

MUNICIPAL OWNERSHIP OF UTILITIES IN INDIANA

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Cities and towns of this state have long had the right to construct, purchase, acquire and operate utilities for the purpose of furnishing heat, light, water and power for their own use and that of their inhabitants. The right to provide such service for the municipality's own use is an inherent one.¹ It exists even "without statutory authority" where the service is provided for a "public purpose".² This inherent right, in the absence of statutory limitation, includes the furnishing of such service to private consumers.³ The right of a city to acquire and operate a utility is a transcendent one. It extends even to the taking of property by condemnation, as hereinafter noted, from a public utility already devoting the property to a public use.

The legislature has from an early date granted the right to cities and towns to provide service for its inhabitants. Some of the principal statutes are set out below.

Following adoption of the new constitution of the state in 1851, the legislature, in 1852, passed two general laws concerning municipalities, one relating to cities and the other to towns.

In the act relating to towns, approved June 11, 1852,⁴ section 22 provided:

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1. *Crawfordsville v. Braden*, 130 Ind. 149, 28 N.E. 849 (1891); *Underwood v. Fairbanks-Morse & Co.*, 205 Ind. 316, 185 N.E. 118 (1933); *Indiana Service Corp. v. Town of Warren*, 206 Ind. 384, 189 N.E. 523 (1934); *Letz Mfg. Co. v. Public Service Comm.*, 210 Ind. 467, 4 N.E. (2d) 194 (1936).
2. *Underwood v. Fairbanks-Morse & Co.*, 205 Ind. 316, 325, 185 N.E. 118, 121 (1933). "It must be conceded to be the law that unless restricted by law, even without statutory authority, towns may provide light and water for public purposes. These may be furnished as the town wishes it to be done. It may be done by contract or the town may, in its inherent right, erect and maintain plants for this purpose."
3. *Public Service Comm. v. Newcastle*, 212 Ind. 229, 8 N.E. (2d) 821 (1937); cf. *Crawfordsville v. Braden*, 130 Ind. 149, 28 N.E. 849 (1891), decided prior to the many statutes which now prescribe the powers of a municipality in connection with the operation of utility properties for supplying service to its inhabitants so holds; *Huntington v. Northern Indiana Power Co.*, 211 Ind. 502, 5 N.E. (2d) 839 (1939), for the situation after a statutory method had provided the way.
4. *Ind. Rev. Stat. 1852, c. 108, p. 282.*

"The Board of Trustees shall have the following powers, viz.: . . .

Third. . . to construct and preserve reservoirs, wells, pumps, and other water works, and to regulate the use thereof, and generally to establish other measures of prudence for the prevention or extinguishment of fires as they shall deem proper."

This act of June 11, 1852, and the above quoted provisions relating to water works, continued in force as to incorporated towns until passage of the general Cities and Towns Act in 1905.

In the act relating to cities, approved June 18, 1852,⁵ section 35 provided:

" . . . The Common Council shall have power to pass ordinances: . . .

Twenty-third. To construct and establish works for furnishing the city with wholesome water, and for that purpose may go beyond the city limits and exercise full jurisdiction and all necessary powers therefor.

Twenty-sixth. Concerning the lighting of streets, public grounds and buildings."

There is no reference in either of the above acts to "gas" as a public utility, and of course none to electricity for there was no electric lighting in that day.

In 1857, the act of 1852 relating to cities was repealed and a new statute passed and approved March 9, 1857.⁶ Section 35 provided:

" . . . The Common Council shall have power to pass ordinances: . . .

Twenty-sixth. To construct and establish works for furnishing the city with wholesome water, and for that purpose may go beyond the city limits, and exercise full jurisdiction and all necessary power therefor.

Twenty-ninth. To construct and establish gas works, or to regulate the establishment thereof by individuals or companies, or to regulate the lighting of streets, public grounds and buildings, . . ."

The above act of 1857 relating to cities was repealed in 1867, and a new statute was passed and approved March 14, 1867.⁷ Section 53 provided:

" . . . The Common Council shall have power to enforce ordinances: . . .

5. Ind. Rev. Stat. 1852, c. 17, p. 203.

6. Ind. Acts 1857, c. 33, p. 42.

7. Ind. Acts 1867, c. 15, p. 33, Ind. Stat. Ann. (Burns, 1901) § 3541.

Twenty-sixth. To construct and establish works for furnishing the city with wholesome water, and for the purpose of drainage of such city, may go beyond the city limits, and condemn lands and materials, and exercise full jurisdiction, and all necessary power therefor: . . .

