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unclassified city or a city of the fifth class and some doubt as to whether it was a city at all and this bill was intended to settle that question. If this information be correct the Act would apply to Delphi only and classify it as a city of the fifth class and would be valid for that purpose.

In addition to answering your specific questions I believe it well to say that in my opinion this Act in no way affects the fiscal affairs of civil cites or towns in the State of Indiana.

OFFICIAL OPINION NO. 51

June 9, 1949.

Hon. Henry F. Schricker,
Governor of Indiana,
State House,
Indianapolis, Indiana.

My Dear Governor:

I have before me your letter of May 28, which is as follows:

"I hereby request an official opinion of your office upon the following question:

"Does a municipally owned utility, owned and operated by a municipality, fall within the purview and meaning of the term 'public utility' as used and defined in Section 2 of Chapter 341 of the Acts of 1947?

"While I am submitting the above question in general form, I attach hereto a petition presented by Local Union L-723 International Brotherhood of Electrical Workers of Fort Wayne which raises the question of my official duty under Section 5 of the above mentioned act."

With the idea of possibly having a more thorough understanding of your question, we have immediately scrutinized the petition attached and the allegations contained therein, and as a result our investigation discloses that the business and financial structure of the City Light & Power Company
of Fort Wayne, Indiana is not that of a Corporation under the laws of the State of Indiana and authorized by the Secretary of State. A further review of the records, for the purposes of identifying said City Light & Power Company, shows that in the records of the Public Service Commission of Indiana, that said Company is not a public utility but is a municipal utility entirely owned and operated by the City of Fort Wayne. Therefore, the employees represented by the Union referred to in the petition filed with you indicate that all of such employees are City employees and that none of such employees are public utility employees.

Chapter 318 of the Acts of 1947 amends the original Shivley-Spencer Act in some respects but a public utility is defined separately and distinctly from a municipal utility which more clearly appears later in this opinion. A public utility is a utility which supplies water, lights or transportation services and other items to the public. Also, the conveyance of telegraph and telephone messages. It applies to private individuals, receivers or corporations. The term municipal utility is defined to be a utility furnishing services above named by a municipality. It clearly appears that any municipality, city or town which owns and operates a utility plant is a municipal utility, as distinguished, from a utility owned and operated by private individuals and corporations.

Because of the preclusions of law, a bargaining agreement between the employees as members of a union and officers of the City or of the municipal utility, can not have any legal status of force or effect.

In complying with your request, it is necessary to consider and to determine whether or not Chapter 341 of the Acts of 1947 apply to a case wherein employees of a municipal utility and the Union are involved.

In construing a statute the intent of the Legislature is always of first importance and of prime necessity. The title of an Act should indicate its intent and purpose.

Section 19, Article 4, Constitution of Indiana, states that:

"Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. * * *"
Among other things the title to Chapter 314 of the Acts of 1947 states:

"An Act to provide for the prompt, peaceful and just settlement of labor disputes between public utility employers and their employees which cause or threaten to cause strikes, lockouts, slowdowns, or similar work stoppages, * * *"

It is noted that the title of the Act deals only with public utility employees. Nowhere in the Act is any reference made to municipal employers or employees. An outstanding provision of Chapter 341 which clearly indicates the intent of the Legislature to deal with public utilities is found in sub-paragraph (b) of Section 2 of said Act, which reads as follows:

"The term 'collective bargaining' means collective bargaining of or similar to the kind provided for by the federal law known as the National Labor Relations Act and as interpreted by decisions of the Supreme Court of the United States arising under said last-mentioned Act."

Throughout the entire Act reference is repeatedly made to public utility employers and employees. A reference to the National Labor Relations Act, Paragraph 152 thereof defines an employer in the following language:

"The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to sections 151-163 of Title 45, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

It will be seen that since a municipality is a political subdivision of the State the reference to paragraph two (2) above, shows that the provisions of Chapter 341 of the Acts of 1947 was not intended to apply in a case involving employees of a municipality. The legislative Act was specific in defining "collective bargaining" to mean collective bargain-
ing similar to the kind provided in the National Labor Relations Act and if the National Labor Relations Act applies only to private corporations it can not be said in any sense of the term that it would apply to municipal corporations.

