rotary or revolving appropriations. It was pointed out in Official Opinion No. 116, 1945 Ind. O.A.G., p. 499, that the post war construction fund, referred to in Sections 13 and 14 of Chapter 256 of the Acts of 1945, was derived from special taxes and, by Chapter 234 of the Acts of 1947, is appropriated for special purposes by a standing appropriation and for this additional reason said section would not apply to the appropriation in question.

In summary, it is my opinion that Section 21 of Chapter 279 of the Acts of 1947 does not apply to the appropriation in question as it is not an appropriation from the General Fund, and there being no time limit placed upon the power to expend said funds, they will remain available for expenditure under said appropriation until allocated or expended or until further legislation is enacted. It is further my opinion that even if said Section 21 of Chapter 279 does apply to appropriations made from funds other than the General Fund, it would not apply to the appropriation in question for the reason that said appropriation is from a fund derived from special taxes and appropriated by a standing appropriation.

If, in the second paragraph of your letter, you mean to inquire as to whether any unexpended balance would revert to the General Fund, it is my opinion that in no event would any unexpended balance become a part of the General Fund without legislation transferring the same to the General Fund.

What is said in this opinion has no reference or application to appropriations by or for political subdivisions of state government. Upon this question, see Official Opinion No. 53 for 1946 addressed to the State Board of Accounts.

OFFICIAL OPINION NO. 15

February 20, 1948.

Mr. Hoyt Moore, Sr.,
State Senator,
Rural Route 3, Box 920,
Indianapolis 44, Indiana.

Dear Sir:

Your letter of January 26, 1948, has been received and is as follows:
"I am writing to seek your opinion as to the legal status of a proposed bond issue by Decatur Civil and School Township of Marion County, Indiana. At the present time the Harding Street plant of the Indianapolis Power and Light Company is situated in Decatur Township, after much litigation as to whether this plant was situated in Perry or Decatur Township.

"The Indianapolis Power and Light Company plant constitutes about 75% of the assessed valuation in our township, and of course any bond issue contemplates the inclusion of such property.

"Several questions have arisen since this proposed issue of bonds originally came up for discussion, which questions are most important, not only to the citizens of Decatur Township, but to prospective purchasers of these obligations. These questions are as follows:

"1. What would be the effect of future legislative action removing the Indianapolis Power and Light Company, Harding Street plant from Decatur Township, Marion County, Indiana, as regards the holders of these proposed bonds?

"2. What would be the status of the proposed bonds if the so-called County Unit form of government were to be adopted by this State?

"3. What would be the status of the proposed bonds if the City of Indianapolis were to annex all of Marion County, Indiana?

"4. What would be the status of the proposed bonds if the present system of township assessment were to be abolished and state assessment of public utilities were to be adopted?"

The history of the controversy surrounding the present location of said Light Plant in Decatur Township, from a legislative and judicial standpoint, is fully covered by the following decisions:

Decatur Twp. v. Board of Commissioners of Marion County (1942), 111 Ind. App. 198;
Perry Civil Twp. v. Indianapolis Power and Light Company (1943), 222 Ind. 84;
It appears to me the only question presented is whether or not any of the changes outlined in your four questions would seriously impair the status of bonds, both civil and school, which are contemplated being issued for the building of school buildings in said township. In view of this fact the only question involved from a legal standpoint is whether or not such contingencies might be considered as an impairment of the obligation of the contracts between the bondholders and the civil and school township.

In 43 Am. Jur., Public Securities and Obligations, Section 273, the rule there announced, in part reads as follows:

"It is definitely settled that public bonds issued by states and their subdivisions, constitute contracts within the purview of constitutional provisions banning laws impairing the obligation of contracts, especially as respects the source of payment for the bonds. ***. Thus, the legislature cannot be permitted to repeal an act authorizing a levy of taxes for payment of the bonds which was in force when they were issued, or withdraw or limit a taxing power which was the source of payment at time of issuance of the bonds, and leave no adequate means for their payment. ***. A statute must be shown, however, to have materially reduced the taxing power of a municipal corporation which has been pledged for the payment of a bonded debt before it can be said to contravene a constitutional prohibition of legislation affecting the obligation of contracts. ***."