Twenty-eighth. To construct and establish gas works, or to regulate the establishment thereof by individuals or companies, or to regulate the lighting of streets, public grounds and buildings, . . ."

Thus the act of 1867 concerning cities re-enacted the provisions in the act of 1857 relating to water works and gas works without material change.

The act of 1852 concerning towns, and the act of 1867 concerning cities, including the above quoted provisions authorizing ownership of water works and gas works, continued to be the law governing towns and cities generally in Indiana until passage of the general Cities and Towns Act in 1905. These provisions as to public utilities were not changed in wording prior to 1905 except in a few instances where cities of a certain class were given special charters—a practice that was rather prevalent a few years prior to 1905. They were, however, in certain instances, modified or affected by the statutes hereinafter referred to.

An act applying to all cities of a population of less than 45,000 (city of Indianapolis only one excluded) was approved March 29, 1879.⁸ Section 1 provided:

"That the Common Council of any city or Board of Trustees of any incorporated town, having a population of less than 45,000, which shall, by ordinance or resolution, decide to erect water works, or to make extensions or improvements where works have heretofore been constructed, are hereby authorized, for the special purpose of furnishing the inhabitants of such city or town with pure and wholesome water, and for fire protection, to issue bonds, etc."

This act remained in force until the general Cities and Towns Act of 1905.

In 1883 the first law was passed recognizing electricity as a public utility. This act was approved March 3, 1883.⁹ Section 1 provided:

"That the common council of any city in this State, incorporated

8. Ind. Acts 1879, c. 17, p. 88, Ind. Stat. Ann. (Burns, 1901) § 4250.

9. Ind. Acts 1883, c. 70, p. 85, Ind. Stat. Ann. (Burns, 1901) §§ 4301-4305.

either under the general act for the incorporation of cities, or under a special charter, and the board of trustees of all incorporated towns of this State, shall have the power to light the streets, alleys, and other public places of such city and town with the electric light, or other form of light, and to contract with any individual or corporation for lighting such streets, alleys, and other public places with the electric light, or other forms of light, on such terms, and for such times, not exceeding ten years, as may be agreed upon."

This act appears to confer upon cities and towns the power both to construct and own electric light plants and to contract with private corporations for lighting the streets and public places. The act remained in force until the general Cities and Towns Act of 1905.

In 1891 the legislature passed a law concerning the incorporation of cities having more than 100,000 population, which was in effect a special charter for the city of Indianapolis. The act was approved March 6, 1891.¹⁰ Section 59 provided:

"The Board of Public Works shall have power: . . . To purchase or erect, by contract or otherwise, and operate water works, gas works, electric light works, street car and other lines for the conveyance of passengers and freight, natural gas lines, telegraph and telephone lines, steam and power houses and lines, for the purpose of supplying such city and the suburbs thereof, or to purchase or hold a majority of the stock in corporations organized for either of the above purposes: Provided, That none of the powers conferred by this paragraph shall be exercised except pursuant to an ordinance specifically directing the same."

This act remained in force until the general Cities and Towns Act of 1905.

In 1893 the legislature passed a law limiting the power of incorporated towns to own and operate electric light plants, as authorized in the above act of 1883. The act was approved March 1, 1893.¹¹ Section 1 provided:

"That whenever a majority of the voters of an incorporated town, as shown by the number of votes cast at the latest preceding corporation election for officers of said town, shall petition the Board of Town Trustees of said town to cause to

10. Ind. Acts 1891, c. 97, p. 137, Ind. Stat. Ann. (Burns, 1901) §§ 3772, 3830.

11. Ind. Acts 1893, c. 100 p, 185, Ind. Stat. Ann (Burns, 1901) §§ 4363 et seq.

be constructed at the expense of the town, an electric light plant for the purpose of furnishing public, commercial and domestic electric lights for said town, the Board of Town Trustees shall proceed to construct said plant under the regulations hereinafter stated."

Under this act the town could enter upon the policy of municipal ownership only on petition of a majority of the voters, which was the equivalent of an election. This act remained in force until the general Cities and Towns Act of 1905.

