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OFFICIAL OPINION NO. 75

September 14, 1953.

Mr. A. L. Fossler, Chairman,
State Board of Tax Commissioners,
Room 301, State House.
Indianapolis 4, Indiana.

Dear Sir:

I have your letter in which you ask for my opinion on the following questions:

1. Must the budget of the Department of Public Sanitation managed by the Board of Sanitary Commissioners be submitted to the Common Council of Indianapolis for review and approval?
2. Does the Common Council of Indianapolis have the power to reduce the budget and tax levies as adopted and fixed by the Board of Sanitary Commissioners?
3. In the event both bodies have adopted and fixed a budget for sanitation purposes, which budget does the Marion County Auditor refer to Marion County Tax Adjustment Board for their use?

The status of the Department of Sanitation of the City of Indianapolis, managed by the Board of Sanitary Commissioners created by Chapter 157 of the Acts of 1947, has been previously considered by this office, and an Official Opinion was rendered in regard thereto, the same being found in 1947 O. A. G., 305-315, No. 62.

I have carefully reviewed this opinion, and I am in accord with the conclusions contained therein.

Section 21 of Chapter 157 of the Acts of 1917, as amended, Burns' Indiana Statutes Annotated (1950 Repl.), Section 48-4221, provides in part as follows:

"For the purpose of providing for the payment of all general expenses of said Board of Sanitary Commissioners, including salaries of officers and employees, fees and expenses for professional services, and other

items of expense not properly chargeable into the cost of any property acquired or work done under any resolution of said board for which special taxing district bonds are issued, and for the further purpose of providing for the operation, maintenance and repair of any incinerating, reduction or sewage disposal plant or plants, intercepting or connecting sewers and drains, and other plants and permanent works constructed, and the cost of the collection and removal of garbage and ashes, including the repair and maintenance of equipment, or the performance of any duty imposed pursuant to the provisions of this act, *a tax, at the rate required to provide the funds needed to defray such expenses, on all the taxable property in said sanitary district shall be levied annually by said board of sanitary commissioners, and the county auditor shall estimate said taxes and enter the same upon the tax duplicate, and the county treasurer shall collect and enforce such taxes, in the same manner as state and county taxes are estimated, entered, collected and enforced.*" (Our emphasis.)

Section 19 of Chapter 157 of the Acts of 1917 as found in Burns' Indiana Statutes Annotated (1950 Repl.), Section 48-4219, provides for a similar tax levy by the Board of Sanitary Commissioners for the purpose of raising money to pay bonds issued by said sanitary district. The Supreme Court of Indiana has held that a tax levied for the purpose of paying such sanitary district bonds did not constitute a debt of the municipality but that the debt contracted is the debt of the taxing district. See Department of Public Sanitation of the City of Hammond *et al.* v. Solan (1951), 229 Ind. 228, 97 N. E. (2d) 495, where the Court said at page 238 of the opinion:

"If the statute in question authorized the property owners of the taxing district legally to bind themselves in the construction and maintenance of a local public improvement (not political or governmental in nature) for the use of those who receive the special benefit thereof, and of the public, the debt contracted is the debt of the taxing district and not that of the political or governmental subdivision that executed the evidence

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of indebtedness under command of the statute, and does not constitute a debt of such political or governmental unit. In such case the tax or assessment is based upon the theory that it is a return for the benefit received by the persons who pay the tax or by the property assessed."

The Court could not have reached its conclusion in the above case without regarding the sanitary district as a separate taxing unit.

We have seen, in the Solan case, *supra*, that a sanitary district, such as is here being considered, is a separate taxing district for the purpose of financing the construction of sewage systems, disposal plants and other facilities.