In 12 Am. Jur., Constitutional Law, Section 418, the further statement is made:

"In accord with the general rule that existing laws become an integral part of the obligation of a contract, the laws relating to the rights of enforcement existing at the time of the issuance of municipal bonds under the authority of which they are issued enter into and become a part of the contract in such a way that the
obligation of the contract cannot thereafter be in any way impaired or its fulfilment hampered or obstructed by a change in the law. As a result, when a contract is made with a municipal corporation on the faith that taxes will be levied, legislation repealing or modifying the taxing power of the corporation, so as to deprive the holder of the contract of all adequate and efficacious remedy, is within the constitutional inhibition as to the impairment of the obligation of contracts. Therefore, the remedies for the enforcement of such obligations assumed by a municipal corporation, which existed when the contract was made, must be left unimpaired by the legislature; or if they are changed, a substantial equivalent must be provided. Likewise, where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States and is null and void. This rule is applicable regardless of whether the legislative action is taken by the municipality or by state legislation which repeals or limits the statute authorizing the municipality to levy taxes. The creditor of the municipality does not always have a right to have the taxes collected in the same manner as they were always collected, but he does have the right under his contract to have taxes collected in as prompt and efficacious a manner as provided at the time the contract was executed. Thus, any act which attempts to put off or retard the enforcement of a municipality's obligations by postponing the power of the city to levy taxes impairs the obligation of contract. ***.”

The case of Seibert v. Lewis (1886), 122 U. S. 284, involved the validity of subsequent laws of the State of Missouri which seriously impeded the collection of money due bondholders whose bonds were issued under previous laws of Missouri to facilitate the construction of railroads where the money was supposed to be raised by general levy in the same manner that other taxes were assessed and collected. By the
subsequent legislation such process was complicated and among other things required the bondholders to secure an order from the Judge of the Court and required action of other officials be taken. In determining whether or not such subsequent legislation constituted an impairment of the obligation of such contracts, the Court on page 296 to page 298 of the opinion said:

“But the contract which the relator is entitled to insist upon under the act of March 23, 1868, is, that he shall have a special tax for the payment of the principal and interest due him, to be levied from time to time ‘in the same manner as county taxes.’ It may be admitted that the legislature, from time to time, notwithstanding this provision, might by subsequent legislation change the mode and the means for the assessment, levy, and collection of county taxes, as in its judgment the public interest should require. Any such changes, made in view of public interests, not substantially to the prejudice of public creditors, might be considered, in respect to them, as the legal equivalent for the particular mode in force in 1868, and a fair and reasonable substitute therefor. Ordinarily, it would be true that such altered provisions would not be injurious to any private rights, for the creditor would at all times have the guaranty of as prompt and speedy a collection of a tax in satisfaction of his claim as is secured by law for the collection of the revenues of the county, most important for the support of its government.

“It may, therefore, be considered as a most material and important part of the contract contained in the second section of the act of March 23, 1868, not, perhaps, that the creditor shall always have a right to have taxes for his benefit collected in the same manner in which county taxes were collectible at that date, but that he shall at least always have the right to a special tax to be levied and collected in the same manner as county taxes at the same time may be levied and collected. In other words, the essential part and value of the contract is, that he shall always have a special tax to be collected in a manner as prompt and effic-
acious as that which shall at the time, when he applies for it, be provided by law for the collection of the general revenue of the county. His contract is not only that he shall have as good a remedy as that provided by the terms of the contract when made, but that his remedy shall be by means of a tax, in reference to which the levy and collection shall be as efficacious as the state provides for the benefit of its counties, without any discrimination against him.

"It is in this vital point that the obligation of the contract with the relator has been impaired by the section of the law under which the respondent seeks to justify his disobedience of the mandate of the Circuit Court. Those sections provide one mode for the collection of county taxes by the direct action of the county court; they provide another mode for the collection of the special tax for the payment of obligations such as those held by the relator and merged in his judgment. They expressly declare that he shall not be entitled to a tax collected in the same manner as county taxes, but add limitations and conditions which, whatever may have been the legislative motive, compared with the original remedy provided by the law for the satisfaction of his contract, cannot fail seriously to embarrass, hinder, and delay him in the collection of his debt, and which make an express and injurious discrimination against him."