The legislature from 1893 to 1903 passed several laws creating special charters for different cities. The provisions relating to ownership of public utilities are identical with those in the charter for the city of Indianapolis passed in 1891 above referred to, and each of said laws remained in force until the general Cities and Towns Act of 1905.¹²

In 1903 the legislature passed an act creating a commission to codify certain classes of the statutes of Indiana.¹³ The work of this commission included a revision and codification of the laws of the state relating to cities and towns, which was passed and adopted by the legislature in 1905 as the general law covering the subject. This codification still remains the foundation of the statutory law of the state on cities and towns.¹⁴ All or practically all acts on this sub-

12. The legislative acts were: In 1893 for the government of cities having a population of more than 50,000 and less than 100,000—a special charter for the city of Evansville. Ind. Acts 1893, c. 59, p. 65, Ind. Stat. Ann. (Burns, 1901) § 3905; In 1893 for the government of cities of more than 35,000 and less than 49,000—a special charter for the city of Fort Wayne. Ind. Acts 1893, c. 115, p. 202, amended as to population, Ind. Acts 1901, c. 117, p. 197, Ind. Stat. Ann. (Burns, 1901) § 4055; In 1899 for the government of cities having a population of more than 23,000 and less than 35,000—a special charter for the city of Terre Haute. Ind. Acts 1899, c. 152, p. 270, amended as to population, Ind. Acts 1901, c. 59, p. 94, Ind. Stat. Ann. (Burns, 1901) § 4190a et seq.; In 1901 for the government of cities of more than 30,000 and less than 36,500 population—a special charter for the city of South Bend. Ind. Acts 1901, c. 118, p. 198, Ind. Stat. Ann. (Burns, 1901) § 4190u5 et seq.; In 1903 for the government of cities of less than 30,000 and more than 20,900 population—a special charter for the city of Muncie. Ind. Acts 1903, c. 230, p. 432.

13. Ind. Acts 1903, c. 212, p. 391.

14. Frank v. City of Decatur, 174 Ind. 388, 390, 92 N.E. 173, 174 (1910). "The duty of the codification committee, under the act of 1903 (Acts 1903 p. 391), was to prepare a compilation, revision and codification of the statute laws * * * concerning public, private and other corporations, * * * omit all parts repealed or obsolete and insert all amendments necessary to make all laws complete; * * * to prepare and report bills concerning new matters, repealing

ject subsequently passed are amendatory thereof or supplemental thereto.

The 1905 codified general law relating to cities and towns was entitled "An Act Concerning Municipal Corporations," and was approved March 6, 1905.¹⁵ Section 31 in part provides:

"The Board of Town Trustees shall have the following powers: . . .

Third. . . To construct, purchase and preserve engine houses, fire stations, fire apparatus, reservoirs, wells, pumps, and other water-works for supplying such town with water for fire protection and other purposes and to regulate the use thereof, . . .

Thirteenth. To contract for lighting the streets and other public grounds of the town with gas, electricity, or other suitable light: Provided, however, that the Board of Trustees. . . may. . . cause to be constructed at the expense of the town an electric light plant or a gas plant for the purpose of furnishing public, commercial and domestic lights for such town. . ."¹⁶

Section 93 in part provides:

"The Board of Public Works shall have power: . . .

Eighth. To purchase within or without the limits of such city, and to construct, by contract or otherwise, and to operate, water works, gas works, electric light works, heating and power plants, steam and power houses and lines, for the purpose of supplying such city and the inhabitants thereof with the use and convenience of such works, or to purchase or hold a majority of the stock in corporations organized for any of the above purposes; and to purchase within or without the limits of such city, lands, or other property for any such purpose."¹⁷

Section 249 in part provides:

old laws,' etc. Out of this direction grew the act of 1905, *supra*, which we know historically was an attempt to systematize, harmonize and simplify our municipal laws. While it could hardly be expected to embrace every possible condition which might arise, it goes far to codify the whole subject." *Marion, Bluffton & Eastern Traction Co. v. Simmons*, 180 Ind. 289, 291, 102 N.E. 132 (1913). "It was the purpose of the act of 1905 to codify and re-enact the statute law of this State as it applied to the organization of cities and towns and prescribed the powers and duties of their officers and boards. Its purpose was general and, of necessity, its title was also general."

15. Ind. Acts 1905, c. 129, p. 219, Ind. Stat. Ann. (Burns, 1908) §§ 8696, 8921, Ind. Stat. Ann. (Burns, 1926) §§ 10188-11307 (as amended in various sections).
16. Ind. Acts 1905, c. 129, p. 219, 229, 231, Ind. Stat. Ann. (Burns, 1933) § 48-301.
17. Ind. Acts 1905, c. 129, p. 219, 278, Ind. Stat. Ann. (Burns, 1933) § 48-1902.