Under Section 21 of Chapter 157 of the Acts of 1917, as amended, Burns' Indiana Statutes Annotated (1950 Repl.), Section 48-4221, *supra*, it is clear that it is the Board of Sanitary Commissioners which levies the tax for the purpose of meeting the general expense of operating and maintaining the sanitary district and the various sewage systems, disposal plants and other facilities contained therein. In view of the authorities cited above I think this tax is levied, by said board, as a separate taxing district, in order to better accomplish a public purpose in a territory not the same as the City of Indianapolis.

Moreover, I believe that the budgeting of such a sanitary district is governed by Section 200 of Chapter 59 of the Acts of 1919, as amended, Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-1331 which provides in part, as follows:

"The several tax levies and rates shall be established by the proper legal officers of any municipal corporation after the formulation and publication by them of a budget on forms prescribed by the state board of accounts showing in detail the money proposed to be expended during the succeeding year, the valuation of all taxable property within the jurisdiction and the rate of taxation which it is proposed to establish, and after a public hearing within the jurisdiction at which any taxpayer shall have a right to be heard thereon. * * *"

Section 202, as amended, of this same Act, Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-1333 further provides that:

"The phrase 'municipal corporation' as used in the five preceding sections shall be deemed to include a county, township, city, incorporated town, school corporation, or any person, persons, or organized body authorized by law to establish tax levies for any purpose."
(Our emphasis.)

Therefore, it appears that a sanitary district is included within the definition of a "municipal corporation" as used in Burns', Section 64-1331, *supra*, and that the Board of Sanitary Commissioners are the proper legal officers thereof authorized to formulate its budget and establish the tax levies and rates.

In this connection see Section 2 of Chapter 119 of the Acts of 1937, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-308, which defines the term "municipal corporation" as including "sanitary districts"; and Section 1 of Chapter 41 of the Acts of 1947, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-311 which provides in part that:

"The officers of each municipal corporation shall, at the time of filing a statement of the tax levies and rates fixed by each of said municipal corporations, also file with the county auditor at least two (2) days prior to the second Monday in September, two (2) copies of the budgets on which tax levies are based and the same shall be carefully preserved by the auditor for the use of the county tax adjustment board. * * *"

Section 4 of Chapter 119 of the Acts of 1937, as amended, Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-310 further provides, in part, that:

"At said meeting (of the county board of tax adjustment) the county auditor shall lay before said board the budgets adopted and tax levies and rates fixed by the proper officers or bodies of each municipal corporation of such county for the ensuing year. * * *"
(Our insertion.)

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I am therefore of the opinion that the Board of Sanitary Commissioners is the proper body authorized by law to formulate and publish the budget for the sanitary district and to establish the tax rates and levies in accordance with the provisions of the Municipal Budget Law, Burns' 64-1331, *supra*. I am of the further opinion that the Board of Sanitary Commissioners is authorized to file such budget together with a statement of tax levies and rates with the county auditor pursuant to Burns' 64-311, *supra*, and that the county auditor should, pursuant to Burns' 64-310, *supra*, lay such budget together with the tax levies and rates fixed thereon before the County Tax Adjustment Board on the second Monday of September of each year.

In view of the foregoing, your first two questions are answered in the negative. My answer to your third question is as follows: In the event both the Common Council of the City of Indianapolis and the Board of Sanitary Commissioners have adopted and fixed a budget for sanitation purposes, then the county auditor should refer the budget fixed by the Board of Sanitary Commissioners to the County Tax Adjustment Board, providing, of course, that all of the provisions of Burns' 64-1331, *supra*, and Burns' 64-311, *supra*, have been fully complied with by said Board of Sanitary Commissioners.

OFFICIAL OPINION NO. 76

September 15, 1953.

Mr. H. L. Solberg,
School of Mechanical Engineering,
Purdue University,
Lafayette, Indiana.

Dear Mr. Solberg:

This is in reply to your letter of August 14, 1953 in which you inquire as to the following:

1. "In the first paragraph of Section 9 of Chapter 66 of the Acts of the General Assembly appears the following statement: '* * * inspector qualified and commissioned as hereinafter provided and regularly so employed * * *.'