I am not without authority in reaching this conclusion because an official opinion of this office on June 10, 1944, being Official Opinion No. 55 of Attorney General expressly holds that a municipal corporation can not enter into a bargaining agreement with the officers of a labor Union. This opinion cites the provisions of the National Labor Relations Act and many decisions of our Supreme Court. I quote from a portion of said opinion found on page 230 of the Opinions of the Attorney General:

"If a collective bargaining agreement in Indiana be construed as merely a continuing offer on the part of the employer, clearly there is no statutory provision in Indiana authorizing the making of such an agreement between a governmental unit and an unincorporated union. If the agreement be construed as a contract, then, it is submitted, it must be upon the theory that the members of the unincorporated union authorize their agents to enter into a contract binding upon the individual members for their own benefit, and also for the benefit of third parties who might subsequently become members of the union. A search of the statutes fails to disclose any authorization for the making of this sort of a contract by any unit of government within this state. Some provisions in the statute clearly preclude such a possibility, as in cases where competition is required, or where merit or civil service provisions are mandatory, as in the State Personnel Act. In many instances salaries or wages of employees are fixed by statute or the method in which they are fixed is provided by statute. This method would have to be followed, and they could not be fixed by collective bargaining. Until the General Assembly provides by statute for the making of collective bargaining agreements with boards, bureaus, commissions, agencies and units of government, I am of the opinion that such agreements are unauthorized."
and in conclusion the Attorney General says:

"* * * I am of the opinion that although officials charged with the duty of making employments may properly meet with representatives of the union to discuss matters of employment, yet there is no binding duty upon the officials to do so, and that until the legislature specifically provides for the making of collective bargaining agreements where a board, bureau, commission, official agency, or unit of the government is the employer, such collective bargaining agreements would be ultra vires and of no legal force."

Not since 1913 when the original Shively-Spencer Act was adopted which first gave the control over utilities, a public utility was defined and likewise a municipal utility was also defined and each treated separately. In a recent Act adopted the day before Chapter 341 was adopted an amendment was made to the original Shively-Spencer Act, being Chapter 318 of the Acts of 1947. This amended Act defines a public utility to mean, "every street railway or interurban railway, and every plant or equipment within the state used for the conveyance of telegraph and telephone messages, or for the production, transmission, delivery or furnishing of heat, light, water or power, or for the furnishing of elevator or warehouse service, either directly or indirectly to the public: * * * *" In the same Act, same section, a municipally owned utility was defined: "The term 'municipally owned utility' shall include every utility owned or operated by a municipality." All of our statutes dealing with utilities since the State entered the field of regulation have made a clear distinction between the two types of utilities.

A rather recent and very able opinion on the question of the right of municipalities to contract with labor unions is the case of Nutter et al. v. The City of Santa Monica et al., rendered by the Supreme Court of California and found in 168 Pacific Reporter (2) on page 741. That case was one involving the right and duty of city employees operating a city bus system to enter into a bargaining agreement with officers of a labor union. The officers of the City of Santa Monica refused to enter into a bargaining agreement and
refused to contract with the labor union representing the employees of said bus system. A proceeding of mandamus was instituted to force the officers of said bus system to enter into bargaining agreements and to contract with such employees. The State of California had enacted a labor code applicable to private corporations but it was claimed that said labor code was applicable to municipal utilities. The lower court sustained the petitioner in that case and made finding and judgment to the effect that the officers of said company should enter into a bargaining agreement and contract with such employees. The Supreme Court of California in passing upon and reversing said case said among other things on page 745 of said Reporter, the following:

"'The distinction between private employment and public service is an important one. Private employers if not restrained by law, are free to adopt any policy toward their employes which they believe calculated to promote the success of their enterprises, without regard to its effect upon the welfare of the employees; and it is therefore proper to restrain this freedom to some degree, and to safeguard the right of the workers to combine with each other, and to use the strength of this union in bargaining in the matter of wages, hours, terms and conditions of employment, and to strike if need be.

"'In the field of public employment, on the other hand, altogether different conditions prevail. Public officers do not have the same incentive to oppress the worker; and fair treatment sought to be coerced by collective bargaining in the field of private employment, is in the public field, to a large extent, compelled by law. Public officers, therefore, do not have the same freedom of action which private employers enjoy. Their authority is confided to them by public law, and by that law is limited. That authority may not be delegated or surrendered to others, since it is public property. And so it has been almost uniformly held that governmental authority may not discriminate in favor of union labor.'"
And again on said page the following appears:

"The principle espoused by section 923 is essentially the same as that fostered by the National Labor Relations Act, 29 U. S. C. A. §151 et seq., namely, the right of workmen to enjoy free collective bargaining over terms and conditions of employment. In adopting that act Congress did not recognize the existence of the right of collective bargaining in public employment and did not consider it necessary to adopt a national policy which would extend into the field of public employment. Section 2 (2) of the act expressly excepts from the definition of the term 'employer' the United States and any state or political subdivision thereof."

While the California code is different from ours the principle of law involved is the same. It appears that the decision of that court is in line with the opinion of the Attorney General as shown in its opinion to which reference is made above.

In conclusion, I am of the opinion that Chapter 341 of the Acts of 1947 has no application to differences existing between municipal utility employees and the officers of a labor union. I am further of the opinion that city officials have no power or authority to conduct bargaining agreements with labor Unions and any such agreements would be invalid as being ultra vires and you are therefore advised that the petition filed with you does not invoke your right, duty or authority to appoint a conciliator as therein requested and for that reason you should reject the petition and decline to take jurisdiction.

CHJ:ar