The case of Seibert v. Lewis, supra, was cited and followed by the Court in the case of Meyer v. City of Eufaula, Oklahoma (1942 Circuit Court of Appeals, Tenth Circuit), 182 Fed. 2nd 648, 651 and in the case of Veraluis v. Town of Haskell, Oklahoma (1946, Circuit Court of Appeals, Tenth Circuit), 154 Fed. 2nd 935, 939.

Also supporting the above proposition see annotations in 156 A.L.R., page 1266 to page 1280 and 117 A.L.R., page 288 to page 299.

The case of Geweke v. Niles (1938), 368 Ill. 463, 14 N.E. 2nd 482, 117 A.L.R. 262, involved the validity of a statute disconnecting certain land from the limits of a city and exempting such land from taxation, which exemption included
any assessment for the payment of certain bonds previously issued for the construction of a sanitary system. In determining the constitutionality of such statute in the light of whether or not it constituted an impairment of the obligation of contracts, the court on page 265 of the A.L.R. citation, said:

"Section 14 of article 2 of the Constitution prohibits an act of the General Assembly affecting the obligation of contracts, and appellees' argument is that the disconnection of this land from the village will reduce the ability of the balance of the property to pay the judgment assessed against the village for the public benefits connected with the construction of this sewer. There is nothing in the record showing the extent of the ability of the village to meet the bonds issued for its share of the cost of constructing this sewer. So far as appears from the record, increased property within the jurisdiction of the taxing body may have resulted in an increase in the taxing power of the village, notwithstanding the disconnection of this property. It must be conceded that a statute which diminishes the power of a village to meet a certain obligation is invalid as affecting the obligation of contracts. It must be seen, however, that the statute attached has a tendency to destroy or materially reduce the taxing power of the municipal corporation that has pledged the payment of a debt, before such act can be said to contravene section 14 of article 2 of the Constitution. People v. Chicago & Western Indiana Railroad Co., 256 Ill. 388, 100 N.E. 35; Peoria, Decatur & Evansville Railway Co. v. People, 116 Ill. 401, 6 N.E. 497."

Again on page 266 of said citation the court continued:

"*** There is, and has long been, a rule in this state that the Legislature not only has authority to determine the territory and boundaries of various municipal corporations, but also to change or alter them by annexing or disconnecting territory, either with or without consent of the corporate authorities. Town of Cicero v. City of Chicago, 182 Ill. 301, 55 N. E. 351; People v. Binns, 192 Ill. 68, 61 N. E. 376; People v. City of Rock Island, 271 Ill. 412, 111 N.E. 497."
In True v. Davis, 133 Ill. 522, 22 N. E. 410, 411, 6 L.R.A. 266, the question of the effect of removal of property from the taxing jurisdiction of a municipality was considered, and it was there said: 'There is no provision in our constitution which make a municipal debt a specific charge or lien upon the persons or property within the municipality; nor is there any provision in that instrument which guaranties the resident within the municipality that his property shall bear the burden of taxation only for the purpose of paying debts incurred by the municipality while that property had an existence there. It is within common observation that large amounts of property, and, it may be, all the persons, within a municipality when a debt is contracted, cease to be there when the debt is payable. The property within a municipality when a tax is levied for its payment can alone be made to pay it.' It seems clear that, under the power of the General Assembly to add to or take from the territory of municipalities, the fact that property disconnected thereafter escapes general taxation does not render the disconnection act obnoxious to section 23 of article 4 of the Constitution.

In view of the foregoing authorities I am of the opinion your questions should be answered as follows:

(1). The validity of any future legislative action removing said light plant from Decatur Township as regards the holders of these proposed bonds, would depend entirely upon whether or not such legislation seriously affected the means of payment of such obligations and whether or not such legislation seriously impeded the remedy now afforded for the collection of taxes and payment of such bonds as they mature. If an alternative means of payment is provided with a comparative facility of payment authorized, such legislation would not be unconstitutional. Otherwise, it would constitute an impairment of the obligation of such contracts under the Federal Constitution.

