public libraries is a part of the educational system of the State, and that boards organized under the provisions of said act exercise the whole power of the municipality in respect to public libraries. * * *" (Our emphasis).

The court further quoted Thompson on Corporations to the effect that:

"In the machinery of municipal government the legislatures of states have frequently had occasion to create boards of officers for the performance of particular duties. The boards are not in general corporations, but are agents of the municipal corporation in the sense which makes the latter liable for their contracts and torts. * * *" (Our emphasis).

In applying the above authorities to the question presented in your letter, we have a board at the head of a department of municipal government directly created and authorized by the legislature to carry out certain powers relative to a governmental function for and on behalf of that municipality. I do not believe there is any doubt but that their acts properly taken pursuant to statute are the acts of the municipality and binding as such. Your question, therefore, is answered in the affirmative.

OFFICIAL OPINION NO. 32

May 5, 1949.

Mr. Otto F. Walls, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana,

Dear Mr. Walls:

I have your letter wherein you state the following:

"Arthur E. Wooden filled the position of Director of Public Welfare of Marion County, Indiana from April 15, 1944 to July 27, 1948."
"In the month of July 1948, he resigned effective July 27, 1948.

"Mr. Wooden now has filed a claim with the County Department of Public Welfare of Marion County, asking that he be paid for ‘Earned and Accumulated Days of Vacation and Sick Leave’ during the period between April 15, 1944 and July 27, 1948.

"We would like to have an answer to the following question: Can the claim of Mr. Wooden for sick leave and vacation leave not taken by him prior to the effective date of his resignation be legally allowed and paid?"

The “State Personnel Act” provides at Section 2, Chapter 139 of the Acts of 1941, subsection (a), Burns R. S., Sec. 60-1302, 1943 Replacement:

"State service means all public services in all offices and employments in the following named institutions and agencies (except members of boards and commissions of the following named institutions and agencies and except the chief administrative officer of each of the following named institutions and agencies, but not excepting directors of county departments of public welfare): * * *.” (Our emphasis).

Section 6 of Chapter 139 of the Acts of 1941, subsection (b), Burns R. S., Section 60-1306, 1943 Replacement, authorizes the state personnel board:

"To adopt, with or without modification, such pay plan as may be recommended by the director and as is in conformity with the provisions of this act, and, upon approval of the state budget committee, to promulgate and enforce the same: * * *.”

Subsection (c), supra, authorizes the State Personnel Board:

"To make, alter, amend or repeal rules and regulations by a majority vote of the members thereof, for any or all of the following enumerated purposes; (2) * * * administering the classification plan and the pay plan; * * *."

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Section 30 of Chapter 139 of the Acts of 1941, Burns R. S., Section 60-1330, 1943 Replacement, provides:

"The rules shall provide for the hours of work, holidays, attendance regulation and leaves of absence in the various classes of positions in the classified service. They shall contain provisions for annual, sick, and special leaves of absence with or without pay or with reduced pay, and may allow special extended leaves for employees disabled through injury or illness arising out of their employment, and the accumulation of annual and sick leaves."

The rules and regulations adopted by the State Personnel Board, relative to vacation pay, states in Rule 11, Sec. 3 (E) 1, as follows:

"Upon separation from the service in good standing, an employee shall be paid for unused vacation leave to the extent earned except that in no event shall such payment exceed eighteen working days regardless of the amount earned and not used. The date of separation shall be the last day for which vacation leave is paid." (Indiana Rules and Regulations, Vol. 2, 1947, p. 1588).

Section 4 of this same rule states, relative to sick leave, as follows:

"Sick leave with pay shall be granted to all regular employees, war service employees duration employees, and employees serving an original working test period in the classified service at the rate of one working day for each full month of service. No sick leave shall be granted during the first six months of employment, but upon completion thereof, sick leave earned during such period may be granted. In charging sick leave, only normal working days shall be considered, and any day on which an employee normally works only one-half a day shall count as a whole day. Sick leave is defined as absence from duty of any employee because of personal illness, or legal quarantine, and the director may at any time demand of employees requesting pay for

The Attorney General, in an official opinion dated April 13, 1943, interpreting a rule and regulation established by the Indiana State Personnel Board, providing for vacation leave, said:

“That rule necessarily became a part of a contract of employment and the rights of the employee vested thereunder.

“In the very few cases arising under state regulations or statutes concerning the right to accrued vacation pay after the termination of employment, the decisions have turned upon a determination whether this earned and accrued leave is compensation or a gratuity.

“In a recent Michigan case—Rainey v. State, 296 N. W. 323 (1941), I believe the proper result was reached. In that case the legislature, in effect, abolished the position held by the plaintiff who was held entitled to the earned vacation pay upon termination. It is true that Rule 17 of the Civil Service Commission of Michigan expressly provided that upon separation the employee should be entitled to accrued vacation pay. The court, however, did not rely upon the express provision of Rule 17 as much as it did upon the premise that a ‘vacation with pay is not a gratuity; it is compensation for services rendered.’

“Such, in my opinion, is the proper interpretation of Section 3 of Rule 11. The whole tenor of that rule seems to import that one who renders faithful service thereby earns and is entitled to an additional reward—a right to vacation with pay. Consequently, the right having accrued and vested it cannot, constitutionally, be taken away by the termination of the employment, whatever the means of termination.” (1943 O. A. G. P. 186).

I agree with this interpretation regarding vacation pay.
The last sentence in Section 4 of Rule 11, defines sick leave as follows:

"Sick leave is defined as absence from duty of any employee because of personal illness, or legal quarantine, and the director may at any time demand of employees requesting pay for sick leave a medical certificate from the attending physician or a designated physician."

The definition of sick leave, as set out in this rule, would preclude an employee from collecting pay for sick leave after termination of the relationship of employee and employer.

In answer to your question, it is my opinion that Mr. Wooden is entitled to vacation pay for the amount of days earned and not used but not to exceed eighteen days, even though his employment is terminated. He is not, however, entitled to collect pay for unused sick leave after his employment is terminated.

OFFICIAL OPINION NO. 33

May 4, 1949.

Mr. Hal T. Kitchen, Jr.
Supervisor Building and Loan Division,
Department of Financial Institutions
Indianapolis, Indiana

Dear Sir:

Pursuant to your request for an opinion as to the interpretation of the provisions of Section 258 (a) of the Indiana Financial Institutions Act, as amended, I beg to submit the following:

You state that:

"In a recent examination of a building and loan association, it was found that the association computes dividends according to the following example: A shareholder who has a balance of $1000.00 on January 1st, withdraws $500.00 on February 1st, and invests $200.00