes of the meetings of the County Council, and to copy the same in the journal. After such record is made in the journal it becomes the County Council's record, and the auditor cannot be mandated to make corrections in it. Such action can only be filed against the County Council. There is no statutory provision requiring the records of the procedure of the County Council to be signed.⁹⁷ Therefore, the pay of the County Council cannot be withheld pending their signing the record or journal of such Council.

A 1945 act⁹⁸ provides for the budgeting and appropriation of highway funds.

Courts have inherent power to appoint counsel to defend pauper defendants in criminal actions without prior appropriation therefor by the County Council, and the County Council may be mandated to appropriate such money so ordered paid. This power of the court cannot be curbed even by the legislature.⁹⁹ The County Council may make budget appropriations to cover contemplated expenditures in the next calendar year under acts passed by the legislature which have not yet become effective, unless some present law prohibits the making of such appropriations.¹⁰⁰ In such cases the County Council will be required to make emergency appropriations after the effective date of the new law.¹ This question is important for the reason that unless the County Council makes provision in its annual budget for contemplated expenses, no tax rate is fixed therefor, and such appropriations must be

97. *State ex rel. Van Der Meer v. Butcher*, 205 Ind. 117, 185 N.E. 108, 17 Ind. L. J. 510 (1933).

98. Acts 1945, Ch. 308, p. 1371, amending Ind. Stat. Ann. 1943 Repl., Sec. 64-1339 Burns.

99. *Knox County Council v. State ex rel. McCormick*, 217 Ind. 493, 29 N.E. (2d) 405 (1943).

100. *Op. Atty. Gen.* 1943, p. 497.

1. Evidently it is meant that emergency appropriations may be made after the first of the next calendar year, unless the new law contemplates action during the remainder of the current year, in which case no provision would have been made in the preceding year for such appropriation in any event, since the budget would have been made and approved before the legislature acted.

met out of the working balance, which will reflect, if a proper budget is made, in the rate of the succeeding year. County Councils cannot meet and legally transact business at a different hour than that called for in the notice by the county auditor and cannot adjourn or continue a meeting for a longer period than the following day or from Saturday to Monday, and then only when a quorum is present.² To hold otherwise would defeat the intent of the statute.³ County Councils of counties not less than 18,500 nor more than 28,500 population may levy a tax to render public aid to colleges, universities, or normal schools located in such counties.⁴

A member of the County Council may serve as a member of the County Board of Aviation Commissioners.⁵ Under the 1945 act⁶ members of a Board of Aviation Commissioners will serve without compensation except their expenses. Conceding that the office of county councilman is a lucrative one, the other office is not, when only expenses are paid, and Sec. 9 of Art. 2 of the Constitution of Indiana is not violated.

An act of 1945 provides for the appointment and duties of the County Board of Tax Adjustment.⁷ This act adds to previous requirements the stipulation that no member appointed by the courts shall have been an officer or employee of any municipal corporation within the year preceeding.

The compensation and manner of payment of the Board of Commissioners is fixed for the period after January 1, 1949.⁸ There is also provided a per diem for additional duties to be effective immediately. Further discussion of this per diem allowance will be made at a later point.

In Marion County, docket fees collected by the clerk should be paid to the county treasurer and by him paid to the state treasurer. The clerk's service fee, an additional fee if a jury is called, including cases involving violation of a municipal ordinance, shall belong to Marion County. In criminal cases the docket fee should be taxed and collected for the benefit of the City of Indianapolis.⁹ Clerks of the circuit court

2. Op. Atty. Gen., 1944, p. 167; Op. Atty. Gen., 1945 (March 19, 1945).

3. Ind. Stat. Ann., 1943 Supp., Sec. 26-507 Burns.

4. Acts 1945, Ch. 114, p. 243.

5. Op. Atty. Gen., No. 95, 1945.

6. Acts 1945, Ch. 190, Sec. 2, p. 591.

7. Acts 1945, Ch. 129, p. 274 amending Ind. Stat. Ann. 1943 Supp., Sec. 64-310 Burns.

8. Acts 1945, Ch. 238, p. 1095.

9. Op. Atty. Gen., 1940, p. 257.

are not entitled to fees in connection with admission of persons to Long or Coleman Hospitals operated by the Trustees of Indiana University, or where a person has been adjudged insane but dies before admission to a hospital, or dies prior to adjudication, or where the complaint is withdrawn.¹⁰ Clerks of the circuit court have no claim against the county and can file no claim for the recovery of trust funds lost in depositories.¹¹

It is the duty of a Board of Commissioners to approve or disapprove bonds of deputy county treasurers, and its disapproval must not be arbitrary or capricious. One who has paid such premiums can recover the sum so paid by an action directly against the board.¹²

Where, pending an appeal, a county treasurer paid funds to a party subsequently determined by the Supreme Court to have been the wrong party, the statute of limitations would not begin to run against the party finally determined to be entitled to the money until the time of the determination of his right, rather than from the time of the payment by the county treasurer.¹³

Boards of Commissioners of counties having a population in excess of 250,000 are authorized to purchase, lease, or contract for the use of motor vehicles for the sheriff's office.¹⁴

In a 1945 opinion construing Ind. Stat. Ann. (1943 Supp.) Sec. 22-1743 Burns,¹⁵ Ind. Stat. Ann. (1943 Supp.) Sec. 49-1315 Burns¹⁶ along with Ind. Stat. Ann. (1943 Supp.) Sec. 22-1810 Burns,¹⁷ the Attorney General has given an opinion that where a boy escapes from a state school and is taken into custody by one of the sheriffs of this state, it is the duty of the officers of the institution to request the return of such inmate, and if he is returned under such circumstances by

10. Op. Atty. Gen., 1940, p. 81.

11. Op. Atty. Gen., 1942, p. 128 (see Ind. Stat. Ann. 1943 Supp., Secs. 61-664, 61-665, 61-666 Burns).

12. Board of Commissioners v. Hack, 109 Ind. App. 106, 33 N.E. (2d) 367 (1941).

13. State ex rel. Pink v. Cockley, 110 Ind. App. 417, 37 N.E. (2d) 284 (1941).

14. Acts 1945, Ch. 213, p. 979.

15. Acts 1939, Ch. 119, Sec. 4.

16. Acts 1932, Sp. Sess., Ch. 26, Sec. 1 (providing sheriff's fees for removing persons to state institutions.)

17. Acts 1919, Ch. 94, Sec. 14 (providing for expenses of officers in charge of patients to be paid by county.)

the sheriff, the sheriff will be entitled to the mileage fees specified in Ind. Stat. Ann. 1943 Supp., Sec. 49-1315 Burns.¹⁸ Under the act authorizing the appointment of emergency deputy sheriffs¹⁹ there is no authorization for the appointment of full time deputies where the need for such deputies is known at the time of the regular annual meeting of the County Council.²⁰ In fixing the compensation of emergency deputy sheriffs appointed under said act, the Board of Commissioners is not bound to fix such compensation within the minimum and maximum limits ordinarily provided.²¹ Deputies appointed under this latter section shall be paid salaries within the minimum and maximum fixed therein, but those properly appointed as emergency deputies are not subject to the provisions of this act. A 1943 act provides for the remuneration of a sheriff for feeding prisoners.²² A sheriff is entitled to receive compensation for removing a prisoner from one county to another within the state under the provisions of Ind. Stat. Ann. 1943 Supp., Sec. 49-1315 Burns.²³ In returning a fugitive from another state the sheriff would be entitled to fees as provided under Ind. Stat. Ann. 1943 Supp., Sec. 9-418 Burns, regardless of whether the prisoner was charged with a felony or a misdemeanor, and regardless of whether or not the prisoner waived the issuance of an extradition warrant;²⁴ but the superintendent of the Indiana Boys School cannot pay a reward to sheriffs for returning runaway boys since this is a part of the sheriff's official duties.²⁵ Under a 1945 act,²⁶ sheriffs serving writs, processes, or other papers issued from another county in the state, or issued by the court or proper officer thereof of his own county, in a cause venued to his county, shall tax and charge the fees and costs allowed by law for such services, which fees and costs shall be retained by such sheriff. He shall annually file a verified

18. Op. Atty Gen., 1945 (January 11, 1945).

19. Acts 1921, Ch. 255; Ind. Stat. Ann. 1933, Sec. 49-504 Burns.

20. Op. Atty. Gen., 1944, p. 402.

21. Ind. Stat. Ann. 1943 Supp., Sec. 49-1002 Burns, which is Acts 1943, Ch. 261, amending a previous act. (This section was amended by Acts 1945, Ch. 172, p. 403). See Op. Atty. Gen. 1945 (April 11, 1945).

22. Acts 1943, Ch. 239, Ind. Stat. Ann., 1943 Supp., Sec. 49-1323 Burns.

23. Op. Atty. Gen., 1943, p. 199.

24. Op. Atty. Gen., 1943, p. 199.

25. Op. Atty. Gen., 1943, p. 221.

26. Acts 1945, Ch. 179, p. 445.

claim with the auditor of any such other county from which papers issued, or from which such cause was venued, and such auditor shall present such claim to the Board of Commissioners of such county, who shall allow in full all correct items, and the auditor then shall issue a warrant, and the treasurer of such county shall pay such sums out of sums not otherwise appropriated. If any claim be disallowed, the sheriff may proceed in the regular manner provided in respect to actions on disallowed claims. Upon receipt of such money the sheriff shall report the same to the clerk of the county where such fees were taxed, who shall record the payment of the same, and upon collection of such costs from the party against whom charged, shall pay them to the county which has paid them, such county being subrogated to all rights to collect and receive the same. On request of the sheriff, the county attorney of his county shall represent the sheriff in all proper proceedings for enforcing collection of such fees and costs.

A coroner is entitled to fees for the number of days of services actually performed in a case.²⁷ He must file his claim under oath setting out the factual data.²⁸ In an act of 1945²⁹ applying to counties of over 100,000 population, and classifying those between 100,000 and 250,000, and over 250,000 to 400,000, and over 400,000 population into different classes, provision is made for deputies and assistants, of the coroner, and their salaries, and the coroner is authorized to employ a pathologist to perform autopsies. The duties of the county council and the board of commissioners in regard to these matters are enumerated. In another act applying to counties of less than 100,000 population³⁰ the fees, salaries and duties of a coroner are enumerated, and it is provided that in impaneling and swearing a jury and witnesses and making and returning an inquisition for the viewing of each body, the coroner is entitled to \$10.00 for the first day and \$5.00 for each additional day, and \$.05 for each mile necessarily traveled. The coroner is also empowered to employ a clerk.

27. Op. Atty. Gen., 1944, p. 198.

28. Ind. Stat. Ann. 1943 Supp., Sec. 26-807 Burns.

29. Acts 1945, Ch. 189, p. 587.

30. Acts 1945, Ch. 225, p. 1065 amending Ind. Stat. Ann., 1943 Supp., Sec. 49-2917 Burns.

In a 1945 act³¹ the compensation of county surveyors in every county in the state is fixed and the provisions of the 1943 act are extended to March 31, 1947. In construing a statute providing greater salaries for the county surveyor under Acts of 1933, Ch. 21, Secs. 4 and 10, if he is a "qualified licensed engineer" the Supreme Court has held that his term applies only to an engineer licensed under the laws of the state of Indiana, and not to one licensed under the laws of another state.³²

In an opinion in 1943³³ the Attorney General said that acts increasing the salaries of county officers during their term of office are violative of Sec. 2, Art. 15 of the Constitution of the State of Indiana, and are not effective until a new term of office has started, but where the legislature fixes the additional compensation on a per diem basis the constitutional prohibition does not apply. Repeating this opinion in 1944,³⁴ the Attorney General said that when a vacancy occurs in the office after the effective date of the act, the newly appointed officer is entitled to the increase in such salary under such act.³⁵ In a 1945 opinion³⁶ the Attorney General considered Acts of 1945 Ch. 92, p. 206, which was approved February 28, 1945 and contained no emergency clause and Acts of 1945 Ch. 172, p. 403, approved March 6, 1945, which contained an emergency clause. Both purported to amend the same section of an act concerning salaries, minimum and maximum, and appointments of deputies of the same county officers. Since the later act contained an emergency clause, it became effective immediately, and left no prior act to be amended by Ch. 92, p. 206. Therefore Ch. 172, p. 403 is the effective act. Under its terms the minimum salaries fixed are mandatory and the changes made are to be effective immediately, within the minimum and maximum

31. Acts 1945, Ch. 94, p. 211 amending Ind. Stat. Ann. 1943 Supp., Sec. 49-1004 n. Burns.

32. *Ralston, Auditor et al v. Ryan et al*, 217 Ind. 482, 29 N.E. (2d) 202 (1940).

33. Op. Atty. Gen., 1943, p. 517.

34. Op. Atty. Gen., 1944, p. 171.

35. The act involved in this opinion was Acts of 1943, Ch. 305; Ind. Stat. Ann., 1943 Supp., Sec. 49-1004 n. Burns, and was amended by Acts 1945, Ch. 94, p. 211, continuing it in effect until March 31, 1947.