(2). The same rule would apply with equal force to the effect of the consolidation of all the township school properties
under the county unit statute, same being Chapter 281, Acts 1947. However, I am of the opinion that any such consolidation under such county unit statute, in its present form, would not raise any serious question as to constitutionality for under Section 1 of said Act, page 1170, Acts 1947, it is among other things provided:

"Such school corporations shall be vested with all right, title and interest of their respective predecessor township school corporations hereby terminated to and in all the real, personal, and other property of any nature and from whatever source derived, and shall assume, pay, and be liable for all the indebtedness and liabilities of the same."

(3). 'The foregoing guide would be followed in the testing of the constitutionality of any law of this State under which the City of Indianapolis might in the future annex all of Marion County, Indiana, as far as interfering with the rights of the bondholders referred to in your question, is concerned. However, again it is pointed out that under the present law regarding annexation of land by cities, same being Section 28-3303a Burns' 1945 Supplement, being Section 1, Chapter 158, Acts 1935, it is provided as follows:

"In all cases where any city or incorporated town of this state has annexed or shall hereafter annex any territory, or where any town has been or shall hereafter be incorporated, and where the civil township, or school township, from which such territory was or is taken, is indebted or has outstanding unpaid bonds or other obligations at the time of the annexation or incorporation of such territory, then such city or town, as the case may be, shall be liable for, and pay such proportion of such indebtedness of such civil township or school township as the assessed valuation of property in such annexed or incorporated territory is to the valuation of all property in such township, as the same is assessed for general taxation, prior to the annexation of any such territory or incorporation of any such town. Such annexing city or town, or newly incorporated town, shall pay such part of (or) proportion of such unpaid
indebtedness of such civil township or school township to the township trustee: Provided, That in case such indebtedness consists of outstanding unpaid bonds or notes, of such civil township or school township, then such payment to such trustee shall be made at such time as the principal, or any part thereof, or interest of such bonds or notes falls or becomes due: Provided, further, That if any school building is included in such annexation, the entire remaining indebtedness on such building shall be paid by the annexing city, town, or newly incorporated town, as heretofore provided by law. No annexation of territory under previously enacted laws shall be effective if the liability so created should cause the indebtedness of the annexed city or town to exceed the constitutional limitation on indebtedness of such municipality, or if such annexation would cause the township indebtedness to exceed such limitation after the annexation took place."

In view of the foregoing statute no serious constitutional question would present itself unless other laws are passed covering such question of annexation. If such laws are passed effecting such bondholders rights they would be subject to a test as to constitutionality as above outlined.

(4). Your fourth question is not entirely clear to me. If you mean future legislation impairing the obligation of such contracts by merely providing that the assessment would be made by the State, and the taxes collected by the township as at present, I am of the opinion such change in manner of assessment would not be unconstitutional unless the security of the bondholders would be impaired.

However, if you mean by your question would there be an impairment of the obligation of such contracts if the Legislature abolished the local taxation of public utilities as far as the township is concerned and placed the same under the taxing power of the State, your question would necessarily be answered as follows: The security for the payment of the bonds could not be withdrawn by the State without making adequate provision for their payment if such action seriously impeded the collecting of money for, and the payment of said bonds, as they mature.
Each of the foregoing answers are further predicated upon the assumption that any such bonds so issued will be issued under statutes which do not make such bonds a lien upon the particular real estate located in the township but are issued under statutes now in effect which, as far as I can determine, merely make such bonds an obligation of the civil township or the school township.

OFFICIAL OPINION NO. 16

February 28, 1948.

Mr. Edwin Steers, Sr.,
State Election Board,
108 East Washington Building,
Indianapolis, Indiana.

Dear Sir:

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

"We are handing you herewith copy of letter which we have received from Robert S. Black, Clerk of the Fountain Circuit Court at Covington, Indiana, in which he makes inquiry as to how long a party may serve under an appointment to fill a vacancy caused by the resignation of a duly elected county treasurer. You will note that the county treasurer in Fountain County does not take office until one year following the election, and the question is whether or not the party appointed to fill the vacancy will serve until one year after the new treasurer is elected, or just until the new treasurer is elected and qualified."

The office of the county treasurer was created by the Constitution and the term fixed at two years and until his successor is elected and qualified. Section 2, Article 6 and Section 3, Article 15 of the Constitution of Indiana; Scott v. State, ex rel. (1898), 151 Ind. 556, 52 N. E. 163, and cases cited.

The Constitution fixes the length of the term of the office but not when it shall commence. Same is fixed by statute,