sources in the hands of public officers which are designed for public use, must be deemed public funds.

The extra-curricular funds are separate and distinct. Even though the records may be examined by the state, the cost thereof is not taken from the fund and the sole authority over it is the principal, his appointees, the sponsor, and members of the organization or class. It is neither impressed with a public interest nor designed for a public use.

Even though the treasurer, after each semester or at the end of the term, as the case may be, is required to file a copy of his report of such extra-curricular activities, together with all records, in the office of the township trustee, board of school trustees or board of school commissioners, and the statutes declare them to be a public record, open to inspection by any interested person, the fact remains that neither Chapter 151 of the Acts of 1937, nor the Chapter 312 of the Acts of 1945, nor any other act, attempts to delegate any authority over the fund beyond the immediate school personnel.

I am, therefore, of the opinion that these moneys do not possess the character of public funds so as to require the institution receiving them to be approved by the State Board for Depositories.

OFFICIAL OPINION NO. 21

March 9, 1948.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
Room 304, State House, Indianapolis, Indiana.

Dear Sir:

I have your letter requesting an official opinion in which you state that you have had many inquiries in recent months concerning the disposition of fines and fees collected by a city court with special reference to cities of the fifth class. You then quote Section 4-2407, Volume 2, Part 2, Burns’ 1933, same being Acts 1907, Chapter 138, Section 1, page 222, which reads as follows:
"Each judge of a police (city) court and each mayor acting as police (city) judge in this state shall, on the first Monday in January, April, July and October of each year, make a report to and pay over to the city treasurer of his respective city all fines collected by him since his last previous report, verifying such report by oath."

You further state that "Since Section 4-2407 quoted above requires the city judge to report and to pay over to the city treasurer all fines collected by him and since there appears to be no provision by statute whereby the city treasurer (clerk-treasurer) (is) to make a report and pay over to the county treasurer such fines and/or fees, we desire to know the procedure that should be followed by a city court judge in the disposition of fines and/or fees collected by the said city court judge, in a city of the fifth class."

Section 4-2401, Burns' 1933, same being Acts 1905, Chapter 129, Section 215, page 219, provides that "The judicial power of every city of the first, second, third and fourth classes shall be vested in a city court. The officers thereof shall be a judge, a clerk and a bailiff, except that, in cities of the third and fourth classes, the judge of such court shall act also as clerk and shall perform all duties, so far as applicable, herein-after prescribed for the clerk of such court. * * * Provided, That, in cities of the fifth class, the mayor shall exercise all the powers and be required to perform all the duties herein provided for city judges, in so far as the same are applicable. * * *"

Section 4-2406, Burns' 1933, same being Acts 1905, Chapter 129, Section 221, as amended by Chapter 133, Section 1, Acts 1927, provides that in cities of the first and second classes the city clerk shall be the clerk of the city court. His duty is to keep a complete record and docket of all cases and to give an account of the fines, fees, penalties, forfeitures, judgments, executions, decrees and orders in cases before the city court. It is his further duty to collect all such fines, fees, penalties and forfeitures and all judgments and executions and/or monies whatever accruing to or to be paid in for the use of such city from the enforcement of any of the ordinances thereof and at the end of each week he is required to make out and deliver over to the city treasurer a written report of
all cases in which he has collected and received any costs, fines, or forfeitures due the city and forthwith pay over the same to the city treasurer and take a receipt therefor; and at the close of each week it is his duty to make out and deliver to the Prosecuting Attorney a written report of all cases in which he has collected or received fees due the Prosecuting Attorney and pay over such fees to the Prosecuting Attorney and at the end of each month "he shall make out and deliver to the county treasurer of the county in which the city is located a written report of all cases in which he has received or collected any fines or forfeitures due the state of Indiana during such month and, forthwith, pay to such county treasurer all such fines or forfeitures so collected and take a receipt for the same."

Section 4-2409 Burns' 1933, provides that the Prosecuting Attorney of the judicial circuit where such city is located shall prosecute all cases in the city court for violation of the laws of this state and shall be entitled to the same fees therefore as are now provided in cases of such prosecutions before justices of the peace; and the city attorney shall prosecute all cases of violations of the ordinances of such city.