36. Op. Atty. Gen. 1945 (April 11, 1945). See *Metsker v. Whitsell*, 181 Ind. 126, 103 N.E. 1078 (1914).

fixed, and the officers and employees enumerated are entitled to receive additional compensation provided during the current budget year, to be pro-rated from the effective date of the act to the end of the year. In the opinion of the Attorney General³⁷ the additional salaries granted under Acts of 1945, Ch. 295, p. 1284 are not violative of Sec. 2, Art. 15 of the Indiana Constitution. The granting of fees for additional duties is not a general salary increase. The per diem allowance provided for the auditor, assessor, clerk of the circuit court, recorder, and treasurer is payable for all days when such officers are engaged in the official duties of their office. Since the duties of the sheriff are continuous, the per diem granted him under the act is payable for every day of the year, Sundays and legal holidays included. As to the per diem granted judges of the circuit and superior courts, this is payable for every day he performs a duty of his office, which would include all the days in term time, except Sundays and holidays, and those days in vacation when he legally exercised a power or performed a duty as a judge. The mileage per diem granted to the sheriff, and to his chief deputy, is in addition to any allowance now provided by law for mileage, and is not limited to days in which they travel, but is payable for every day of the year, since their duties are continuous. As to the per diem allowed members of the Board of Commissioners, the opinion expressed here is slightly different from the subsequent opinion, No. 40, 1945, in construing Acts of 1945, Ch. 238, p. 1095, in that in this opinion it is said that the member of the board may be entitled to his per diem for any day in which he performs any duty imposed by statute outside of board meetings, if such statute contemplates his acting as an individual commissioner. No such statutes are cited.³⁸ The opinion construes the act as limiting the per diem of members of the county council to a maximum of three days a month. The act is not applicable to judges of criminal, probate, or juvenile courts. The Attorney General construes the act,³⁹ which applies to counties of less than 75,000 popula-

37. Op. Atty. Gen., 1945, No. 31.

38. Quære: What opinion would be rendered on the question involved when the members of the board devote days inspecting county highways in performance of their duties, but hold no meeting at their legal meeting place, and no record is made in their official record?

39. Acts 1945, Ch. 295, p. 1284.

tion in which is located a defense installation, and to counties contiguous or near to such a county, the latter classification not containing any expressed population limitation, as applying throughout only to counties of 75,000 or less population. The reasoning to reach this construction was used in answering the question whether criminal, probate, or juvenile judges were included, in pointing out that it is indicative of legislative intent to leave them out, since there are no such courts, as such, in counties of less than 75,000 population. In a later opinion⁴⁰ it was said that the per diem allowances under Acts of 1945, Ch. 238, p. 1095, to incumbent officers is not an increase in salary, and is valid, and that members of Boards of Commissioners can only claim a per diem for a day in which the board acted as an entity, and was in session, pursuant to some legal duty, as evidenced by the records of the board. The Attorney General has also given his opinion⁴¹ that the act⁴² limiting the amount of salaries, fees and penalties received by a county treasurer to a maximum of \$10,000.00 contemplates that the salary received by such county treasurer as ex-officio city treasurer must be considered as a part of his compensation.

Provision has been made⁴³ for a purchasing agent for counties of more than 110,000 and less than 150,000 population.

A clerk of the circuit court, county auditors, county treasurers, county recorders, county sheriff, or the deputy of any such officer, is each prohibited from soliciting for himself, or for any other person, employment as an attorney to practice law in any of the courts, and a county assessor, an inheritance tax appraiser, their deputies or employees are prohibited from soliciting business in connection with the settlement of any estate, trust, or probate matter.⁴⁴

B. JUDGMENTS.

Provision has been made for the payments of judgments against counties⁴⁵ and the legislature has decreed⁴⁶

40. Op. Atty. Gen., No. 40, 1945.

41. Op. Atty. Gen., No. 69, 1945.

42. Acts 1945, Ch. 192, p. 1010, amending Ind. Stat. Ann. 1943 Supp., Sec. 49-1006 Burns.

43. Acts 1941, Ch. 23, Ind. Stat. Ann. 1943 Supp., Sec. 26-1601 Burns.

44. Acts 1941, Ch. 66; Ind. Stat. Ann. 1943 Supp., Sec. 10-3102 Burns.

45. Acts 1941, Ch. 34, Ind. Stat. Ann., 1943 Supp., Sec. 26-528 Burns.

46. Acts 1941, Ch. 17, Ind. Stat. Ann., 1943 Supp., Sec. 26-821 Burns.

that no judgment against the Board of Commissioners of any county shall be a lien on any property owned by such county.

C. VACANCIES.

The 1945 legislature restored to the remaining members of the several Boards of Commissioners the power to fill vacancies in the membership of the Board,⁴⁷ repealing a 1943 act⁴⁸ which changed the appointive power in such cases to the County Council. This restores the appointive power to the place where it had been for a century, until the General Assembly of 1943 discovered on February 5, 1945, an emergency requiring its change. The Supreme Court has held that the appointing authority may appoint an official to fill a vacancy in office without waiting for judicial determination of such vacancy if existing vacancies are such that a judicial determination would result in a declaration of vacancy.⁴⁹

D. PUBLIC WELFARE.

In an opinion of the Attorney General⁵⁰ it was said that funds of a probation department or of a County Department of Public Welfare may be expended for dependent or neglected children maintained in their own homes. The selection of eligible lists from which county departments of public welfare shall appoint county directors is not controlled by the 1943 act,⁵¹ but the eligible lists for such appointment shall be established and furnished by the State Department of Public Welfare.⁵² In the opinion of the Attorney General, the appointment of county welfare directors as provided under Ind. Stat. Ann., 1943 Supp., Sec. 52-119 Burns,⁵³ is not affected by Secs. 35 and 36 of Ch. 139 of the Acts of 1941⁵⁴ known as the State Personnel Act. The Supreme Court has held that Sec. 38 of Ch. 3, Acts of 1936⁵⁵ providing for a lien on the property of old age assistance recipients was repealed by Acts of 1941,

47. Acts 1945, Ch. 261, p. 1189.

48. Acts 1943, Ch. 9, Ind. Stat. Ann. 1943 Supp., Sec. 26-601 Burns.

49. State ex rel. Kopinski v. Grawskowiak, — Ind. —, 59 N.E. (2d) 110 (1945).

50. Op. Atty. Gen. 1940, p. 140.

51. Acts 1943, Ch. 101 being Ind. Stat. Ann. 1943 Repl., Sec. 60-1304 et seq. Burns.

52. Op. Atty. Gen. 1943, p. 273.

53. Acts 1936 (Spec. Sess.) Ch. 3, Sec. 20.

54. Ind. Stat. Ann., 1943 Repl., Sec. 60-1301 et seq. Burns.

55. Ind. Stat. Ann., 1941 Supp., Sec. 52-1207 Burns.

Ch. 201, Sec. 1.⁵⁶ Since this case did not involve the foreclosure of a lien, but a general claim, it must be assumed that there is neither a lien nor a claim for old age assistance paid under the 1936 act.⁵⁷ The Supreme Court has also held⁵⁸ that Acts of 1933, Ch. 36, provided for old age assistance, and by Sec. 7 thereof⁵⁹ provided for the recovery of such payments by the filing of a claim in the estate of such pensioner. Chapter 3 of the 1936 act⁶⁰ set up a new plan, and by Sec. 129 thereof specifically repealed the act of 1933, but in Sec. 119 of the 1936 act⁶¹ it was provided that no right conferred under any law repealed by the 1936 act should be impaired or abrogated. The 1936 act provided for recovery of payments, and established a lien on the recipients' property to secure the repayment. The 1941 act⁶² took out Sec. 38 of the 1936 act, the provision for liens, and repealed Secs. 44-48 of the 1936 act. It left untouched Sec. 119 of the 1936 act, heretofore referred to, which preserved rights conferred in laws repealed by the 1936 act. The court held that payments made under the 1933 act, until the effective date of the 1936 act, were therefore a claim against the recipients and can be recovered. The Supreme Court reached the same conclusion in this case which the Appellate Court had reached in 1944.⁶³

The director of the personnel board may neither approve nor disapprove payment of the salary of a county director of public welfare under Ind. Stat. Ann. 1943 Supp., Sec. 52-119 Burns.⁶⁴ A 1945 act⁶⁵ provides for the appointment of County Boards of Public Welfare, consisting of five members, not more than three of whom shall belong to the same political party, such appointments to be made by the judge of the Circuit Court.

56. Ind. Stat. Ann., 1943, Sec. 52-1207 Burns.

57. County Dept. of Public Welfare v Potthoff, 220 Ind. 574, 44 N.E. (2d) 494 (1942).

58. County Dept. of Public Welfare v. Nichols' Estate, — Ind. —, 62 N.E. (2d) 146 (1945).

59. Ind. Stat. Ann., 1933, Burns, Sec. 52-307.

60. Ind. Stat. Ann., 1933 Supp., Sec. 52-1201 et seq.

61. Ind. Stat. Ann., 1933 Supp., Sec. 52-1407 Burns.

62. Acts 1941, Ch. 201 being Ind. Stat. Ann., 1943 Supp. Sec. 52-1207 Burns.

63. County Dept. of Public Welfare v. Scotts' Estate, — Ind. App. —, 55 N.E. (2d) 337 (1944).

64. Op. Atty. Gen., 1944, p. 177.

65. Acts 1945, Ch. 196, p. 632.

A 1943 act⁶⁶ provides the maximum sum to be paid for old age assistance, blind assistance, and dependent children assistance, and provides for the determination of the amount paid, and for the direct payment for medical care. Another 1943 act⁶⁷ amends the original section making records concerning the application or receipt of such assistance confidential, by making it unlawful for any person to solicit, disclose, receive, or make use of any such information, or knowingly to authorize any such act, making all such acts misdemeanors.

A 1945 act⁶⁸ provides a method and procedure concerning delinquent, dependent and neglected children, and their parents, guardians, or custodians, specifying places for their temporary or permanent detention, and compensation for their care, providing for the time, place and manner of trial, and appeal therefrom. The act leaves much to be desired in so far as the effect of its procedural certainty, providing for a petition in the form of an ex parte petition but providing for notice to custodians and/or parents as in adversary proceedings. No provision is made for service where there is no knowledge concerning residence, provision being limited to personal service, or to service at last known residence.⁶⁹ Where the child is declared a ward of the court, county department of public welfare, or other licensed child placing agency, and the wardship is declared for reasons other than economic, would service by publication be authorized, under this act, on parents whose residences are unknown, and never were known, so that a final decree declaring the child a public ward would be binding on them, the child being held under the protective care of the court pending the time of such publication, and prior to the making of an order of wardship? A 1943 act⁷⁰ authorizes county departments of public welfare to commit any indigent person over the age of sixteen having

66. Acts 1943, Ch. 79, Ind. Stat. Ann., 1943 Supp., Sec. 52-1203 to 52-1241 Burns, amending Acts 1941, Ch. 142, Ind. Stat. Ann., 1941 Supp., Sec. 52-1203 et seq. which was an amendment of the Welfare Acts of 1936.

67. Acts 1943, Ch. 78, Ind. Stat. Ann., 1943 Supp., Sec. 52-1262, (A) (B) Burns.

68. Acts 1945, Ch. 256, p. 1176.

69. Quære: What effect may this have as to notice required in adoption proceedings under the adoption statute, Acts of 1943, Ch. 40, Sec. 5, Ind. Stat. Ann. 1943 Supp., Sec. 3-120 Burns?

70. Acts 1943, Ch. 289, Ind. Stat. Ann. 1943 Supp., Sec. 28-5417 Burns.

residence in such county, and suffering from a condition or malady not chronic, or a deformity which may be benefited by treatment, to a hospital, as provided in the act. In an opinion of the Attorney General⁷¹ the appointment of employees of a county children's home (orphans' home) is controlled by Ind. Stat. Ann. 1943 Supp., Sec. 22-2805 Burns,⁷² as that is influenced by Ind. Stat. Ann. 1943 Supp., Sec. 52-1121 Burns,⁷³ and the authority to appoint such employees is in the County Department of Public Welfare, subject to the approval of the judge of the court having juvenile jurisdiction in such county. Such appointments are not affected by Ind. Stat. Ann. 1943 Supp., Sec. 60-1301 et seq.⁷⁴ or by the merit provision of Ind. Stat. Ann. 1943 Supp., Sec. 52-1102 Burns et seq.⁷⁵

New provision is made for the reimbursement of counties for the care of inmates of county asylums,⁷⁶ at a rate not to exceed \$7.00 a week to be collected quarterly by the superintendent of such institution and paid into the county treasury. Authority is given to bring suit against the estate of any such inmate and any judgment shall constitute a lien against such part of the estate of such person as shall be described in the complaint.

E. HIGHWAYS AND BRIDGES.

According to an opinion of the Attorney General, construction and repair of bridges may be made with appropriations of the county council from the county general fund⁷⁷ and payment therefor may be made under Ind. Stat. Ann. 1943 Supp., Sec. 26-519 Burns. However, such requests and appropriations must be itemized by setting out the location and the amount required for each bridge. In another opinion⁷⁸ it was said that streets in subdivisions located outside incorporated cities and towns should be considered as highways

71. Op. Atty. Gen., 1945, (March 15, 1945).

72. Acts 1941, Ch. 175, Sec. 5.

73. Acts 1936 (Spec. Sess.) Ch. 3, Sec. 22 as amended by Acts 1937, Ch. 41, Sec. 4.

74. Acts 1941, Ch. 139 as amended. (State Personnel Act).

75. Acts 1936, (Spec. Sess.) Ch. 3 as amended. (Welfare Act).

76. Acts 1945, Ch. 270, p. 1210 amending Ind. Stat. Ann., 1943 Supp., Sec. 52-142 Burns.

77. Op. Atty. Gen., 1941, p. 376.

78. Op. Atty. Gen., 1942, p. 18.

in determining the extent of highways in any given county. Likewise, streets and alleys in unincorporated towns, and all that portion of county line highways for which the county is responsible, should be considered. All roads which have been incorporated into the county highway system which have not been abandoned by complete and continuous non-usage for six years immediately following the time of their establishment, or by vacation, including all alleys and streets outside any incorporated city or town should be included in the tabulation. The statutory provision⁷⁹ leaves no discretion to the county, but charges it with the maintenance of the highways set forth. Adjacent property owners are entitled to exemption from assessment for taxation on land occupied by public highways, as well as that occupied by any railway, interurban or street railway.⁸⁰ In 1941, a new class, "any public drainage ditch," was added.⁸¹ However, there can be no deduction in assessment under these classes, in the absence of timely objection by the adjacent land owners, without a re-valuation of the entire tract.⁸² Conversely where a highway is abandoned, the assessment to the adjacent land owner should be increased under the same considerations. The requirements for the appointment of a county highway supervisor, and other matters pertaining thereto, were amended in a 1943 act.⁸³ Authority has been given to those having control of highways, and their construction and maintenance, to change the courses of streams or ditches, and to do such construction work as may be necessary in connection with the protection and maintenance of public highways. In case it is necessary to acquire rights in land not within the right of way of the highway involved, in carrying out the purpose of this act, such rights may be procured by grant, purchase or voluntary donation, and the power of eminent domain is conferred, if the exercise of such power is necessary to procure such rights. This confers upon Boards of Commissioners the power to purchase land or interests therein not directly used for highway purposes, in order to provide drainage, or

79. Acts 1941, Ch. 91, 1943 Supp., Sec. 64-1010 Burns.

80. Acts 1941, Ch. 168, Sec. 4, Ind. Stat. Ann. 1943 Supp., Sec. 36-2817 Burns.

81. Acts 1919, Ch. 277.

82. Op. Atty. Gen., 1942, p. 41.

83. Acts 1943, Ch. 161 amending Acts 1933, Ch. 10, Sec. 10, Ind. Stat. Ann., 1943 Supp., Sec. 36-1110 Burns.

to protect highways from injury caused by streams or ditches.⁸⁴ A new act defines the duties of the county surveyor in connection with the repair and maintenance of county highways.⁸⁵ Boards of Commissioners are authorized to do private work for any resident taxpayer, and to use county highway equipment in connection with such work, and charges therefor are fixed, with provisions for the collection of such charges as taxes are collected if the sum is not paid.⁸⁶ Members of the Board of Commissioners are not entitled to mileage for attendance at the road school held at Purdue University under Ind. Stat. Ann. 1943 Supp. Sec. 49-1013 Burns, because they are under no duty to attend.⁸⁷

F. SCHOOL FUNDS.

A comprehensive act of 1943 provides for the manner of loaning of congressional township school funds, and the permanent endowment fund of Indiana University, and also provides for the borrowing of such funds by the respective counties charged with them, and fixes the procedure of making loans, or foreclosing mortgages securing delinquent loans.⁸⁸ Another 1943 act provides such funds by the counties.⁸⁹ An original school fund mortgage can now be made only under the terms of the 1943 act which provides for the making of such loans and the judicial foreclosure of all delinquent mortgages where title to the mortgaged property has not previously vested in the State of Indiana, prior to the effective date of the 1943 act. If the county council had, prior to any sale of land in which title had vested in the state, adopted a resolution to elect to accept the provision of the other 1943 act⁹⁰ and to surrender the custody of all the school funds specified therein, then the receipts of any such sale should be surrendered to the state treasurer, assuming the county had not already paid

84. Acts 1945, Ch. 20, p. 31.

85. Acts 1945, Ch. 165, p. 388 amending Ind. Stat. Ann., 1943 Supp., Sec. 1101 Burns.

86. Acts 1943, Ch. 96, Ind. Stat. Ann., 1943 Supp., Sec. 36-119 Burns.

87. Op. Atty. Gen., 1940, p. 72.

88. Acts 1943, Ch. 251, Ind. Stat. Ann., 1943 Supp., Sec. 28-201 et seq. Burns.

89. Acts 1943, Ch. 181, Ind. Stat. Ann. 1943 Supp., sec. 28-150 et seq. Burns.

90. Acts 1943, Ch. 181, Ind. Stat. Ann., 1943 Supp., Sec. 28-150 et seq. Burns.

the State the sum involved.⁹¹ Previous sales of forfeited school fund land are legalized, whether they were made by Boards of Commissioners or by the auditor.⁹² Where the county auditor had bid in property for the common school fund prior to the passage of Ch. 251 of the Acts of 1943⁹³ he may continue to sell such lands under the former procedure set up by Acts of 1865, Ch. 1, Sec. 97 as amended, Ind. Stat. Ann. (1933), Sec. 28-244 et seq. Burns, until all such lands are disposed of, but where the title to land has not been acquired prior to the passage of the 1943 act, the procedure will be governed by that act.⁹⁴ Counties which have surrendered all or any part of the common school fund and the Indiana University permanent endowment fund, pursuant to the 1943 act,⁹⁵ cannot secure the return of such surrendered funds, to be thereafter loaned to such county for any purpose.⁹⁶ However any such school funds not surrendered may be borrowed by the county under the provisions of another 1943 act⁹⁷ and such borrowed sums may be used to purchase land within such county for park purposes, and such land may be conveyed to the state for park purposes.⁹⁸

G. PURCHASES AND SALES.

A 1945 purchasing act⁹⁹ provides for notice and bids for any purchase in excess of \$500.00 in the case of material, goods, equipment, and supplies, but provides that if the total amount of any such purchase is less than \$500.00 the governing body may invite bids from not less than three persons, firms, or corporations not less than three days before the time fixed for receiving bids. Sec. 1 provides that any purchase under \$500.00 may be made on the open market without notice

91. Op. Atty. Gen., 1944, p. 235.

92. Acts 1943, Ch. 203, Ind. Stat. Ann., 1943 Supp., Sec. 28-254 (a) Burns.

93. Ind. Stat. Ann., Sec. 28-201 Burns et seq.

94. Op. Atty. Gen., 1943, p. 723.

95. Acts 1943, Ch. 181, Sec. 1, Ind. Stat. Ann., 1943 Supp., Sec. 28-150.

96. Op. Atty. Gen., 114, 1945.

97. Acts 1943, Ch. 251, Ind. Stat. Ann., 1943 Supp., Sec. 28-201 et seq. Burns.

98. Acts 1927, Ch. 174, Ind. Stat. Ann., 1943 Supp., Sec. 26-1512 et seq. Burns.

99. Acts 1945, Ch. 99, p. 215 repealing Acts 1943, Ch. 129, Ind. Stat. Ann., 1943 Supp., Sec. 53-510 Burns.

or bids. Sec. 2 provides that any purchase under \$500.00 shall be made by inviting bids from three prospective bidders, except that where no bids are received in reply to the invitation, then such purchases may be bought on the open market. This act expressly provides that it is to be construed as supplemental to other purchasing acts and does not prohibit the purchase by the county highway department of supplies, trucks, and materials for repair and maintenance not to exceed \$350.00 a month nor to repair parts for machinery or equipment procured from the manufacturer thereunder, which may be purchased without notice or bids. This act substantially follows the terms of the 1943 act which it repeals except that the 1943 act, Sec. 1 contemplates application of the act only to purchases over \$100.00 and under \$500.00, and Sec. 1 of the 1945 act raises this figure to \$500.00, but in Sec. 2 provides a procedure for purchase under \$500.00 which under the 1943 act would only have applied to purchase between \$100.00 and \$500.00. Apparently in drafting the 1945 act, the legislature failed to note the distinction. In construing the 1943 act,¹⁰⁰ which construction could equally be applied to the 1945 act, the Attorney General gave as his opinion that the act did not apply to purchases made with the funds of municipally-owned utilities, but that the provisions concerning the inviting of bids was in lieu of notice otherwise required by municipal units. Surplus property of the federal government may be leased, purchased, or hired for any unit of the government of the State of Indiana including counties by the State Director of the Division of Procurement and Supplies acting as agent for such unit under prescribed procedure if such unit has a valid appropriation therefor and gives the prescribed notice. Units may receive gifts and grants of federal property under the same procedure.¹

The legislature has provided for the purchase by counties, townships, cities, or towns of personal property of the state.² Where a Board of Commissioners accepts a higher bid for materials, without any finding that the higher bidder was more responsible financially, or that the materials furnished were preferable in the public interest, a court of equity will find that the Board has been guilty of constructive fraud,

100. Acts 1943, Ch. 129, Ind. Stat. Ann., 1943 Supp., Sec. 53-510 Burns.

1. Acts 1945, Ch. 219, p. 1014.

2. Acts 1941, Ch. 156, Ind. Stat. Ann. 1943 Supp., Sec. 49-1723 Burns.

and declare such a contract illegal and void.³ There is no statute or authorization of any kind which empowers Boards of Commissioners to purchase fire fighting equipment for the protection of private property generally in a county.⁴ Boards of Commissioners are empowered⁵ to preserve the public property of the county and they might purchase fire-fighting apparatus for such limited purposes. Boards of Commissioners are authorized to acquire lands to be held and owned as permanent public forests, and may levy a tax for the creation of a county forestry fund for the maintenance of such forest.⁶ Boards of Commissioners shall not be authorized to sell either personal or real property of the county, except at public auction,⁷ after advertising such property for sale for four weeks under the Legal Advertising Act,⁸ and by posting notice in the county court house for three weeks. Boards of Commissioners of any county have been authorized to sell, as other county property is sold, any asylum or farm maintained for the poor, and to contract with the commissioners of any other county for the maintenance and care of the poor of such county which has disposed of its facilities.⁹

H. DITCHES AND DRAINS.

In 1941, the legislature enacted supplementary legislation providing additional procedure for the cleaning and repair of ditches and drains.¹⁰ The payment, within specified limits, of the expenses of cleaning and repairing of private ditches has been authorized out of the general fund of the county,¹¹ if said ditches and drains, either directly or indirectly, empty into any established ditch, tile, drain, or live stream, which has been constructed either under private contract, or by virtue of any drainage law of the state.¹² This

3. *Haywood Publishing Co. v. West*, 110 Ind. App. 568, 39 N.E. (2d) 785 (1942).

4. *Op. Atty. Gen.* 1942, p. 4.

5. *Ind. Stat. Ann.* 1933, Sec. 26-620 Burns.

6. *Acts* 1943, Ch. 272; *Ind. Stat. Ann.* 1943 *Supp.*, Sec. 32-601 et seq.

7. *Acts* 1943, Ch. 226; *Ind. Stat. Ann.* 1943 *Supp.*, Sec. 26-2008b.

8. *Acts* 1927, Ch. 96; *Ind. Stat. Ann.*, 1933, Sec. 49-704 Burns.

9. *Acts* 1943, Ch. 65; *Ind. Stat. Ann.* 1943 *Supp.*, Sec. 52-215 Burns.

10. *Acts* 1941, Ch. 63; *Ind. Stat. Ann.* 1943 *Supp.*, Sec. 27-234 et seq. Burns.

11. *Acts* 1943, Ch. 314; *Ind. Stat. Ann.* 1943 *Supp.*, Sec. 27-283 Burns.

12. *Op. Atty. Gen.* 1943, p. 330.

act is supplemental to Acts 1933, Ch. 264¹³ and therefore the County Council has the power and authority to limit the amount spent on cleaning and repairing of any one ditch by limiting the amount appropriated, and requiring the work to be done under the 1933 Act. The limitation of the 1943 Act applies only to the necessity and requirements of advertising the work.¹⁴ A Board of Commissioners has no authority to award a contract for the completion of a ditch improvement project instituted under Acts 1937, Ch. 62, which was repealed by Acts 1943, Ch. 269, Ind. Statutes Ann. (1943 Supp.) Sec. 27-222(n), from which project the Civilian Conservation Corps had withdrawn its aid prior to the completion of said ditch.¹⁵ Where vested rights have been established, created and declared by the judgment of a circuit court creating a Drainage Ditch Association, the authority of such association to levy assessments for the maintenance of such ditch is not terminated by the repeal of the Act under which it was originally created.¹⁶ Unless a county surveyor is a licensed engineer under Indiana law, he is disqualified from acting as an engineer of drainage proceedings,¹⁷ and the court must appoint a licensed engineer as in an ordinary proceeding for the construction of a drainage ditch.¹⁸ The county surveyor has authority to include in his report lateral, arm, or branch ditches which become a part of the improvement petitioned for.¹⁹ In proceedings for alteration or repair of a drainage ditch the maximum power of an extension of the project is 10% of the original specifications.²⁰ The question of qualifications of viewers in this proceeding²¹ for the repair of a drainage ditch is not jurisdictional, but merely affects the regularity of the proceedings.²² Nor does the

13. Ind. Stat. Ann. 1933, Sec. 27-101 et seq. Burns.

14. Op. Atty. Gen. 1943, p. 606.

15. Op. Atty. Gen. 1942, p. 243.

16. Op. Atty. Gen. 1943, p. 168.

17. Ind. Stat. Ann. 1933, Sec. 27-120 and Sec. 27-102 Burns. (Where township trustees are made ex officio deputies of county surveyor for their respective townships.)

