

OPINION 36

OFFICIAL OPINION NO. 36

May 20, 1954

Mr. R. R. Wickersham  
State Examiner  
State Board of Accounts  
404 State House  
Indianapolis, Indiana

Dear Mr. Wickersham:

Your letter has been received in which you request an Official Opinion upon the following:

"1. Is it mandatory for members of all library boards operating under the provisions of the Library Act of 1947 to elect from its members a treasurer?

"2. If it is mandatory for a library board to elect from its members a treasurer, is it optional with the board to continue to use the treasurer of the civil city or town as treasurer of the library funds?

"3. If it is not mandatory for an existing library that converts under the 1947 act, to elect a treasurer from its members, is it permissible to do so, and dispense with the services of the civil city or town treasurer as treasurer of the library funds?

"4. If it is permissible for a library board to elect a treasurer from its members, and it continues to use the treasurer of the civil city or town as treasurer of its funds, what would be the duties and responsibilities of the treasurer elected from the membership of the board?

"5. If the treasurer of the civil city or town serves as treasurer of the library funds, is it necessary for such treasurer to give a separate bond to cover the library funds or is the bond which he gives to the civil city or town sufficient to cover the library funds?

"6. If a separate bond is required does the library board have the authority to fix the amount of such bond and to approve such bond?"

The above questions require a construction of Chapter 321 of the Acts of 1947, as found in Burns' Indiana Statutes (1952 Repl.), Section 41-901 *et seq.*, as amended, same being the Library Law of 1947. Under its requirements within a prescribed period of time certain class libraries could convert under the law to the plan therein outlined, and after a certain date specified certain libraries were required to convert under the plan. The statute also provides for the creation of new library boards under the provisions therein outlined.

Section 7 of the above Act, same being Burns' Indiana Statutes (1952 Repl.), Section 41-907 provides in part as follows:

"Members of the old library board shall remain as members of the new library board until a majority of the new library board has been appointed and such new appointees have qualified."

The statute, after making provision for the appointment of a new library board, further under Section 9 of said Act, same being Burns' Indiana Statutes (1952 Repl.), Section 41-909 provides in part as follows:

"Upon the creation of a new library, the board shall meet upon the call of any two [2] appointees. The meeting shall be held within ten [10] days after all the appointees have qualified by taking the oath. The board shall elect from its members a president, a vice-president, a secretary, a treasurer, and such other officer or officers as the board may deem necessary. In the absence of the president the vice-president shall preside. A majority of the members shall constitute a quorum for the transaction of business. The board shall meet monthly and at such other times as may be necessary. All meetings of the board, except necessary executive sessions, shall be open to the public."

Section 19 of said Act, as found in Burns' Indiana Statutes (1952 Repl.), Section 41-919, reads as follows:

"The monies collected from such tax levies shall be deposited with the treasurer disbursing city or town funds and maintained by him as a separate fund to be known as the '———— Library Fund'; or said monies

## OPINION 36

may be deposited with the treasurer of the library board. The treasurer, in either case, shall pay money from the library fund only upon the warrant of the president of the board, countersigned by the secretary, and shall be under bond in a sum sufficient to cover any funds coming into his hands. The library board may pay for such bond from its funds.

“The treasurer shall report to the board each month the condition of the fund. His report shall include a statement of all receipts deposited by him to the credit of the fund and all disbursements and the purposes for which they were made.”

From the foregoing it is clear that upon a new library board being created, or an old library board converting to, the plan provided for in the above statute, that it is mandatory that a treasurer be elected. It is also clear that the old members of a library board hold over until a majority of the new library board has been appointed and qualified.

Under Section 19 of said statute, *supra*, either the treasurer of the library board or the treasurer disbursing city or town funds must act as treasurer of such new library board in regard to “monies collected from such tax levies”; the library board has the option of determining with which of said officers such tax funds shall be deposited; such treasurer is required to be under bond covering funds coming into his hands and the library board is authorized to pay for such bonds from its funds. However, monies received from taxes may not be the entire funds in the hands of such library board for the reason that under Burns’ Indiana Statutes (1952 Repl., 1953 Supp.), Section 41-915, as said section was amended by Section 3 of Chapter 13 of the Acts of 1953, under the powers and authority of such library boards, it is contemplated they are authorized to accept gifts of personal and real property and to sell, exchange and dispose of property real and personal, and engage in numerous other designated activities of a financial nature. These additional funds of course could only be handled by the treasurer elected from the library board as the authority of the city or town treasurer to act is by the statute limited to monies received from tax levies.

Therefore your specific questions are answered as follows:

1. It is mandatory for all library boards operating under the provisions of the Library Law of 1947 to elect from its members a treasurer.

2. In answer to your second question it is optional with said board to continue the use of the treasurer of the civil city or town as treasurer of library funds raised only from tax levies, and that the treasurer elected from its membership acts as treasurer of all other funds of the board.

3. As seen by the answer to question Number 2, it is permissible for a library board which converts under the 1947 Law upon the election of a treasurer from its membership to dispense with the services of the city or town treasurer.

4. Your question Number 4 has been answered by the above answer to your second question.

5. In answer to your question Number 5, I am of the opinion that any civil city or town treasurer who serves as treasurer of a library board created under the 1947 Law must either give a separate bond for such purpose, or to increase his present bond accordingly to cover the library funds.

6. In answer to your question Number 6, where a separate bond is given, or the original bond is increased, as specified in answer to question Number 5, *supra*, the library board has authority to fix the amount of such bond, approve the same and pay for the same out of its funds.

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OFFICIAL OPINION NO. 37

May 25, 1954

Mr. Ferdinand Jehle, Secretary  
Board of Registration for Professional  
Engineers and Land Surveyors  
230 State House  
Indianapolis, Indiana

Dear Mr. Jehle:

I have your letter of April 26, 1954, in which you ask for an interpretation of the Acts of 1935, Ch. 148, Sec. 20 (d), as