"Any city or town may determine to erect water works, gas works, electric light works or a heating or power plant, or any other works or public utilities provided for in section ninety-three, clause eight of this Act, or to purchase or lease any such works already constructed or in course of construction and owned by any person, corporation or company, together with all the property, rights and privileges connected therewith, and also may purchase, or lease, other lands for like purposes; . . ."¹⁸

The foregoing summary shows that from 1852 to 1905 cities and towns were given express statutory power to acquire, own and operate water works and gas works, and from 1879 to 1905 the same powers were extended in connection with electric lighting plants. The acquisition, construction and improvement could be financed by the issuance of general obligation bonds of the city.¹⁹

Recently, a great many acts have specifically authorized the financing of utility construction or acquisition by the issuance of revenue bonds, payable out of the earnings of the utility.²⁰ The right to finance out of revenues has been recognized as an implied right.²¹

18. Ind. Acts 1905, c. 129, p. 219, 392.

19. Ind. Stat. Ann. (Burns, 1933) §§ 48-1902(8), 48-301 (3, 13), 48-7201, 48-7209, 48-7108, 48-7110, 48-5418, 54-610.

20. The first was Ind. Acts 1921, c. 96, Ind. Stat. Ann. (Burns, 1933) §§ 48-5345 et seq., which authorized the purchase and acquisition of water works financed out of revenue bonds. Ind. Acts 1927, c. 164, Ind. Stat. Ann. (Burns, 1933) §§ 48-5402 et seq. authorized the establishment of water works districts in cities of over 80,000 and the issuance of bonds to acquire, erect and maintain said works. Ind. Acts 1929, c. 155, Ind. Stat. Ann. (Burns, 1933) §§ 48-5328 et seq. authorized any city or town owning and operating unencumbered water works to issue bonds for the extension and improvement. Ind. Acts 1932, c. 8, Ind. Stat. Ann. (Burns, 1933) § 48-7301 authorized any city or town leasing or purchasing any electric light and power plant for distribution system to issue bonds payable from revenue. Ind. Acts 1933, c. 125, Ind. Stat. Ann. (Burns, Supp. 1945) § 48-7101 authorized cities of the first class to acquire and extend and improve any utility property out of revenue bonds. Ind. Acts 1933, c. 190, Ind. Stat. Ann. (Burns, 1933) §§ 54-105 et seq. authorized any municipality to own, lease, erect, establish, purchase, condemn, construct, acquire, hold and operate any utility property, and to finance the same from revenue bonds. Ind. Acts 1933, c. 235, Ind. Stat. Ann. (Burns, 1933) §§ 48-5301 et seq. authorized any city or town operating water works to finance the construction of extensions and additions out of revenue bonds. Ind. Acts 1933, c. 259, Ind. Stat. Ann. (Burns, 1933) §§ 48-5441 et seq. relates to extension of water works in fifth class cities. Ind. Acts 1937, c. 206, Ind. Stat. Ann. (Burns, Repl. 1943) §§ 61-508 et seq. applies to refunding, refinancing, and improving any utility. Ind. Acts 1939, c. 107, Ind. Stat. Ann. (Burns, Supp. 1945) § 48-7120 authorized any city of the first class to purchase the whole or part of any utility and issue revenue bonds.

21. Underwood v. Fairbanks-Morse & Co., 205 Ind. 316, 185 N.E. 118 (1933).

Most of the water works in cities and towns in the state were constructed by municipalities. Many of the electric plants were built by municipalities.²² For a while there was a trend toward the disposition of these properties by cities.²³ Recently, there are evidences of an opposite trend. Water works properties have been voluntarily sold by utilities to municipalities. No evident willingness exists on the part of utilities to part with electric properties on a voluntary basis. However, as cities and towns are pressed for a solution of the dilemma of rising costs and demands for reduction of taxes, many municipalities may turn to acquisition of public utility properties as an additional source of revenue. The favorable financial position of cities and towns owning two or more of their utilities will provide the stimulus.²⁴ Legally, the way is clear in Indiana for acquisition by condemnation. To some, municipal ownership of utility property is a new and insidious doctrine. Whether municipal ownership is an insidious thing must be left to the particular social bias of every individual, but, as the history above shows, it is certainly not new in Indiana.

