State Budget Committee and the Governor shall require each board, commission or commissioner recommending any building or rehabilitation program to furnish a written proposal showing that such project is essential and necessary to the best interests of the State."

In summary, Sec. 2a of Ch. 286 of the Acts of 1957 provides for an appropriation of sixteen million six hundred thousand dollars ($16,600,000.00). Subsections b, c, and d, of Section 2 provide the method for the allocation of the funds provided by Section 2a, together with allocations which are to be considered by the Budget Committee in the expenditure of the appropriation provided in Section 2a. All of the specified amounts in subsections b, c, and d are allocations to be considered, and not separate appropriations.

OFFICIAL OPINION NO. 6
January 22, 1958

Mr. Robert L. McMahan
Commissioner, Bureau of Motor Vehicles
126 State House
Indianapolis, Indiana

Dear Mr. McMahan:

I am in receipt of your letter of January 7, 1958, in which you request an Official Opinion on the following question:

Does the Bureau of Motor Vehicles have authority to issue free registration plates to the vehicles operated by the Citizens Gas and Coke Utility of Indianapolis under the Acts of 1945, Ch. 304, Sec. 65, as found in Burns' (1952 Repl.), Section 47-2802, which section provides that motor vehicles owned by any city and used in the transaction of official business are exempt from vehicle registration fees.

The statute which you call attention to in your letter reads in part as follows:

"Vehicles of the type required to be registered hereunder, owned by * * * any * * * city * * * and
used in the transaction of official business, are hereby exempted from the payment of the registration fees herein provided, but shall not be exempt from registration. * * *"

The answer to the question presented will turn on (1), whether or not the utility is owned by the city, and therefore the vehicles, too, and (2) if so, are the vehicles used for official business.

The utility herein is operated and managed by the Board of Directors for Utilities under the Department of Utilities, an executive department of the city, under the authority of the Acts of 1929, Ch. 77, Sec. 3, as amended, as found in Burns' (1950 Repl.), Section 48-7103, as follows:

"The said board of directors for utilities shall have, within and outside such city as herein provided (Indianapolis) the exclusive government, management, regulation and control of all public utilities consisting of any * * * gas-works, * * * and all property held by and relating or belonging thereto, any of which public utilities any such city may heretofore have acquired * * * for the service of the public as consumers, users, or patrons, and including any public utility and all property thereof which such city may now or hereafter hold as trustees for the benefit of the inhabitants of such city; * * *."

That the utility does qualify for such control by the Board was established in the case of Todd v. Citizens Gas Co. of Indianapolis (C. C. A. 7th 1931), 46 F. 2d 855, wherein the Court said at page 866:

"The legal title to the property which was acquired with the money contributed by the certificate holders was in the Citizens' Company, subject to the trust in favor of the inhabitants of the city * * *. The conveyance to the city to be made when the charge in favor of certificate holders was released was a continuance of the trust; the city being the successor in the fiduciary relationship. * * *" (Our emphasis)

The conclusion to be drawn from both the cited case and the quoted statute, considered together, is that the legal title to
the utility is in the city as trustee for the inhabitants of said city and, a fortiori, it is city owned.

It would also follow then that the vehicles owned by the utility, being "property held by and relating or belonging thereto," under the management and control of the Board as provided in Burns' 48-7103, supra, are also owned by the city.

There remains the question as to the use of the vehicles for "official business" by such city owned utility.

The term "official business" is not easily defined and the Courts and Legislature have not been called upon in the past to construe the phrase. Nor is any attempt herein made to give an all inclusive definition or meaning to it. But for the purpose of the section of the statute we are here concerned with, it is not unreasonable to say that acts for a public purpose by and through public officers, their agents and employers are acts of "official business" within the contemplation of the Legislature in enacting Burns' 47-2802, supra.

A somewhat analogous question was presented in the case of Chadwick et al. v. City of Crawfordsville (1940), 216 Ind. 399, 412, 24 N. E. (2d) 937. In that case the question before the Court was the propriety of extending tax exemptions to municipally owned utilities under our constitutional provision allowing public property used for a public purpose to be exempted. The Supreme Court in that case held that although the utility property (electric plant) was held in a private or proprietary capacity there was sufficient power under the police power to prevent their function from being considered private to the extent of its being nonmunicipal. The Court concluded therefore that the utility was exempt from tax as imposed.

And in Long v. Stemm et al. (1937), 212 Ind. 204, 209, 7 N. E. (2d) 188, with another type of problem before it, the Supreme Court said:

"It is true that, in the operation of public utilities, a city acts in its private or proprietary capacity, but these utilities are generally managed by a board of public works, or the city council, or by a waterworks board. Chapter 235 of the Acts of 1933 (Acts 1933, p. 1063), under which it is alleged appellees were ap-
OPINION 6

pointed, provides for a ‘department of waterworks,’ as one of the departments of the city government, and appellees were appointed as trustees to manage that department. *It cannot be seriously questioned that they are public officers.*” (Our emphasis)

It is my opinion then, that:

(1) The Citizens Gas and Coke Utility of Indianapolis is a city owned utility within the provision of Burns’ 48-7103, supra;

(2) The vehicles owned by the Citizens Gas and Coke Utility are therefore city owned vehicles;

(3) The vehicles are used by the city owned utility in the transaction of official business, i.e., business endowed with a public purpose and carried out by and through its public officers, and are therefore exempt from the payment of registration fees under Burns’ 47-2802, supra.

Although it is not disclosed in your letter, it is understood that the past practice of your bureau has been to issue the registration plates without cost to the utility herein discussed. That one fact alone might well have been enough to answer your question and merits calling to your attention the language of the Supreme Court in Gross Income Tax Div. v. Colpaert Realty Corp. (1952), 231 Ind. 463, 109 N. E. (2d) 415:

“While not controlling, the contemporaneous construction of a statute by those charged with the administration of it is entitled to great weight, and should not be interfered with unless there are very cogent and persuasive reasons for departing from it.”

It is therefore my opinion that the Citizens Gas and Coke Utility is an instrumentality of the city of Indianapolis, Indiana, and as such is entitled to obtain free plates in accordance with the foregoing analysis.