18. Op. Atty. Gen., 1942, p. 112.

19. Ind. Stat. Ann. 1933, Secs. 27-109, 27-115. Burns.

20. Ind. Stat. Ann. 1943 Supp., Sec. 27-120(b) Burns.

21. Ind. Stat. Ann. 1933, Sec. 27-120 Burns.

22. *Drinkwater v. Eikenberry*, — Ind. —, 64 N.E. (2d) 399 (1946). superseding 63 N.E. (2d) 196 (1945) which opinion was withdrawn and petition for re-hearing granted.

Court lose jurisdiction because the final report of the engineer described a drain more than ten per cent longer than that described in the original petition. Circuit courts have been authorized in certain cases to order the balance in ditch construction funds to be used in the repair of such ditch, and provision has been made for the filing of a petition therefor, the giving of notice, and the filing of certified copies of the court's order thereon with the county auditor.²³ It shall be the duty of the county auditor to release the lien of any ditch, drain, or dredge assessment five years after the last payment on such assessment was due if he is requested to do so, and it shall also be his duty to release any such lien when it has been paid in full.²⁴ The legislature has provided for the disposition of surplus special assessment funds collected in connection with drainage operations.²⁵ The duties of the county surveyor in seeing that certain ditches and drains are cleaned have been enumerated in an act supplemental to other ditch legislation.²⁶ Judges of the circuit court are now authorized to strike ditch proceedings from the records of the court, where an injunction has been enforced against the auditor and treasurer in connection with such proceedings for more than five year, and provision has been made for the cost and expenses.²⁷ A 1945 Act, amending Acts 1933, Ch. 264, Acts 1935, Ch. 225; Acts, 1937, Ch. 162 and Acts 1941, Ch. 165,²⁸ is another comprehensive amendment to ditch and drainage legislation to add to the confusion of existing ditch laws in Indiana.²⁹ Revised procedure is provided in certain cases for the construction and/or reconstruction and/or repair of ditches. A new category for exemption from assessment for taxation, namely "any public drainage ditch," was added under a 1941 act,³⁰ to the classes already exempted as against adjacent property holders. The

23. Acts 1945, Ch. 17, p. 26.

24. Acts 1941, Ch. 73, Ind. Stat. Ann. 1943 Supp., Sec. 27-140 Burns.

25. Acts 1943, Ch. 50, Ind. Stat. Ann. 1943 Supp., Sec. 27-141 Burns.

26. Acts 1943, Ch. 314; Ind. Stat. Ann. 1943 Supp., Sec. 27-238 Burns.

27. Acts 1945, Ch. 49, p. 103.

28. The sections amended are Ind. Stat. Ann. 1933, Secs. 27-101, 27-107, 27-109, 27-112, 27-117, 27-119, 27-120, 27-122, 27-124, 27-127, 27-129, 27-131, 27-133, 27-138, 27-203, 27-205, 27-208, 27-210, 27-302, and 27-315 Burns.

29. Acts 1945, Ch. 221, p. 1021.

30. Acts 1941, Ch. 91, amending Ind. Stat. Ann. 1943 Repl., Sec. 64-1010 Burns.

previously established classes include land occupied by any railway, interurban, or street railway, or by any public highway. However, there can be no deduction in assessment under these classes, in the absence of timely objection by the adjacent property owners, without a revaluation of the entire tract.³¹

I. ELECTIONS.

The Supreme Court has held that the legislature cannot confer jurisdiction on the courts to determine the nomination, election, or qualification of members of the General Assembly since the Indiana constitution confers exclusive jurisdiction for such determination in the General Assembly.³² Where a clerk of the circuit court has certified election returns to the Secretary of State and later attempts to file a so-called amended certification showing that he had actually certified the first time to only a portion of the precincts in the county, the Secretary of State has no authority to accept the amended certification unless the first certification shows the defect on its face.³³ A reasonable construction of the applicable statutes³⁴ will permit unused election materials and ballots to be baled and sold as waste paper in view of the paper shortage, except where there is a contest, or during the time in which a contest might be instituted.³⁵ Residents of areas owned by the United States of America, but not ceded thereto by the State, may vote in state and county elections, but where the State has ceded the territory to the United States of America, and the United States of America has assumed exclusive jurisdiction of territory within the bounds of the State, the residents therein are not entitled to vote in such elections.³⁶ The legislature does not have the power under Sec. 1 of Article II of the Indiana Constitution to provide that members of the armed service may vote by proxy.³⁷ If the name of a voter does not appear on the official lists of registered voters in his precinct, the

31. Op. Atty. Gen. 1942, p. 41.

32. *Lucas v. McAfee*, 217 Ind. 534, 29 N.E. (2d) 403 (1940).

33. Op. Atty. Gen. 1942, p. 170. This was a construction of Ind. Stat. Ann. 1933, Sec. 29-525 Burns.

34. Ind. Stat. Ann. 1933, Secs. 29-1120 and 29-1304 Burns.

35. Op. Atty. Gen. 1942, p. 2.

36. Op. Atty. Gen. 1944, p. 142.

37. Op. Atty. Gen. 1943, p. 37.

Attorney General has given an opinion that he is not entitled to vote even though he has an official receipts showing that he had registered. The voter's only recourse according to the opinion would be to go to the office of the clerk of the circuit court to secure a correction. This remedy would be futile if the deputy registration officer taking the registration had not turned in such registration to the clerk.³⁸ In 1945³⁹ the legislature enacted a comprehensive election code including all matters pertaining to registration and general, primary, city, and town elections. In construing this act, the Attorney General has said that the supplies required by any county, other than ballots, for holding elections must be purchased by the Board of County Commissioners upon requisition, specification, bid and contract pursuant to the provisions of purchasing laws.⁴⁰ Under Sec. 20 and Sec. 96 of the 1945 Act registration and primary election expenses are to be paid in the same manner as the expenses of general elections. The ballots shall be prepared, printed, and delivered by the County Board of Election Commissioners under Secs. 19, 84, 218 and 240 of the 1945 Act, and this has been interpreted to mean that the Board of Election Commissioners contracts for and purchases the ballots, as evidenced by the terms of the Henley-Van Ness Act,⁴¹ in regard to war ballots, for which provision was made in Sec. 11 of such Act in the special session of 1944. Under Sec. 17 of the 1945 Act, two appointive members of the Board of Election Commissioners of a county must be appointed at least 60 days prior to any primary election. In the opinion of the Attorney General their appointment prior to January 1st of the year in which elections are held would be legal.⁴² The Attorney General has also given as an opinion that members of the County Board of Election Commissioners, while acting as members of the County Board of Canvassers, are entitled to receive compensation for their service as such members of the Board

38. Op. Atty. Gen. 1944, p. 408.

39. Acts 1945, Ch. 208, p. 680.

40. Acts 1943, Ch. 199, Ind. Stat. Ann. 1943 Supp., Sec. 26-536 Burns.

41. Acts 1944 Special Session, Ch. 3, providing a procedure for voting by members of the armed services, and related service, such as the merchant marine, Red Cross, Society of Friends, WASP, and U.S.O., where such persons were absent on duty. This act was repealed by Acts 1945, Ch. 208, p. 680. See Sec. 219 et seq. of 1945 Act.

42. Op. Atty. Gen. 1945, No. 90.

of Canvassers in addition to their compensation as members of the County Board of Election Commissioners. Their compensation as members of the Board of Canvassers shall be in such amounts as are fixed by the Board of Commissioners.⁴³

J. VETERANS AND THEIR RIGHTS.

In 1942 the Attorney General rendered an opinion under existing law⁴⁴ that the Board of Commissioners was not required to make the allowance for burial of a soldier, sailor, or marine unless a claim was filed showing the service of the deceased in the Army or Navy, and that the deceased was honorably discharged. This did not include men who died in active service.⁴⁵ In 1943 the Attorney General gave an opinion that members of the armed forces in World War H are entitled to receive the benefits of burial allowance under the above mentioned section,⁴⁶ and that this extended to those who have received an honorable medical discharge and the same would apply to their wives or widows. The classification would include Wacs, Waves, and Spars and members of the Nursing Corps, but the husband of such female members of the services would not be included. The Act is retroactive to apply to those who died before the passage or the effective date of the Act; but where a city, which has previously set aside a plot for graves of soldiers in a public cemetery where other facilities were not available, makes a claim for furnishing a burial lot as provided for under the Act the claim must be denied.⁴⁷ Construing certain acts⁴⁸ conferring on veterans, their wives, widows, and children the same rights as those given veterans of the first World War, the Attorney General has given his opinion that such persons are entitled to a certified copy of any record without charge from any officer in whose custody the desired record is, when such record is needed for the purpose of determining any such person's eligibility to participate in benefits made available by the United States Veterans Bureau, and that all proper officers are required to administer oaths, affix jurats, attestations and seals, free of

43. Op. Atty. Gen. 1945, No. 57.

44. Ind. Stat. Ann. 1933, Sec. 59-1009 Burns.

45. Op. Atty. Gen. 1942, p. 56.

46. Ind. Stat. Ann. 1943 Supp., Sec. 59-1009 Burns.

47. Op. Atty. Gen. 1943, p. 734.

charge, in connection with any writing necessary for the procurement or drawing of any premium, bounty, back pay, or prize money for such persons.⁴⁹ The Attorney General has also given his opinion that, construing certain acts together,⁵⁰ all rights and privileges heretofore conferred on veterans, their wives and widows are now conferred on present members of the armed forces, and if a wife of a present member of the armed forces dies, the husband or other interested person is entitled to the benefits of the 1943 Act.⁵¹ The appointment of a city and/or county Veterans Assistance Officer and assistants has been provided for under a 1945 Act,⁵² and the qualifications of such officers and the payment of salaries and expenses are fixed and provided for.

K. ZONING, BOUNDARIES, AND POLICE POWER.

The Supreme Court has held that existing legislation⁵³ authorizing a county planning commission to submit to the Board of Commissioners drafts of ordinances for the benefit and well-being of rural and suburban areas including zoning and land use registrations is broad enough to authorize the Boards of Commissioners to adopt an ordinance providing for building regulations and to authorize a reasonable fee to be paid for building and inspection permits.⁵⁴

An order of a Board of Commissioners changing the boundary lines of a township, under its then existing statutory power, is not invalidated because one of the members of the Board, whose vote therefor was essential, was a citizen, freeholder, and taxpayer of one of the affected township.⁵⁵ A 1945 Act provides for the jurisdiction of Boards of Commis-

48. Acts 1931, Ch. 69, Sec. 14; Ind. Stats. Ann. 1933, Sec. 8-514 Burns and Acts 1943, Ch. 254, Sec. 1; Indiana Stats. Ann. 1943 Repl., Sec. 59-1007a Burns, as amended by Acts 1945, Ch. 141, p. 308.

49. Op. Atty. Gen. 1945, No. 106.

50. Acts 1943, Ch. 55, Sec. 1, Ind. Stat. Ann. 1943 Repl., Sec. 59-1009 Burns, with Ind. Stat. Ann. 1943 Repl., Sec. 59-1007a Burns as amended by Acts 1945, Ch. 141, p. 308.

51. Op. Atty. Gen. 1945, No. 66.

52. Acts 1945, Ch. 122, p. 257. For excellent detailed discussion of tax relief for veterans and others, see Dunham, *Taxation*, 21 Ind. L. J. 113, 114, 186 (1946).