Article 8, Section 2, Constitution of Indiana provides that, "The Common School fund shall consist of * * * the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue; * * *.”

Section 28-101 Burns' 1933, provides that the common school fund shall consist among other funds of "all fines assessed for breaches of the penal laws of the state * * *.”

Section 60-214 Burns' 1933 provides that it is the duty of every officer who collects or receives fines or forfeitures belonging to the State of Indiana to keep in a separate book a record of all sums received from such fines and forfeitures, the amount of each and from whom and when received. It is the duty of the clerk of every court possessing criminal jurisdiction and every Justice of the Peace, mayor or city judge who assesses fines to make report forthwith to the Auditor of State of any and all fines assessed in such courts for violation of the criminal statutes of the State of Indiana and upon payment of such fines, forthwith to report payment to the Auditor of State, whereupon such officers are charged by the Auditor as debtors to the Common School Fund.
Fines and forfeitures received on account of violations of the criminal statutes of this state become accretions to the Common School Fund of which the county treasurer is the proper custodian. I find no statute making provision for a city treasurer to pay over to the county treasurer fines and forfeitures belonging to the state paid to such city treasurer by a city judge or mayor.

It is to be noted that the judicial power of every city of the first, second, third and fourth classes is vested in a city court and in cities of the fifth class the mayor of such city exercises all the powers and is required to perform all the duties provided for city judges. A city court consists of a judge, a clerk and a bailiff, and in cities of the third and fourth classes the judge acts also as clerk and performs all duties prescribed for the clerk of such court. It follows, therefore, that in cities of the fifth class the mayor acts as judge and clerk of the court and performs all the duties prescribed for city judges and clerks of a city court. The duties of the clerk of a city court are prescribed by Section 4-2406, Burns' 1933, outlined above.

It is my opinion, therefore, that the duties of a mayor in regard to the keeping of records and dockets of cases coming before the court of a city of the fifth class, the giving of an account of the fines, fees, penalties, forfeitures, judgments, executions and orders in connection with such cases, and the collecting and paying over to the proper officers of the same are set forth in Section 4-2406, Burns' 1933, and Section 60-214 Burns' 1933, outlined above, except that now prosecutor's fees are to be charged and collected as the property of and for the benefit of the general fund of the county in the manner in which fines are now collected. (Acts 1945, Chapter 253, Section 95, page 1170.)

I note that Section 4-2407 quoted in your letter contains the word "(city)". This word does not appear in the printed Acts of 1907, Chapter 138, Section 1, page 222. Such word was apparently inserted by the compiler of Burns' Annotated Statutes. We no longer have police courts as such in the State of Indiana. However, if it should be construed that this Section applies to judges of city courts and mayors acting as city judges, it is my further opinion that the provisions of such Section concerning the paying over to the city treasurer of fines collected by them can only have reference to
penalties collected by the judge of a city court or the mayor acting as such judge, assessed for violations of city ordinances and which would belong to the city.

OFFICIAL OPINION NO. 22

March 10, 1948.

Hon. Ben H. Watt,
State Superintendent,
Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Watt:

Your letter of February 25, 1948, has been received requesting an official opinion on the following questions:

"1. Can the County Board of Education lower the salary of the County Superintendent of Schools?

"2. and 3. Craig School Township and Jefferson School Township of Switzerland County, Indiana, have just completed consolidation proceedings under Chapter 123 of the Acts of 1947, effective under the law August 1, 1948.

"After August 1, may these townships under Chapter 261 of the Acts of 1947 bond the Civil Township 2%?

"Between now and August 1 may these two townships bond the Civil Township 2% under Acts 261 of 1947?"

1. In answering your first question, it is necessary to call your attention to a number of statutes effecting my decision in the matter. The general salary of the county superintendent of schools is fixed in each enumerated county by Section 49-1004 Burns' 1933, same being Section 4, Chapter 21, Acts of 1933.

Under Section 49-1014 Burns' 1945 Supplement, same being Section 14, Chapter 21, Acts of 1933, as amended by Section 1, Chapter 96, Acts of 1939, it is provided: