In conclusion, you are informed that the operation of an electric light plant is the operation of a private enterprise and is not governmental in its functions.

It will appear from the reading of the sections of the statutes referred to above, that the debts created by a municipality in the operation of its municipal utilities is in no sense a debt of the city, but is a debt of the utility while operated by the city under the proprietary function.

OFFICIAL OPINION NO. 52

June 19, 1951.

Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

Your letter of June 7, 1951, has been received and in part reads as follows:

"A school corporation in Indiana has submitted to us the following questions which we are transmitting to you for your official opinion:

"(1) Since the superintendent was not notified prior to May 1, 1951 and since his successor could not be elected because of a deadlock on the board, is his contract in force for another year?

"(2) Is the School City obligated to pay the superintendent his present salary after July 31, 1951?"

Accompanying your letter is a copy of the form of contract in the particular instance referred to under which this superintendent was employed from July 30, 1947 to July 31, 1951 at a salary of $8,000.00 per year. There is nothing in the contract as to what notice, if any, will be given toward renewal.

Section 28-4321 Burns 1948 Replacement provides in part as follows:
“Every contract of employment hereafter made by and between a teacher and a school corporation, except contracts wherein a township school corporation is a party and except contracts with permanent teachers as defined in chapter 97 of the Acts of 1927 and acts amendatory thereof, shall be renewed and continue in force on the same terms and for the same wages, unless increased by the provisions of chapter 101 of the Acts of 1907 and acts amendatory thereof, known as the Teachers’ Minimum Wage Law, for the school year next succeeding the date of termination fixed therein unless on or before the date fixed for the termination of said term of school, but in no case later than the first day of May, the teacher shall be notified by the school corporation in writing delivered in person or mailed to him or her at last and usual known address by registered mail that such contract will not be renewed for such succeeding year or unless such teacher shall deliver or mail by registered mail to such school corporation his or her written resignation as such teacher or unless such contract is superseded by another contract between the parties. * * * Superintendents, principals, and supervisors shall be deemed to be teachers within the meaning of this act. * * *

(Our emphasis).

We have also been further advised that this man at the time of his employment as superintendent was also a tenure teacher in a school corporation. I do not believe this would affect the question for two reasons, namely:

1. His employment as superintendent is not necessarily occasioned by the fact he is a tenure teacher and, 2. The Supreme Court of Indiana in the case of Hayes v. Holder (1941), 218 Ind. 263, 272, referred to the above quoted statute and applied it to the status of the tenure teacher involved in that case.

Section 28-4321 Burns 1948 Replacement, supra, requires teachers in city schools to be notified of the fact they will not be reemployed for the coming school year by giving the specified delivered notice on or before May 1st. The statute specifically makes the same applicable to superintendents.
1951 O. A. G.

1. Therefore, in answer to your first question, I am of the opinion since this teacher was not notified on or before May 1st, 1951, that his contract as superintendent would not be renewed, he is entitled to serve another year under such contract.

2. In answer to your second question I am of the opinion that under the provisions of said statute such superintendent would be entitled to the salary specified in his contract which might be increased in the event all teachers were given a blanket percentage increase in salary for the coming school year.

OFFICIAL OPINION NO. 53

June 26, 1951.

Mr. Ross Teckemeyer,
Executive Secretary,
Public Employees’
Retirement Fund,
707 Board of Trade Building,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion in regard to the employment retirement fund. Your request is in the following language:

“Chapter 313 of the Acts of 1951 provides that municipalities or political subdivisions may begin participation January 1st of any year. The Federal Social Security Director (Regional) has insisted that we inform the eligible political subdivisions that coverage may be retroactive to January 1, 1951.

“Since this Act was approved and became effective April 1, 1951 and since Section 7 also sets out steps to be taken prior to the election by the local governing body, we have been rather hesitant about giving out the above information.

“Therefore, I am asking that if in your opinion may this law be retro-active to January 1, 1951? An imme-