53. Ind. Stats. Ann. 1933, Sec. 26-2301 et seq. Burns.

54. Board of Commissioners v. Sanders, 218 Ind. 43, 30 N.E. (2d) 713 (1940).

55. Decatur Township v. Board of Commissioners, 111 Ind. App. 198, 39 N.E. (2d) 479 (1942).

sioners of counties to change township boundaries in certain cases, and provides for an appeal from the action of such boards to the circuit court.⁵⁶ The constitutionality of this act has been upheld by the Supreme Court.⁵⁷

L. HEALTH.

Boards of Commissioners unable to secure the services of a physician as a part-time health officer may employ a person for such purpose other than a physician subject to the approval of the State Board of Health until March 15, 1949.⁵⁸ In an amending act in 1945 the legislature provided for the appointment, qualifications, term, salaries and duties of the health officers.⁵⁹ The fees provided under Acts 1945, Ch. 154, Sec. 9 (b), p. 364, which the health officer shall charge for certified copies of birth and death certificates are the personal property of such officers.⁶⁰ A 1945 act provides for the report of tubercular patients by a health officer, their quarantine, and establishes a procedure for their commitment to a hospital similar to the procedure for commitment for insanity.⁶¹ Boards of Commissioners have been authorized to accept gifts for the construction and equipment of buildings for county health departments.⁶² An amending act of 1943 provides for the procedures of operation of county hospitals, authorizes the acceptance of donations and provides for the investment of funds.⁶³ In another amending act in 1945, provision is made for the appointment of governing boards of county hospitals and for their terms and qualifications and for the management of such hospitals.⁶⁴ Legislation has also been enacted concerning county tubercular hospitals in counties of not less than 15,000 nor more than 160,000 population.⁶⁵

56. Acts 1945, Ch. 131, p. 277.

57. *Perry Township et al. v. Indianapolis Power and Light Co., et al.*, — Ind. —, 64 N.E. (2d) — (1946).

58. Acts 1945, Ch. 67, p. 156.

59. Acts 1945, Ch. 173, p. 406, amending Ind. Stat. Ann. 1943 Supp., Secs. 35-118, 35-121 and 35-124 Burns.

60. Op. Atty. Gen. 1945, No. 117.

61. Acts 1945, Ch. 193, p. 612.

62. Acts 1945, Ch. 289, p. 1272.

63. Acts 1943, Ch. 166, Ind. Stat. Ann. 1943 Supp., Sec. 22-3218.

64. Acts 1945, Ch. 206, p. 674 amending Ind. Stats. Ann. 1943, Supp., Sec. 22-3204, 22-3207 Burns.

65. Acts 1941, Ch. 33; Ind. Stats. Ann. 1943 Supp., Sec. 22-3501 Burns.

The Indiana Personnel Board is not empowered to review on appeal the action of the Board of Commissioners of a county in discharging a public health nurse without hearing or assigning cause for removal, even though her entire salary is paid by the State Board of Health and the county has paid her expenses pursuant to Ind. Stat. Ann. 1943 Supp., Secs. 35-118, 35-119 Burns, the first section of which was amended by Acts 1945, Ch. 173, p. 406 which deals with the manner of appointment of county health officers.⁶⁶

M. EXEMPTIONS AND BOUNTIES.

Where a husband owns a piece of property in his own name and the husband and wife own property as tenants by entireties, the wife may file for a mortgage deduction on the jointly owned property for \$500 and the husband for the property in his own name for \$1,000, assuming that the assessed valuation is sufficient to cover these amounts.⁶⁷ Members of the armed service and veterans are entitled to mortgage exemptions for the years for which they should have filed in 1942, 1943, 1944, 1945, or subsequent years when such person was in such service at the time he should have filed for the exemptions.⁶⁸

An amending act of 1945 provides for the payment of bounties for wolf and fox scalps by Boards of Commissioners if they decide to establish such bounties.⁶⁹ The only change in the previous act is an increase in the amount of bounties, the General Assembly having found in 1945 that an emergency existed to double the amount previously allowed 70 years before.

N. FLOOD CONTROL.

Additional duties of the auditor and treasurer in the Flood Control Districts and provision for compensation for the auditor have been provided for in such districts located in the Ohio River Valley.⁷⁰

66. Op. Atty. Gen. 1945, No. 37.

67. Op. Atty. Gen. 1942, p. 28.

68. Acts 1945, Ch. 26, p. 44. For complete and excellent discussion of tax relief and benefits to veterans, and others, see Dunham, *Taxation*, 21 Ind. L. J. 113, 114-119, 186 (1946).

69. Acts 1945, Ch. 272, p. 1212, amending Acts 1875, p. 178, Sec. 1, Ind. Stats. Ann. 1933, Sec. 26-1101 Burns.

70. Acts 1945, Ch. 98, p. 214.

III. TOWNSHIPS

This section is limited to the developments in the law governing civil townships. A major portion of the duties of the township trustee in the past five years has been the determination of questions arising in the conducting of school townships, which questions are considered in the succeeding section entitled Schools and School Districts, which will apply both to school townships and school cities and towns.

A. POWERS.

A township trustee cannot bind the township on a contract executed by him with another before he assumed the duties of his office; but when such purported contract has actually been acted on after the trustee assumes office, an implied contract arises as to the service rendered.⁷¹ Township trustees are not under the jurisdiction of the State Department of Public Welfare or the State Board of Public Welfare. The governor is without power to hold a hearing on the removal or to remove a township trustee.⁷² Neither a county nor township officer can legally apportion funds or issue special bonds for sponsoring special work programs of the federal government.⁷³ A township trustee, under his authority to buy supplies, may buy a manual of practice for the justice of the peace in his township.⁷⁴

B. POOR RELIEF.

In the operation of a stamp plan for poor relief, the initial cost of placing the plan in operation may be paid out of poor relief funds and such funds may be drawn upon for the cost of continuing operation of such a plan.⁷⁵ Provision has been made for the filing of an affidavit by one seeking poor relief before such relief is extended; and the township trustee, as overseer of the poor, shall require relief recipients to work if able to do so.⁷⁶ Township trustees

71. *Washington Township v. Breedlove*, 217 Ind. 218, 27 N.E. (2d) 346 (1940).

72. Acts 1945, Ch. 117, p. 247, repealing Ind. Stat. Ann. 1933, Sec. 52-802 Burns.

73. Op. Atty. Gen., 1940, p. 26.

74. Op. Atty. Gen., 1943, p. 183.

75. Op. Atty. Gen., 1940, p. 46.

76. Acts 1941, Ch. 190, amending Ind. Stat. Ann., 1941 Supp., Sec. 52-152 Burns.

have been empowered to cooperate with federal agencies in the distribution of surplus commodities to those who require poor relief.⁷⁷ Where an indigent having legal settlement in the township is injured in another township, which has the duty to furnish temporary aid, the township of his settlement must furnish the necessary medical or surgical care upon his removal to the latter township; and the township of his settlement cannot avoid it by asserting that the indigent was returned by someone other than the trustee of the township in which he was injured. The court by way of dictum indicates the result would have been different had the township to which the individual was removed to a hospital been other than that of his legal residence.⁷⁸ An amending act of 1945 provides a detailed procedure for the number and appointment of poor relief investigators and supervisors by township trustees, and provides for the appointment of additional assistants by the trustee, with the written approval of the State Board of Inspection and Supervision, which shall approve the rate of pay of such assistants; and no such approval shall be for a longer period than six months.⁷⁹ Section 3 of said act purported to amend Section 4 of the Acts of 1937, Ch. 208; however, in the senate amendment concurred in by the House, the only amended sections mentioned in the title of the 1945 act are sections 2, 3, 7, 8, and 9.

C. OFFICERS.

Members of township advisory boards shall be paid \$5.00 for each meeting of said board, but not to exceed \$25.00 a year.⁸⁰ In counties containing two or more second class cities, each township shall hereafter be entitled to only one justice of the peace and one constable.⁸¹ The bond of a justice of the peace shall be fixed by the county auditor in a sum not less than \$2000.00 nor more than \$6000.00.⁸² The com-

77. Acts 1941, Ch. 150; Ind. Stat. Ann., 1943 Supp., Sec. 52-1801 Burns.

78. *Couger, Trustee v. Millis*, 114 Ind. App. 336, 50 N.E. (2d) 924 (1943).

79. Acts 1945, Ch. 260, p. 1186.

80. Acts 1943, Ch. 133, amending Ind. Stat. Ann. 1933, Sec. 65-312 Burns.

81. Acts 1943, Ch. 184; Ind. Stat. Ann., 1943 Supp. Sec. 5-108 (a) Burns.

82. Acts 1943, Ch. 206, amending Ind. Stat. Ann. 1933, Sec. 5-118 Burns,

compensation of all township officers is fixed by a 1945 act and clerical assistance is provided for along with office rent and expenses. All townships of the state are individually classified for these purposes.⁸³ Supplementing this to give immediate rights of compensation, a per diem expense allowance was provided for, and clerical assistance was also provided in another 1945 act.⁸⁴ Both of these acts deal with allowances and clerical assistance and other matters. Both carried emergency clauses and were approved the same day. In the opinion of the Attorney General, they are not in irreconcilable conflict and both acts were held to be effective, except that as to clerical assistance the terms of Ch. 311 are not as specific as those of Ch. 251 and the Attorney General's opinion is that in this matter the provisions of Ch. 251 are controlling. In the same opinion the Attorney General also observed that the classification of townships must be under the terms of the 1945 act in determining the amounts payable, but that the acts will have no retroactive effect, the amounts payable thereunder being pro-rated from the effective date of the act in 1945.⁸⁵ Statutory provision has been made for the payment of traveling expenses to township assessors.⁸⁶ This act provides that the State Board of Tax Commissioners shall call an annual meeting of the township assessors of townships of over 5,000 population according to the last preceding census, and provides that each assessor may be allowed four cents a mile for the distance actually traveled by the most expeditious railway route or the nearest route by highway, and \$4.00 a day for expenses, for not more than three days in any one year. In the opinion of the Attorney General, this is the only provision for payment of traveling expenses to township assessors.⁸⁷ Where a deputy township assessor also acts as enumerator of male voters pursuant to Acts of 1937, Ch. 138⁸⁸ he is entitled to a per diem for assessing, and also to a per diem for enumerating of male voters,

83. Acts 1945, Ch. 251, p. 1126, amending Ind. Stat. Ann. 1943 Repl., Sec. 65-201 to 65-207.

84. Acts 1945, Ch. 311, p. 1384.

85. Op. Atty. Gen., 1945, No. 41.

86. Acts 1943, Ch. 188, Sec. 1; Ind. Stat. Ann. 1943 Repl., Sec. 64-1103 Burns.

87. Op. Atty. Gen., 1944, p. 450.

88. Ind. Stat. Ann., 1943 Repl., Sec. 65-624 Burns.

when such services are rendered on the same calendar day.⁸⁹ A 1945 act⁹⁰ provides for additional salaries for township assessors. This was not signed by the governor but contained an emergency clause. The act was received by the governor on March 5 and filed with the Secretary of State on March 10, 1945. In the opinion of the Attorney General, the increases applied to incumbant assessors only (a) where the township assessor received only a per diem, (b) where the salary of the township assessor was fixed in an amount greater than the minimum by the Board of Commissioners, and (c) where a township assessor was appointed to fill out an unexpired term after the effective date of the act.⁹¹ Another 1945 act provides for the appointment of deputies and assistants by township assessors and fixes their compensation.⁹²

D. SURPLUS WAR MATERIAL.

Surplus property of the federal government may be leased, purchased, or hired for any unit of government of the state of Indiana, by the state Director of the Division of Procurement and Supplies, acting as agent for such unit under a prescribed procedure, provided that such unit has a valid appropriation therefor, and gives the prescribed notice. Units may receive gifts and grants of federal property under the same procedure.⁹³

E. FIRE PROTECTION.

In an opinion of the Attorney General, it was said that a township may secure fire protection under appropriate statutes⁹⁴ by (1) contracting with an incorporated city or town within such township, which town has an established fire-fighting force, (2) by entering into a cooperative contract with such city or town for joint maintenance of such fire department, or (3) purchase of its own equipment and contracting with a voluntary fire association for its personnel. In the third case a levy should be made on property outside

89. Op. Atty. Gen., 1943, p. 741.

90. Acts 1945, Ch. 363, p. 1798.

91. Op. Atty. Gen., 1945, No. 30.

92. Acts 1945, Ch. 187, p. 577.

93. Acts 1945, Ch. 219, p. 1014. See first footnote 30 under Cities and Towns.

94. Ind. Stat. Ann., 1943 Repl., Sec. 65-504 et seq. Burns as amended.

of incorporated cities or towns in such township. In the first and second cases, a levy should be made on all the property of the township.⁹⁵ Under a 1945 act,⁹⁶ township trustees are authorized to contract with corporate non-profit fire-fighting associations for the use of their equipment and for the service of the operators thereof. Another 1945 act authorizes townships⁹⁷ to levy taxes for the operation of fire-fighting equipment and authorizes the borrowing of money for the operation and maintenance of such fire protection systems. Appropriations made for such purposes prior to the passage of this act are legalized. Provision is also made in this act for the use of such fire-fighting apparatus outside the limits of an incorporated town and the procedure for the financing of such service by the township is provided. Under another 1945 act,⁹⁸ provision is made for the liability of any municipal corporation for injury to persons or property resulting from the negligent operation of a motor vehicle owned by it and operated by a member of its fire department while engaged in the performance of his duty, and without contributory negligence on the part of the injured person.⁹⁹

F. PURCHASES AND SALES.

A 1945 act¹⁰⁰ provides for notice for bids for any purchase in excess of \$500.00 in the case of materials, goods, equipment, and supplies, and provides that if the total amount is less than \$500.00 it may be purchased on the open market without notice or bids according to Section 1, but in Section 2 a procedure is provided for such purposes calling for invitations for bids from three prospective bidders. In connection with the sale of civil township property, no recent legislation has been passed. The last provision¹ calls for only thirty days notice by six postings and provides no procedure for appraisalment. Until recently, with the acquisition of fire fighting equipment, civil townships owned very little property.

