

OFFICIAL OPINION NO. 81

September 27, 1949.

Hon. Hugh W. Abbett,
Chairman, Public Service Commission of Indiana,
401 State House,
Indianapolis, Indiana.

My Dear Mr. Abbett:

I am in receipt of your letter of August 22, 1949, requesting information on the right of cities to issue bonds without the approval of the Public Service Commission in certain cases. Your letter is as follows:

“A question has arisen as to the authority of the Public Service Commission of Indiana to assess a statutory fee for the issuance of revenue bonds, the proceeds of which are to be used to improve the electric municipal system in a city.

“There has been several issues sold in the State of Indiana in which the city concerned did not come to the Commission for authority and no statutory fee was assessed or paid. In a recent case of the City of Anderson the Commission suggested that the city amend their petition, which was originally a petition for increased electric rates, so that it would include an issuance of six and one-half million dollars worth of bonds which they propose to issue. The requirement for servicing the bonds was the main increase in cost to Anderson which caused the City to ask for increased rates.

“Please find attached a copy of a letter from attorneys who contend that it is not necessary to have authority from the Commission on revenue bonds. However, when we read the Act, it is not clear to us how this matter should be handled.

“We would appreciate it if you would be kind enough to give us your opinion in this matter.”

It is noted that you enclose with your letter, which I did not copy herein, a letter from a firm of attorneys. I have

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given consideration of the matter contained in your letter and to the letter referred to from the attorneys.

I observe the letter which was written by an attorney and I am of the opinion that he has overlooked certain phases of the statutes relating to the sale of utility bonds. He seems to be of the opinion that no statute requires that the bonds should be authorized by the Public Service Commission of Indiana. He has made a lengthy survey of the various statutes of the state in reference to such matters and his opinion is rather replete with the citation of the statutes and the Supreme Court decisions.

My research shows that in 1905 prior to the existence and organization of the Public Service Commission cities and towns were given authority to issue and sell municipal bonds with which to purchase or acquire property and also for the purpose of making extensions to such property from time to time. This act was amended in 1911 and again by Chapter 8 of the Acts of 1932.

In 1913 when the Public Service Commission Act came into effect it modified the provisions of the cities and towns act in regard to the sale of city bonds for the purpose of financing the activities of a municipal utility. This act required the approval of the Public Service Commission of all such securities. The cities and towns act adopted on March 6, 1905 contains certain sections with respect to the issuance of bonds. These sections being Sections 249, 253, 254, 256 and 257 of the Act of March 6, 1905 were amended in certain respects on March 3, 1911, but at that time the only kind of bonds provided for under the cities and towns act were municipal bonds which were to be paid for and financed by the collection of taxes and provided for the levy of municipal taxes to meet such obligations. However, at the special session of the 75th General Assembly held in 1932, sections 253, 254, 256 and 257 were amended by incorporating the provisions of each of them in one section. Chapter 8 of the Acts of 1932 (Burns' R. S. 48-7301) provides that cities may issue bonds and securities with which to acquire electric utility property and provide extensions thereto. These acts provide that in lieu of issuing municipal bonds the cities might issue revenue bonds and made provisions for the manner of such issue and

how they should be paid, the latter part of said amended statute contains these words:

“ * * No municipal corporation shall enter into any contract to lease any such utility or to issue any bonds, notes, evidences of indebtedness or other obligations without the approval of the public service commission, as provided by law. * * *”* (Our emphasis.)

This language seems to require a municipality to obtain the approval of the Public Service Commission before issuing any revenue bonds to be issued in connection with the purchase, lease or addition of a municipal utility.

It appears that in 1933 the General Assembly having before it a rewriting and amendment to the Public Service Commission Act, the same being Section 16, page 949, Chapter 190 used this language:

*“Any municipality within this state shall have the power to construct, acquire, purchase, condemn, operate and/or manage any utility, or make extensions or replacements to such municipally owned utility without the approval or consent of the public service commission, or the intervention of such commission in any way whatsoever; * * *”*

Section 22 of said Act repeals all laws and parts of laws in conflict with the provisions of the act so far as it may be inconsistent therewith. However, a proviso in the Act of 1933 was inserted as follows:

“ * * Provided, further, That no provision of the act entitled ‘An act to amend section 1 of an act entitled ‘An act to amend section 253, 254, 256, and 257 of an act entitled ‘An act concerning municipal corporations,’ approved March 6, 1905, and declaring an emergency,’ approved March 3, 1911,’ approved August 8, 1932, and declaring an emergency,’ being chapter 8 of the published Acts of 1932, shall be repealed, modified, amended or affected by this act; but this act wherever applicable and not in conflict with the last above en-*

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titled act, shall be construed as supplemental to the provisions thereof."

This proviso of the Act of 1933 makes its provisions supplemental to the Act of 1932 resulting in incorporating, in the Act of 1932, the right and power under Section 16 and 17 of the Acts of 1933 to issue revenue bonds for extensions and improvements. These supplemental provisions becoming a part of the Act of 1932 makes them subject to the restrictions of said Act. They must be read together so far as possible in construing said Act.

Were it not for the proviso in said Act, the Act of 1933 would have amended and repealed the provisions of the Act of 1932 but since said proviso expressly states that the Act of 1932 shall not be repealed, modified, amended or affected by this act it seems apparent that that the Act of 1932 which requires the approval of the Public Service Commission in the issuance of revenue bonds has not been modified or changed or repealed and is still in effect. In conclusion I am of the opinion that the City of Anderson was required to obtain the approval of the Public Service Commission of Indiana in the issuance and sale of its revenue bonds and therefore was required to pay the fee required by statute for the issuance thereof.

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OFFICIAL OPINION NO. 82

September 8, 1949.

Mr. Lytle J. Freehafer,
Director of the Budget,
Room 302, State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your request for an official opinion as follows:

"Section 37 of Chapter 279, Acts of 1947, provides for the establishing of an Institution Industries and