Cities and towns may acquire utility properties through the process of condemnation even though the owners do not consent. The first authority for a municipality to acquire a utility by condemnation was given by the Shively-Spencer Utility Act in 1913.²⁵

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22. Today in 102 cities there are 77 municipally owned water works, 36 municipally owned electric properties and 4 municipally owned gas properties. The figures as to the 429 towns of the state are not so expressive because many towns are served by the electric, water or gas systems located in large near-by cities. However, 187 towns own their water plants, 59 own their electric generation or distribution systems or both, and 7 own their gas distribution property.
 23. The statutory authority to sell exists. *Ind. Stat. Ann.* (Burns, 1933) §§ 48-7210 et seq.; cf. *Lake County Water & Light Co. v. Walsh*, 160 Ind. 32, 65 N.E. 530 (1902); *DeMotte v. Valparaiso*, 161 Ind. 319, 66 N.E. 882 (1903).
 24. See Appendix A. The appendix was prepared by Mayburn F. Landgraf, financial analyst, of Indianapolis, Indiana, from report on file with the Public Service Commission, the State Board of Tax Commissioners and the State Auditors office.
 25. *Ind. Acts 1913*, c. 76, §§ 103-109. "The Shively-Spencer Utility Act of 1913, Chapter 76, p. 167, expressly authorized cities to acquire privately owned utilities by condemnation, where purchase was impossible either because the owner would not sell or the price could not be agreed upon." *City of Lebanon v. Public Service Co.*, 214 Ind. 295, 304, 14 N.E. (2d) 719, 723 (1938); cf. *Wisconsin Power & Light Co. v. Public Service Comm.*, 219 Wis. 104, 261 N.W. 711 (1935); *Southern Indiana Gas and Electric Co. v. Boonville*, 215 Ind. 552, 556, 20 N.E. (2d) 648, 650 (1939).

In 1933, the legislature provided in detail the procedure for acquiring utility property by the process of condemnation.²⁶ The first case under this act was filed by the city of Boonville on November 18, 1936. On June 6, 1941, the litigation which resulted was terminated, and the city became the first in this state to acquire by condemnation process a utility property.

The 1933 act has been the subject of much litigation.²⁷ The cases have established the constitutionality of the act.²⁸ Under it, the city may acquire property "actually used and useful" in supplying utility service within the city and "within a radius of six miles from the corporate limits of such municipality," or "at any place within the county."²⁹

In order to acquire property the city may hire attorneys,³⁰ appropriate money for preliminary investigation, survey and engineering plans.³¹ The proceedings are initiated by a petition of at least five percent of the voters requesting the city to purchase the utility property.³² Before the city

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26. Ind. Acts 1933, c. 190, Ind. Stat. Ann. (Burns, 1933) §§ 54-601 et seq.
27. Southern Indiana Gas and Electric Co. v. Boonville, 213 Ind. 307, 12 N.E. (2d) 122 (1938), rehearing denied, 12 N.E. (2d) 503; City of Lebanon v. Public Service Co., 214 Ind. 295, 14 N.E. (2d) 719 (1938); Public Service Co. v. City of Aurora, 215 Ind. 311, 19 N.E. (2d) 255 (1939); Public Service Co. v. City of Lebanon, 215 Ind. 400, 19 N.E. (2d) 944 (1939); Southern Indiana Gas and Electric Co. v. Boonville, 215 Ind. 552, 20 N.E. (2d) 648 (1939); Montgomery Light & Power Co. v. Town of Linden, 217 Ind. 471, 29 N.E. (2d) 209 (1940); Indiana Service Corp. v. Town of Flora, 218 Ind. 208, 31 N.E. (2d) 1015 (1941); Public Service Comm. v. City of Lebanon, 219 Ind. 62, 34 N.E. (2d) 20 (1941), rehearing denied, 36 N.E. (2d) 852, appeal dismissed, 315 U.S. 786 (1942); Public Service Co. v. City of Lebanon, 46 N.E. (2d) 526 (1943), rev'd, 221 Ind. 78, 46 N.E. (2d) 48 (1942); Town of Flora v. Indiana Service Corp., 222 Ind. 253, 53 N.E. (2d) 161 (1944); Indiana Service Corp. v. Town of Flora, 58 N.E. (2d) 343 (Ind. 1944).
28. City of Lebanon v. Public Service Co., 214 Ind. 295, 14 N.E. (2d) 719 (1938); Southern Indiana Gas & Electric Co. v. Boonville, 215 Ind. 552, 20 N.E. (2d) 648 (1939).
29. Ind. Stat. Ann. (Burns, Supp. 1945) § 54-607; Ind. Stat. Ann. (Burns, 1933) § 54-612; cf. Ind. Stat. Ann. (Burns, Supp. 1945) § 55-4418 for the application of the Rural Electric Membership Corporation Act of 1935 which requires consent of the Public Service Commission as to property beyond the city limits; compare Montgomery Light & Power Co. v. Town of Linden, 217 Ind. 471, 29 N.E. (2d) 209 (1940).
30. Southern Indiana Gas & Electric Co. v. Boonville, 213 Ind. 307, 12 N.E. (2d) 122 (1938), rehearing denied, 20 N.E. (2d) 503.
31. Ind. Stat. Ann. (Burns, 1933) § 54-607.
32. Ind. Stat. Ann. (Burns, Supp. 1945) § 54-612; Southern Indiana Gas & Electric Co. v. Boonville, 215 Ind. 552, 20 N.E. (2d) 648 (1939).