95. Op. Atty. Gen., 1944, p. 413.

96. Acts 1945, Ch. 130, p. 276.

97. Acts 1945, Ch. 169, p. 398, amending Acts 1943, Ch. 25, Ind. Stat. Ann. 1943 Supp., Sec. 65-510 Burns.

98. Acts 1945, Ch. 197, p. 635.

99. Quaere: Does a "municipal corporation" as used in this act contemplate the operation of township fire departments?

100. Acts 1945, Ch. 99, p. 215, repealing Acts 1943, Ch. 129, Ind. Stat. Ann. 1943 Supp., Sec. 53-510 Burns.

1. Ind. Stat. Ann., 1933, Sec. 65-125 Burns.

IV. SCHOOLS AND SCHOOL DISTRICTS. City, town, and township).

A. IN GENERAL.

The duties of a trustee of a consolidated school are coextensive with the territorial limits of the township in which such school is located, and he is an officer of the township exclusive of the territorial limits of the town.² A township may enter into a contract with a city school board to pay for part of the capital investment involved in a contractual consolidation of schools.³ Under a 1945 act,⁴ provision was made for the establishment and maintenance of joint high schools in two adjoining townships, providing for a board for maintenance and conduct consisting of the two trustees and the county superintendent of schools. Under this act, the maintenance funds shall be provided each year by the two townships in proportion to the number of pupils attending from each township. The property shall be owned by the townships in proportion to the amount paid by each, and on the sale of such property, each township shall be entitled to its proportionate interest. By the terms of another 1945 act,⁵ all school corporations are authorized to provide a cumulative building or sinking fund to secure funds for the erection of new school buildings and the remodeling of old school buildings, and provision is made that taxes may be levied therefor.

B. OFFICERS—THEIR POWERS AND DUTIES.

In another 1945 act,⁶ revised provision is made for a county board of education conferring power on it to hire additional administrative and supervisory employees. In the opinion of the Attorney General this act,⁷ which provides

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2. *Huginn v. Madison School Township*, 108 Ind. App. 573, 27 N.E. (2d) 926 (1940).
 3. *Op. Atty. Gen.*, 1941, p. 286, interpreting Acts 1919, p. 686 as subsequently amended by Acts 1925, Ch. 175 which refers to cities or towns of not less than 6,000 population.
 4. Acts 1945, Ch. 25, p. 42, adding Secs. 2, 3, 4, 5 and 6 to a prior 1915 act, Sec. 6 of the new act being an emergency clause which number was not included in the title to the act.
 5. Acts 1945, Ch. 57, p. 126.
 6. Acts 1945, Ch. 156, p. 372, amending Ind. Stat. Ann., 1933, Sec. 28-801, Burns.
 7. Acts 1945, Ch. 156, p. 372.

for the appointment of additional persons for the necessary administration of the county school system by a vote of at least two-thirds of the members of the county board of education, does not apply to the election of the county superintendent of schools, which is controlled by another statute,⁸ which provides that a majority vote elects the county superintendent of schools.⁹ The Attorney General has given his opinion that where half of the actual number of township trustees voted for a candidate for county superintendent, even though that number constituted a majority of those present, nevertheless, the county auditor was entitled to cast his vote, and if that vote, cast with the minority, created a tie vote no person was elected.¹⁰ The vote must be by ballot and no one can be required to disclose his vote. In order to constitute a quorum a majority of all the trustees in the county must be present and the county auditor can not be counted in determining the presence of a quorum. A deputy auditor is not authorized to cast a vote for the auditor. In counting votes, tellers should be appointed to collect and count said votes in the presence of the auditor. The trustees should elect a chairman to conduct the meeting from their own number.¹¹ In construing certain statutes,¹² the Attorney General has said¹³ that the traveling expenses of any county superintendent of public instruction, who is also ex-officio attendance officer, in excess of \$300.00 is not allowable. The appointment of attendance officers is mandatory in every city and every county having 1,500 or more children of school age in average daily attendance.¹⁴ In computing the average daily attendance for the purpose of determining the need for an attendance officer, the school corporation is permitted to include the average daily attendance of children in parochial schools, since the duties of an attendance officer apply to all children of school age. School attendance officers are "teachers," as teachers are defined under Acts 1945, Ch. 231,

8. Ind. Stat. Ann., 1933, Sec. 28-702, Burns.

9. Op. Atty. Gen., 1945, No. 44.

10. Op. Atty. Gen., 1941, p. 165.

11. Op. Atty. Gen., 1941, p. 148.

12. Ind. Stat. Ann., 1933, Sec. 28-708 Burns construed in conjunction with Ind. Stat. Ann., 1933, Sec. 28-501 et seq. Burns.

13. Op. Atty. Gen., 1943, p. 663.

14. Acts 1945, Ch. 171, p. 402, amending Ind. Stat. Ann., 1933, Sec. 28-501.

p. 1076,¹⁵ when this act is construed in conjunction with other acts¹⁶ requiring such persons to have licenses.¹⁷ Another 1945 act provides for the licensing power.¹⁸ Payment of school funds to a defacto township trustee is ordinarily good, but where it is a question of whether the township itself exists, payment should be withheld.¹⁹ A school corporation is not entitled to state funds unless the teacher's contract is in writing; otherwise, no binding contract exists.²⁰

Cities of not less than 65,000 nor more than 86,000 population are authorized to create a separate taxing district for the purpose of the erection and building of a technical-vocational high school or high schools, such district to be an incorporated entity known as "The Technical-Vocational High School District of the City of ———, Indiana." Management is vested in the Board of Trustees of the school city, and power to issue bonds and to borrow money is conferred, the bonds and debts to be the sole obligation of the technical-vocational high school district.²¹ Bonds may be issued without complying with the requirements provided by law in the issuing of other bonds.²² Buildings for the purpose of teaching agriculture and domestic science in township schools may be erected.²³ Where a township has two small high schools, both of which are under the jurisdiction of the township trustee, it is the opinion of the Attorney General²⁴ that the township would not have the right to abandon either of such schools, except by complying with the provisions of existing law,²⁵ nor would the trustee of such township be authorized to abandon both of said schools and construct a new school on a different site without complying with existing law.²⁶

15. Repealing Ind. Stat. Ann., 1943, Supp. Sec. 28-4319, 28-4320 Burns.

16. Ind. Stat. Ann., 1933, Sec. 28-2401, 28-4208 Burns.

17. Op. Atty. Gen., 1945, No. 91.

18. Acts 1945, Ch. 330, p. 1529.

19. Op. Atty. Gen., 1940, p. 78.

20. Op. Atty. Gen., 1940, p. 24.

21. Acts 1945, Ch. 138, p. 298.

22. Acts 1937, Ch. 119, Sec. 7, Ind. Stat. Ann. 1943 Supp., Sec. 64-313 Burns.

23. Acts 1941, Ch. 88, Ind. Stat. Ann. 1943 Supp., Sec. 28-3419 Burns.

24. Op. Atty. Gen., 1945, No. 55.

25. Ind. Stat. Ann., 1933, Sec. 28-2801 Burns.

26. Ind. Stat. Ann., 1933, Sec. 28-2701 Burns.

C. TEACHERS.

It is the opinion of the Attorney General that a teacher, who has taught five or more successive years in any school city or town corporation, and who at any time thereafter contracts for further service with such corporation, becomes a tenure teacher.²⁷ Where a teacher has taught four years, entered into a contract for an additional three years, but is dismissed after one year of the latter contract, it is the opinion of the Attorney General that the teacher has acquired no right as a tenure teacher.²⁸ The failure of a county superintendent to approve a teacher's contract does not affect the teacher's contract status even though the superintendent fails to approve such contract for cause.²⁹ Any schedule classifying teachers is proper so long as its terms are reasonable, natural, and based on substantial differences germane to the subject, or upon some basis having a reasonable relation to the work assigned.³⁰ A rule of the board of school trustees requiring a teacher who is a candidate for a political office to take a leave of absence during his political activity is not unreasonably. The restriction on the power of the school trustees to enforce involuntary leaves of absence for more than one year³¹ refers only to physical or like disabilities.³² Marriage alone does not justify differentiation in the salary schedule for a teacher.³³ Local school corporations have no power to make a rule providing for dismissal after the legal dismissal date fixed by law,³⁴ nor to require a teacher to do any other act than is set forth in the cited statute on penalty of having his new contract cancelled. Such a rule could not have the effect of constituting a cancellation of the contract by the teacher by any other means than those

27. Op. Atty. Gen., 1943, p. 195.

28. Op. Atty. Gen., 1942, p. 115.

29. Op. Atty. Gen., 1941, p. 358.

30. Board of School Trustees v. Moore, 218 Ind. 386, 33 N.E. (2d) 114 (1941).

31. Ind. Stat. Ann., 1933, Sec. 28-4311 Burns.

32. School City of East Chicago v. Sigler, 219 Ind. 9, 36 N.E. (2d) 760 (1941).

33. Hutton v. Gill, 108 Ind. App. 1, 7 N.E. (2d) 1011 (1937), transferred to the Supreme Court and reported in Hutton v. Gill, 212 Ind. 164, 8 N.E. (2d) 818 (1937). See 13 Ind. Law Journal 182 (1937-1938).

34. Acts 1941, Ch. 130, Sec. 1; Ind. Stat. Ann., 1943, Supp., Sec. 28-4321 Burns.

provided for in the statute.³⁵ A cancellation clause in a teacher's uniform contract providing the cancellation upon the marriage of a woman teacher is invalid as a contract provision, but it may be the subject of a valid rule by the school corporation, in which case, if the teacher marries, the cancellation must be pursuant to law,³⁶ which, among other things, provides for notice and hearing.³⁷ Where a tenure teacher has been wrongfully dismissed, even though thereafter she has taught in another school corporation for three and one-half years, and has then returned to the original school corporation, and has taught there four years under definite annual contracts before asserting the tenure rights which had been violated almost eight years before, the defense of laches will not avail where it does not appear that there has been any such change of position by the school corporation which would injure it by reason of the delay.³⁸ Notice of termination to a teacher under the requirement of law that such teacher shall be "notified by the school corporation in writing, in person, or mailed to him or her"³⁹ is sufficiently satisfied by attaching a written notice to the teacher's pay check and causing delivery by an employee of the township trustee of the township in which such teacher is teaching.⁴⁰ Where a trustee does not notify a teacher within five days after the close of school that her contract has terminated, and the teacher does not deliver to such trustee or mail by registered mail her resignation, her contract is still in effect. If the teacher signs a contract with another school corporation before August 15 of any year without securing a release from the trustee of the township in which she has previously taught, the first contract is still in effect; however, after August 15, the teacher may deliver a twenty-one days' notice of resignation which would cancel the prior contract and relieve the teacher from liability thereunder, and would permit her to comply with the second contract. If she signs a contract after August 15 without securing a release from the trustee, it may be valid, provided she gives the twenty-

35. Op. Atty. Gen., 1944, p. 283.

36. Ind. Stat. Ann., 1933, Sec. 28-4308 Burns.

37. Op. Atty. Gen., 1944, p. 341.

38. Engle, Trustee v. Mathley, 113 Ind. App. 458, 48 N.E. (2d) 463.

39. Acts 1939, Ch. 77, Ind. Stat. Ann. 1943 Supp., Sec. 28-4321 Burns.

40. Op. Atty. Gen., 1941, p. 191.

one days' notice, or if the second contract is not executed until after expiration of service of the twenty-one days' notice.⁴¹ It is the opinion of the Attorney General that whether the trustee releases the contract or not, the teacher, by giving the required twenty-one days' notice after August 15, may cancel the contract under existing statutes.⁴² A tenure teacher under the 1927 act, who has elected to come under the provisions of the retirement law⁴³ and who has reached his 66th year after May 1, 1945, is subject to the provisions of a 1945 act⁴⁴ and may be refused a teacher's contract by the school corporation with which he held such tenure status. This is true because of the waiver of his tenure contract when he has elected to come under the provisions of the retirement act.⁴⁵ A school corporation, with the consent of the teacher, under existing law⁴⁶ may rescind an existing contract, and make a new contract, with different terms, subject to questions of appropriations and budgetary problems which might be involved.⁴⁷ Where a teacher does not ask for a hearing within the statutory time after being notified that the school board has fixed a date for consideration of whether his permanent contract should be cancelled, he may be deemed to have consented that the board might decide without a hearing whether there was sufficient legal ground for cancellation of his contract, with such information as the board officially, or the members personally, might have on the subject.⁴⁸ In the opinion of the Attorney General⁴⁹ the holder of a temporary teaching contract, as provided by law,⁵⁰ has no tenure rights under the Acts of 1927 as amended in 1933⁵¹ as the holder of a legal contract. A school corporation which em-

