OPINION 61

investment by building and loan associations, industrial loan and investment companies or credit unions under the present statutes and regulations. Such State Office Building revenue debentures are legal investments for fiduciaries only if investment in such revenue debentures is authorized by the terms of the trust, or by the trust beneficiaries or by the proper court, as previously stated in this Opinion.

OFFICIAL OPINION NO. 61

December 15, 1958

Hon. John W. Donaldson
State Representative
309 Boone County Bank Building
Lebanon, Indiana

Dear Representative Donaldson:

This is in response to your letter concerning 4-H club associations, in which you request my Official Opinion, which letter reads in part as follows:

"Whether or not a 4-H club association which is incorporated under 'The Indiana General Not For Profit Corporation Act,' as amended, can borrow money and/or issue bonds for the purpose of constructing a building on real estate leased to the corporation during the period of a tax levy for five years granted by the Board of County Commissioners and then use the annual tax derived therefrom to repay the loan and/or bond issue.

"An appropriation was granted by the Commissioners under the provisions of Burns' Indiana Statutes, Sec. 15-315. There are three years to go on the five year period.

"The real estate was leased to the corporation under the provisions of Burns' Indiana Statutes, Sec. 26-620 for a period of 99 years."

The problem resolves itself into two basic questions, and will be answered accordingly.
First, can the subject 4-H club association borrow money or issue bonds for the purpose of constructing a building on real estate leased by the association?

In the Acts of 1935, Ch. 157, Sec. 4, as found in Burns' (1948 Repl.), Section 25-510, referred to in your letter as the "Not For Profit Corporation Act," the following powers (in part) are given to non-profit corporations:

"(b) Subject to any limitations or restrictions imposed by law, or the articles of incorporation, or any amendment thereto, each corporation shall have the following general rights, privileges and powers:

* * *

"(5) To borrow money and to issue, sell or pledge its obligations and evidences of indebtedness, and to mortgage its property and franchises to secure the payment thereof; * * *"

Further, the Acts of 1929, Ch. 104, Sec. 1, as found in Burns' (1950 Repl.), Section 15-310, concerning county agricultural societies, states as follows:

"Any society, association or corporation organized for the improvement of agriculture, or to conduct fairs or agricultural exhibits, or owning or operating fair grounds or their real estate for such or like purposes, may, by authority of its board of directors, borrow money upon mortgage or otherwise; and may mortgage any and all of its property, and may issue its notes, bonds and other obligations without restrictions other than those applying to corporations generally."

There is no need for citation of authority to substantiate the fact that a 4-H club association is a society organized for the improvement of agriculture and, therefore, within the purview of the above quoted section; and, I have also noted that the express purpose stated in the articles of incorporation of the Boone County 4-H club association is the promotion of the agricultural and horticultural interests of Boone County.

The statutory material seems clear and unambiguous and therefore it is my opinion that the subject 4-H club associa-
tion can borrow money or issue bonds for the purpose intended. The purpose for which the loan is to be made or the bonds issued would be restricted only by the purposes for which the corporation was incorporated. The fact that the building is to be constructed on leased property does not affect this power or authority to borrow money or issue bonds but is an important consideration for the lending institution or underwriter of the bond issue. This fact is further material in that under the provisions of the Acts of 1877, Ch. 1, as amended, and as found in Burns' (1957 Supp.), Section 15-315, set out below, the annual tax levy referred to in that section may be made “for the purpose of constructing, operating or maintaining any building owned and operated by such agricultural association.” (Our emphasis) The necessary steps should be taken to insure that the association retains title to the building as separate from the county-owned real estate, so that said building will be “owned and operated by such agricultural association.”

Brown v. Corbin et al. (1889), 121 Ind. 455, 23 N. E. 276;

Price v. Malott et al. (1882), 85 Ind. 266.

The second question is whether the 4-H club association can use the annual tax derived as provided in the Acts of 1877, Ch. 1, as amended and as found in Burns’ (1957 Supp.), Sections 15-314 and 15-315 to repay the money borrowed or retire the bonds issued.

The first section, Burns’ 15-314, provides that the board of county commissioners of any county may, in their discretion, make an allowance out of the general fund to any 4-H club association which has for its purposes the promotion of the agricultural and horticultural interests of the county. The second section, Burns’ 15-315, provides that if such an allowance is sought and granted, a tax levy may be made as follows:

“The board of county commissioners shall have the power and authority to levy an annual tax of not to exceed ten cents [10¢] on each one hundred dollars [$100] of assessed valuation for the purpose of constructing, operating or maintaining any building owned and operated by such agricultural association: Provided, however, That such tax may be levied only until
the building has been constructed and in no event for a longer period of time than five [5] years. After the building has been constructed the board of county commissioners may levy an annual tax of not to exceed two cents [2¢] on each one hundred dollars [$100] of assessed valuation for the purpose of operating and maintaining such building. * * *

It should here be noted that the authority of the board of county commissioners is "to levy an annual tax" and not to levy in advance a tax for a period of five years. The levy may be made, if at all, in each year following the filing and final acceptance of the petition for such allowance, not to exceed five [5] years, and pursuant to the provisions of Burns' 15-315, supra.

Whether the money thus derived can be used to repay the money borrowed or retire the bonds issued depends upon the authority of the county to make the allowance from its general fund and provide for it by the stated levy.

"It is implied in all definitions of taxation that taxes can be levied for public purposes only. This doctrine, now so firmly established in our system of constitutional law, is of comparatively recent origin and finds its justification in the due process clause of the Fourteenth Amendment to the Federal Constitution, adopted in 1868. It was nine years later, however, before the United States Supreme Court applied the principle as a matter of substantive law. Davidson v. Board of Admrs. of New Orleans (1878), 96 U. S. 97. The exact line of cleavage between what is, and what is not, a public use, is somewhat difficult to mark. Some purposes readily align themselves on one side of the line as being clearly public in their nature, while others as readily fall on the other side as being obviously private, and there is a debatable ground between the two. The courts have never attempted to lay down with minute detail an inexorable rule distinguishing public from private purposes, because it would be impossible to do so. Such determination is primarily one for the legislative branch of the government and it can not be held to any narrow or technical rule of action. Courts will
not intervene unless there is a plain departure from every public purpose which could reasonably be conceived. * * *” (Our emphasis)


That the Legislature determined the public purpose of the tax levy and the allowance in the instant case is seen in the language of Burns' 15-314, supra, which gives the county discretion to make such an allowance “to any 4-H club association, having for its purpose, the promotion of the agricultural and horticultural interests of the county * * *.”

The public purpose of such tax being valid and reasonably conceived, it is my opinion that the county may raise revenue for the purpose of making the aforementioned allowances to 4-H club associations which may in turn use such funds to repay loans or retire bond issues. It is important to note, however, that Burns' 15-315, supra, provides “That such tax may be levied only until the building has been constructed and in no event for a longer period of time than five [5] years.” This would mean that upon completion of the building, there would be no further tax funds available to repay loans or retire bonds. Thereafter any further tax may be levied only “for the purpose of operating and maintaining such building” and not for the repayment of loans or retirement of bonds.

It only remains to be noted that the Constitution of the State of Indiana, Article 10, Section 6, in part provides that no county shall loan its credit to any corporation. This would prohibit Boone County from underwriting or assuming the obligations of the 4-H club association.