may proceed, there must be an election in which a majority of the voters vote in favor of the acquisition.³³ Such elections have been held valid wherever there is a free and untrammelled right on the part of the voters to express their will.³⁴ If negotiations to purchase³⁵ do not result in an agreement, then the suit for condemnation may be filed under the provisions of the 1905 act for condemnation of property generally.³⁶ The utility may file objections to the complaint on the grounds of (a) lack of jurisdiction of the subject matter or person, (b) lack of right in the city to exercise the power of domain, or (c) for any other reason disclosed in the complaint or set up in the objections.³⁷ The objections serve as a demurrer to the complaint.³⁸

After the objections are ruled upon, the court appoints "three disinterested freeholders of the county" to assess the damages which will accrue on the taking.³⁹ An appeal may be taken either on the sustaining of objections to the complaint or the appointment of appraisers.⁴⁰ After the appraisers have filed their report as to the damages accruing, either party, within ten days, may take exceptions to the same, and the complaint proceeds to issue, trial and judgment on such exceptions as in civil actions.⁴¹ The court has full power to make all "further orders" to do full justice between the parties,⁴² and this includes the power to provide compensation for improvements to the property after the

33. Ind. Stat. Ann. (Burns, Supp. 1945) § 54-612.

34. *City of Lebanon v. Public Service Co.*, 214 Ind. 295, 14 N.E. (2d) 719 (1938); *Public Service Co. v. City of Aurora*, 215 Ind. 311, 19 N.E. (2d) 255 (1939); *Public Service Co. v. City of Lebanon*, 221 Ind. 78, 46 N.E. (2d) 480 (1943).

35. Ind. Stat. Ann. (Burns, Supp. 1945) § 54-612(b); *Indiana Service Corp. v. Town of Flora*, 218 Ind. 208, 31 N.E. (2d) 1015 (1941).

36. Ind. Stat. Ann. (Burns, Supp. 1942) § 3-1702.

37. Ind. Stat. Ann. (Burns, 1933) § 3-1705.

38. *City of Lebanon v. Public Service Co.*, 214 Ind. 295, 14 N.E. (2d) 719 (1938).

39. Ind. Stat. Ann. (Burns, 1933) § 3-1704; *Public Service Co. v. City of Lebanon*, 215 Ind. 400, 19 N.E. (2d) 944 (1939); *Southern Indiana Gas & Electric Co. v. Boonville*, 215 Ind. 552, 20 N.E. (2d) 648 (1939).

40. Ind. Stat. Ann. (Burns, 1933) § 3-1705; *Indiana Service Corp. v. Town of Flora*, 218 Ind. 208, 31 N.E. (2d) 1015 (1941); *City of Lebanon v. Public Service Co.*, 214 Ind. 295, 14 N.E. (2d) 719 (1938).

41. Ind. Stat. Ann. (Burns, Supp. 1942) § 3-1706; *id.* (Burns, 1933) § 3-1707.

42. Ind. Stat. Ann. (Burns, 1933) § 3-1707.

appraisal or after judgment, and even after possession passes to the city.⁴³

The statute and the cases decided under it provide the way for acquisition of utility properties by cities. Any city may now with some degree of certainty embark upon the processes of acquiring a utility property. There are only three points at which the city may fail in the process: (1) If the voters of the city at the election should not approve the acquisition, then the cause for acquisition is of course lost and should be lost; (2) If any vital errors in legal procedure are made, the city might lose its right to acquire; and (3) If the evaluation fixed either by the appraisers or by the court and jury on review is too high to warrant economic acquisition by the city, then the cause is also effectively lost.

43. *Public Service Co. v. City of Lebanon*, 214 Ind. 295, 14 N.E. (2d) 719 (1938); *Public Service Co. v. City of Lebanon*, 221 Ind. 78, 46 N.E. (2d) 480 (1943).