41. Op. Atty. Gen., 1943, p. 536.

42. Acts 1939, Ch. 7, Sec. 1, Ind. Stat. Ann., 1943 Supp., Sec. 28-4321 Burns.

43. Ind. Stat. Ann., 1943 Supp., Sec. 28-4506 (Cl. d) Burns.

44. Acts 1945, Ch. 71, p. 155, amending Acts 1943, Ch. 193, p. 586; Ind. Stat. Ann., 1943 Supp., Sec. 28-4506 n. Burns.

45. Op. Atty. Gen. 1945, No. 93.

46. Ind. Stat. Ann., 1941 Supp., Sec. 28-4321 Burns and Sec. 28-4310 Burns.

47. Op. Atty. Gen., 1942, p. 1.

48. Phillippe et al. v. Axe et al., 219 Ind. 328, 38 N.E. (2d) 341 (1942).

49. Op. Atty. Gen., 1943, p. 655.

50. Acts 1943, Ch. 202, Ind. Stat. Ann., 1943 Supp., Sec. 28-4300 Burns.

51. Ind. Stat. Ann., 1933, Sec. 28-4307 Burns.

loys and pays a substitute teacher must hold a written contract with such teacher⁵² since substitute teachers are required by law to secure licenses from the licensing board of the State Board of Education as a prerequisite to the performance of their work, and such persons are "teachers" within the meaning of a 1945 act.⁵³ In the opinion of the Attorney General⁵⁴ the licensing of persons employed is required under Ind. Stat. Ann. 1933, Secs. 28-4201, 28-4808, 28-5005, Burns, which have been held to be applicable to school cities and towns as well as to a school township.⁵⁵ The Supreme Court has also decided that no person may be employed or permitted to teach in the absence of his holding some grade of license required or provided for by statute.⁵⁶ The status and contract rights of teachers called to military, naval, or auxiliary war service have been preserved.⁵⁷ Minimum compensation has been provided for teachers.⁵⁸ A 1941 act amended the requirements for the renewal of teachers contracts.⁵⁹ (It is the opinion of the Attorney General⁶⁰ that the sections of the so-called minimum salary law apply to a regularly licensed teacher who teaches part-time.⁶¹ When two school corporations consolidate for school purposes, and erect a joint school building to care for the joint educational needs of both corporations, it is the opinion of the Attorney General⁶² that teachers who have gained tenure rights in each corporation before consolidation do not retain their tenure rights, as the consolidation is such that the identities of the two corporations are completely lost, and a new identity created. The result might be different if the consolidation is contractual, and the identities of the two units are not

52. Ind. Stat. Ann., 1933, Sec. 28-4302 Burns.

53. Acts 1945, Ch. 231, Sec. 1, p. 1076.

54. Op. Atty. Gen., 1945, No. 91.

55. Putnam v. School Town of Irvington, 69 Ind. 80, 83 (1879).

56. State ex rel. Benham v. Bradt, 170 Ind. 480, 84 N.E. 1084 (1908). Jackson School Township v. Farlan, 75 Ind. 118 (1881).

57. Acts 1941, Ch. 97, Ind. Stat. Ann., 1943 Supp., Sec. 28-4322.

58. Acts 1941, Ch. 41, as amended by Acts 1943, Ch. 112, which was repealed by Acts 1945, Ch. 231, p. 1076 which is a new and independent act repealing the act carried in Ind. Stat. Ann., 1943 Supp., Sec. 28-4319 Burns.

59. Acts 1941, Ch. 130, Ind. Stat. Ann., 1943 Supp., Sec. 28-4321.

60. Op. Atty. Gen., 1942, p. 6.

61. Ind. Stat. Ann., 1943 Supp., Sec. 28-4304 and 28-4319, Burns as amended.

62. Op. Atty. Gen., 1941, p. 154.

destroyed.⁶³ It is the opinion of the Attorney General⁶⁴ that a teacher in the joint school district operated jointly by a school town and a township may become a tenure teacher, since such districts are regarded as a town or city school.⁶⁵ The Attorney General⁶⁶ has also construed the term "teacher experience" as used in the 1941 act.⁶⁷ School authorities may, but are not required to consider teacher experience in teachers' colleges or other colleges or universities. It is the opinion of the Attorney General⁶⁸ that the word "year" as used in a 1945 act⁶⁹ refers to the school year. Since statutes are presumed to operate prospectively, the five day sick leave granted, insofar as it applies to the 1944-45 school year, would be five full days after the effective date of the act, March 7, 1945, to the end of the school year. It is the opinion of the Attorney General that if the teacher worked in two or more school corporations during the year, his sick leave would have to be apportioned on the basis of time served in each so that the teacher would have no more than five days for the full school year. A teacher employed part-time by several school corporations would retain the credit for any sick leave accumulated against those school corporations with which she continued her employment, and would lose her accumulated time for which she would be entitled to credit, as against the school corporation with which she had severed her employment. For thirty additional days, the teacher is entitled to her salary above the expenditure for a substitute. If no substitute is hired, she would be entitled to full salary under the cited act.

In a recent opinion,⁷⁰ the Attorney General said that in the event a teacher is absent from his work because of personal injury arising out of and in the course of his employment, and receives benefits therefor under the Workmen's

63. See Ind. Stat. Ann., 1933, Sec. 28-4307 Burns.

64. Op. Atty. Gen., 1943, p. 540.

65. *Harris v. State ex rel. Allen*, 212 Ind. 386, 8 N.E. (2d) 594 (1937).

66. Op. Atty. Gen., 1941, p. 179.

67. Acts 1941, Ch. 41, amending Ind. Stat. Ann. 1943 Supp., Sec. 28-4319 and 28-4320 Burns.

68. Op. Atty. Gen., 1945, No. 120.

69. Acts 1945, Ch. 231, p. 1076 repealing Acts 1943, Ch. 122; Ind. Stat. Ann. 1943 Supp., Secs. 28-4319, 28-4320 Burns.

70. Op. Atty. Gen., 1945, No. 134.

Compensation Act,⁷¹ then such teacher would only be entitled to receive under the 1945 act, previously cited,⁷² the difference between the amount received under the Workmen's Compensation Act, and the full benefits provided by the 1945 act. In the same opinion it was said that if a teacher is absent from his work because of being quarantined by order of a board of health, because of the illness of another person, such teacher is not entitled to the benefits conferred by the cited 1945 act, which contemplates only the illness of the teacher. It was also said that temporary teachers, under a proper construction of the law governing their contracts,⁷³ are entitled to the benefits conferred by the 1945 act.⁷⁴

D. MISCELLANEOUS PROVISIONS.

Where the school board in an incorporated city wishes to abandon a school and to have a township trustee take over the control of the school under Ind. Stat. Ann. 1933, Sec. 28-1242 Burns, it is the opinion of the Attorney General that the township must assume the bonded indebtedness of the city school corporation.⁷⁵ Neither a tax adjustment board nor the State Board of Tax Commissioners can reduce appropriations for the payments of teachers with whom legal contracts have been executed prior to the attempted reduction, and an appropriation made therefor by the Advisory Board of a township.⁷⁶ A board of school trustees of a school city may appropriate funds to be used in defending a suit filed against former members and present employees in an attempt to enforce personal liability for acts and duties performed by said board and its employees in its governmental function as a political subdivision of the state, and the same rule would apply to other governmental units.⁷⁷

71. Acts 1929, Ch. 172, sec. 18, as amended by Acts 1943, Ch. 136, sec. 2; Ind. Stat. Ann. 1943 Supp., sec. 40-1218 Burns. The act covers "personal injury or death by accident arising out of and in the course of employment." Ind. Stat. Ann. 1943 Supp., sec. 40-1202 Burns.

72. Acts 1945, Ch. 231, p. 1076, repealing Acts 1943, Ch. 122; Ind. Stat. Ann. 1943 Supp., sec. 28-4319, 28-4320 Burns.

73. Acts 1943, Ch. 202, sec. 1, Ind. Stat. Ann., 1943 Supp., sec. 28-4330 Burns.

74. Acts 1945, Ch. 231, p. 1076.

75. Op. Atty. Gen., 1942, p. 55.

76. Op. Atty. Gen. 1942, p. 131.

77. Op. Atty. Gen., 1942, p. 253.

The legislature has provided minimum construction requirements for all schools hereafter built.⁷⁸ School townships and corresponding civil townships have been authorized to borrow money and issue bonds to complete school buildings or additions already under construction, where such structures have been started in collaboration with the Works Progress Administration but are not finished.⁷⁹ Provision has been made by the legislature for the government of school corporations in cities of not less than 65,000 nor more than 86,000 population. This act provides for the transfer of the rights from the predecessor school corporation, the election of trustees, and the filling of vacancies.⁸⁰ A similar act applies to school corporations in cities of not less than 90,000 nor more than 100,000 population.⁸¹ Another 1943 act⁸² provides for minimum room temperature, a physical examinations of school employees, and cleanliness of school houses and buses. Nursery schools for children under six years of age may be established by any school city or town.⁸³ If a parent wishes, any child may attend classes for religious instruction for periods to be determined by the principal or superintendent of schools, but not to exceed two hours a week.⁸⁴ Under recent legislation⁸⁵ township trustees must advertise for bids for school bus contracts but may negotiate for such contracts with the various bidders, and are not required to let the contract to the lowest and best responsible bidder as required by a 1941 act.⁸⁶ School bus drivers, however, must take a physical examination required by law.⁸⁷ School bus drivers are required to attend certain safety meetings when called by the superintendent of state police and

78. Acts 1943, Ch. 219, Ind. Stat. Ann., 1943 Supp., Sec. 28-2901 Burns amending a 1923 act.

79. Acts 1943, Ch. 205, Ind. Stat. Ann., 1943 Supp., Sec. 28-1341 et seq.

80. Acts 1943, Ch. 60 Ind. Stat. Ann., 1943 Supp., Sec. 28-815 et seq.

81. Acts 1943, Ch. 106, Ind. Stat. Ann., 1943 Supp., Sec. 28-1914 et seq. Burns.

82. Acts 1943, Ch. 162, Ind. Stat. Ann., 1943 Supp., Sec. 28-2902 Burns, amending Acts 1941, Ch. 214.

83. Acts 1943, Ch. 256, Ind. Stat. Ann., 1943 Supp., Sec. 28-1443 et seq.

84. Acts 1943, Ch. 225, Ind. Stat. Ann., 1943 Supp., Sec. 28-505a.

85. Acts 1943, Ch. 200, Ind. Stat. Ann., 1943 Supp., Sec. 28-3915 n. 28-3920 et seq., repealed and replaced by Acts 1945, Ch. 210 p. 970.

86. Acts 1941, Ch. 161, Ind. Stat. Ann., 1943 Supp., Sec. 28-3915, repealed by Acts 1945, Ch. 210, p. 970.

87. Ind. Stat. Ann., 1943 Supp., Sec. 28-2902 Burns.

the superintendent of public instruction.⁸⁸ A school bus driver inducted into the armed forces under the Selective Service Act of 1940⁸⁹ is not entitled to complete his contract if he returns before the date of expiration of such contract.⁹⁰ The legislature made provision in 1941 for the re-employment of policemen, firemen, and school teachers but did not include school bus drivers. Provision has been made for the transportation of high school pupils from a township without a high school to a school in another township.⁹¹ The so-called free text-book law⁹² does not apply to parochial or other private schools.⁹³ Where a school board, at the request of a Catholic church, took over buildings used as a parochial school, and conducted school with teachers belonging to a Catholic order, payment of such teachers was valid when the teachers were legally licensed under state laws, when the curriculum was prescribed public school curriculum, and when the school was under the supervision of regular civil school authorities.⁹⁴ Boards of school trustees are authorized to purchase real estate, execute contracts for school buildings, purchase furniture and fixtures, and issue and sell bonds to procure funds for any such purposes when such trustees are elected by the voters of any such city, and may do so without the consent of the Common Council of such city.⁹⁵ Surplus property of the federal government may be leased, purchased, or hired for any unit of government of the state of Indiana, including school districts, by the State Director of the Division of Procurement and Supply, acting as agent for such unit under prescribed procedure if such unit has a valid appropriation therefor and proper notice is given. Units may receive gifts and grants of federal property under the same procedure.⁹⁶ School cities, school towns, or school town-

88. Acts 1943, Ch. 127, Ind. Stat. Ann., 1943 Supp., Sec. 28-3927 et seq.

89. U. S. C. A., title 50, Sec. 301, et seq.

90. Op. Atty. Gen., 1942, p. 118.

91. Acts 1945, Ch. 113, p. 242.

92. Ind. Stat. Ann., 1943 Supp., Sec. 28-624 to 28-640 Burns.

93. Op. Atty. Gen., 1941, p. 284.

94. State ex rel., Johnson v. Boyd, 217 Ind. 348, 28 N.E. (2d) 256.

95. Acts 1941, Ch. 102, Ind. Stat. Ann., 1943 Supp., Sec. 28-1338 Burns. Under specified conditions, cities of the fifth class may purchase land for school purposes. Acts 1945, Ch. 11, p. 241.

96. Acts 1945, Ch. 219, p. 1014. For another discussion of problems presented by this act, see first Footnote 30 under Cities and Towns. For a discussion of the regulation of purchases by School Districts, see sub-section G. Purchases and Sales—under Counties herein. See also Acts 1945, Ch. 99, p. 215.

ships are authorized to pay out of special school funds the freight charges on arms, ammunition, and equipment from the federal government where a system of military instruction has been instituted in a high school of such unit, and to pay for insurance charges on such equipment, and to employ suitable persons for military instruction. Such persons so employed must hold a certificate from the State Board of Education, and if duly qualified, may also act as physical director.⁹⁷ School corporations are authorized under certain conditions to purchase buildings for school purposes, where the building was originally constructed for use by the school corporation and used for that purpose for a period of five years; and a procedure is provided therefor.⁹⁸ Another act of 1945 provides for the payment of tuition of pupils transferred from one school corporation to another and the computation of the annual per capita cost.⁹⁹ Educational facilities in the public schools have been provided for any person not less than seven nor more than thirty years of age, who is a patient in a sanitarium maintained solely for the purpose of treatment of tuberculosis.¹⁰⁰ Public school corporations cannot by general rule exclude pupils who are married or beyond the age of twenty-one years, and cannot charge them tuition, when they are legal residents of the school corporation, under the general intentions of the provisions of Article 8, Sec. 1 of the Indiana Constitution.¹ It is also the opinion of the Attorney General² that pupils under sixteen years of age may be required to attend a city high school in a township where no township high school is located, the township trustee paying the expenses and transportation therefor under applicable law.³ The school board or township trustee or the school teacher or principal or superintendent may suspend or ex-

97. Acts 1945, Ch. 269, p. 1208 amending Ind. Stat. Ann., 1943 Supp., Sec. 28-1430 and 28-1431.

98. Acts 1945, Ch. 257, p. 1178. This act is evidently passed to enable townships to purchase buildings held under the so-called holding company act.

99. Acts 1945, Ch. 82, p. 176, amending Acts 1943, Ch. 141, Ind. Stat. Ann., 1943 Supp., Sec. 28-3717 Burns.

100. Acts 1945, Ch. 18, p. 28 which repeals and is substituted for Acts 1941, Ch. 93, Ind. Stat. Ann., 1943 Supp., Sec. 28-5313 Burns.

1. Op. Atty Gen., 1944, p. 386.

2. Op. Atty Gen., 1944, p. 444.

3. Ind. Stat. Ann., 1933, Secs. 28-505 and 28-2410 Burns.

clude a pupil, in the opinion of the Attorney General,⁴ unless prevented by a rule of the school board or township trustee under prevailing law⁵

The Supreme Court has said that the legislature has the power to pass a curative statute validating obligations improperly incurred by a municipal unit, but in construing an attempted curative statute in a 1940 case, the court held that the act passed was not sufficient to validate obligations issued and payment of void school improvement contracts.⁶

In an opinion of the Attorney General it was said that extra-curricular school funds were subject to the control of boards of education in cities and of township trustees in townships.⁷ In the light of the problems which were considered by the Attorney General in the last cited opinion, the 1943 legislature provided a uniform accounting system for extra-curricular funds in all public schools.⁸ In 1945 the legislature repealed and replaced the 1943 act.⁹ This 1945 act provides that the treasurer of such funds shall be the superintendent or principal or some clerk of the school corporation or member of the faculty appointed by the superintendent or principal. It requires that an adequate bond shall be given by such treasurer and that the funds shall be kept in one bank account.

In 1941 a township with a population of not more than 4,000 and an assessed valuation of not less than \$2,000,000.00, which contains a colored orphans' home belonging to the county, was authorized to build a school for colored children, notwithstanding that such action would increase the indebtedness of the school township beyond the constitutional limitation.¹⁰ The act provides for procedure, the issuance of bonds, the raising of money to pay the bonds, and recites that it

4. Op. Atty Gen., 1944, p. 451.

5. Ind. Stat. Ann., 1933, Sec. 28-2410, Burns.

6. *W. H. Dreves, Inc. v. Oslo School Town*, 217 Ind. 388, 28 N. E. (2d) 252 (1940).

7. Op. Atty Gen., 1943, p. 474.

8. Acts 1943, Ch. 267, Ind. Stat. Ann., 1943 Supp., Sec. 28-5134 et seq. Burns.

9. Acts 1945, Ch. 312, p. 1386, Ind. Stat. Ann., 1945 Supp., Sec. 28-5145 Burns.

10. Acts 1941, Ch. 119, Ind. Stat. Ann., 1943 Supp., Sec. 28-3326 et seq. Burns. This act was passed for the benefit of Lost Creek School Township of Vigo County, Indiana. Its constitutionality may be questioned in that it expressly authorizes the incurring of individual taxes beyond the constitutional limitation.

is supplementary to all other laws but repeals any in conflict with it.

V. MISCELLANEOUS.

In the opinion of the Attorney General,¹¹ there is no existing legislation empowering towns, cities, township trustees, or boards of education or boards of commissioners of counties to pay all or any part of the premiums for group insurance for their employees. If the employees wish to carry such insurance themselves, they could authorize the appropriate treasurer to withhold the premium payments from their salaries but that would be a voluntary act on their part.¹² A 1941 act¹³ provided that municipalities and subdivisions of the state were authorized to purchase liability insurance on the operators of motor vehicles, and pay the premiums thereon out of public funds. Analogous statutes authorizes the payment of pensions to firemen, policemen, and municipal employees. In the last cited opinion of the Attorney General, if proper legislation were enacted it would be valid as a proper public purpose.¹⁴ An implied power to insure employees may be found where it is essential to accomplish the purposes of government, but in the absence of express legislation, general insurance on employees covering hazards not connected with their employment is unauthorized.

Any subdivision of the state may contract with the director appointed under the State Personnel Act¹⁵ that such director furnish services to such subdivision in the administration of its personnel on merit principles.

In 1941 all bonds, notes, or other written obligations issued by or in the name of any county, civil, or school township, municipality, special assessment district, taxing district, or any authorized body thereof for the purpose of public improvements were legalized.¹⁶ In the opinion of the Attorney

11. Op. Atty Gen., 1944, p. 396.

12. Acts 1945, Ch. 84, p. 180. This expressly authorizes a trustee or Board of Trustees of any school corporation on request of a teacher to withhold funds to be paid on insurance premiums.

13. Acts 1941, Ch. 52, repealing and replacing Ind. Stat. Ann., 1943 Supp., Sec. 39-1816 and 39-1817 Burns.

14. Acts 1945, Ch. 340, p. 1589, established a public employees' retirement fund.

15. Acts 1941, Ch. 139, Ind. Stat. Ann., 1945 Supp., Sec. 6-1334 et seq. Burns.

16. Acts 1941, Ch. 10, Ind. Stat. Ann., 1943 Repl., Sec. 61-408 Burns.

General,¹⁷ it is not within the power of the board or administrative officer of a local unit of government to grant vacations with pay to Indiana public employees employed on a per diem basis or on an hourly wage. Where there is no implied time continuity, only time of service can be considered; however, under the State Personnel Act,¹⁸ it is provided that the director may enter into agreements with any municipality or political subdivision of the state to furnish services and facilities of the division to such municipality or subdivision in the selection of its personnel on merit principles. Those municipalities who do so contract make the Personnel Act applicable to its employees. Section 30 of said act provides for the adoption of rules concerning holidays and vacations; and if any local units have so contracted, it would seem that the provisions of the Personnel Act and the rules adopted pursuant thereto concerning vacations would be applicable to such local units of government according to the opinion of the Attorney General.¹⁹ Under a 1945 act²⁰ Boards of Commissioners and the governing body of each city, town, township, school city, school town and any other political subdivision may by ordinance or resolution authorize the purchase of bills, certificates of indebtedness, notes or bonds of the United States of America from the money raised by bonds for a future specific purpose, sinking funds, depreciation reserve funds, and gifts, bequests or endowments under their control, provided that such obligations are not purchased over par and that the maturity date, of such investments is not later than the time when such funds are required, if that is determinable, and if not, then such investments shall be made only in securities having a maturity date one year or less from the date of purchase. Interest shall become a part of the fund invested. Such securities may be sold and any and all acts are authorized which are necessary to pro-

17. Op. Atty Gen., 1945, No. 65.

18. Acts 1941, Ch. 139, Ind. Stat. Ann., 1943 Repl., Sec. 60-1334 et seq., as amended.

19. Quære: May valid rules be adopted for vacations of per diem or per hour workers if only the actual time of service can be considered where there is no implied continuity, when the personnel act authorizes nothing more than rules as to vacations, such rules presumably to be formulated thereunder, consistent with existing law?

20. Acts 1945, Ch. 9, p. 14.

fect the funds invested. This act is supplemental to all other acts authorizing investments.

Another 1945 act²¹ discussed in each of the preceding sections empowers any unit of government in the state to requisition the Director of Procurement and Supply of Indiana, who shall act as agent of any such unit in the purchase of surplus war materials. Such unit shall give notice in two newspapers of the type and amount of material to be purchased, rented, or leased, and the amount paid therefor. Before such action is taken the unit must have a valid appropriation to cover the cost of such material.

Whenever any officer, servant, or employee of any subdivision of the state submits his resignation in writing to the proper officer or board, he shall have no right to withdraw, rescind, annul, or amend such resignation without the consent of the officer or persons having power by law to fill such vacancy. Any condition in such resignation except as to the time of taking effect is void.²²

The appointing authority may appoint an official to fill a vacancy in an office without waiting for a judicial determination of such vacancy if existing facts are such that a judicial determination would result in a declaration of vacancy. However the fact that an officer was involuntarily inducted into the army does not in itself interfere with his right to hold a state office under Article 2, Section 9 of the Indiana Constitution and his office is not necessarily vacated.²³

In 1942 the Attorney General gave an opinion²⁴ that a governmental unit was not liable for injuries received by a civilian defense volunteer if such worker was injured and that they were not within the purview of the Workmen's Compensation Act. To meet this question, in 1943, the legislature enacted legislation substantially carrying out the conclusions reached in the Attorney General's opinion.²⁵

In 1945 the legislature established a public employees retirement fund of Indiana²⁶ to provide retirement, death, and

21. Acts 1945, Ch. 219, p. 1014. See first Footnote 30, under Cities and Towns, ante.

22. Acts 1945, Ch. 119, p. 249.

23. State ex rel Kopinski v. Grzowskiak, — Ind. —, 59 N. E. (2d) 110 (1945).

24. Op. Atty Gen., 1942, p. 98.

25. Acts 1943, Ch. 153, Sec. 8, Ind. Stat. Ann., 1943 Supp., Sec. 45-1513 Burns.

26. Acts 1945, Ch. 340, p. 1589.

withdrawal benefits for officers and employees of all political subdivisions of the state including counties, cities, towns, townships, and school corporations, and for the benefit of such officers and employees, and their departments, and provided a procedure. A 1945 act, applying to all *municipal* units, provides procedure for the wrecking or repairing of unsafe buildings and provides for a lien against the real estate involved.²⁷

In an opinion of the Attorney General, no law prevents governmental employees from joining a trade union. However, there is no authorization in any statute for collective bargaining between a governmental unit and its employees, or for collective bargaining between a governmental unit and a union,²⁸ if the agreement growing out of such negotiations be construed as a contract, on the theory that a member of the union authorizes his agents, the union officers, to enter into a contract binding on the individual members of the union, for their own benefit, and also for the benefit of third parties might subsequently become members of the union. Where merit or civil service provisions are mandatory, as in the State Personnel Act, or in cases where competition is required, such a possibility is precluded. It is the opinion of the Attorney General that until the legislature specifically provides for the making of such agreements, they would be *ultra vires* and of no legal force.

It is declared to be the legislative policy that whenever an act incorrectly names any board, bureau, commission, division, department, officer, agency, authority or instrumentality of the state government or of any political subdivision thereof, or where prior to the effective date of any act, the powers of any such officer, board, or other named instrumentality were transferred to another officer or another named authority, such references in any such act shall mean and shall be construed to mean the properly or correctly named or designated officer, board, or other authority,

27. Acts 1945, Ch. 194, p. 616. This act repealed Sections 6 and 7 of Acts 1935, Ch. 196, amended Sections 1, 2, 5 and the title of said act and added Sections 6, 7, 8, 9, 10, 11, 12, and 13. The amended sections are Ind. Stat. Ann., 1943 Supp., Secs. 48-6145, 48-6146, 48-6149 Burns. The act applies only to certain cities.

28. Op. Atty Gen., 1944, p. 224.

or the one to whom such rights, powers, duties, and liabilities were transferred.²⁹

VI. CONCLUSION.

It is obvious from the foregoing recitation of miscellanies that there has been no development in the law relating to governmental subdivisions in Indiana which has exerted any profound change upon the existing structure. Most of the development during that period has been interpretation and adaptation of existing laws to meet unforeseen consequences, occasioned both by the war and otherwise, along with recent efforts to anticipate post-war problems.

29. Acts 1945, Ch. 14, p. 20.