

Section 5 of Chapter 279 of the Acts of 1947 provides in part as follows:

“Subject to other applicable provisions of this Act and to other laws not inconsistent herewith, the Director of Public Works and Supply shall have the following powers and duties respecting all agencies of the State except as herein otherwise provided:

“\* \* \*

“(5) To rent out, with the approval of the Governor, any state property, real or personal, not needed for public use, the rental of which is not otherwise provided for or prohibited by law; provided, that no such property shall be rented out for a term exceeding four years at a time. Provided, however, that this shall not include the power to grant or issue permits or leases to explore for or take coal, sand, gravel, stone, gas, oil or other minerals or substances from or under the bed of any of the navigable waters of the State or other lands owned by the State. \* \* \*”

In my opinion World War Memorial structures in question would not be considered as property “not needed for public use”. In addition the rental of such structures or any part thereof is “otherwise provided for” by the World War Memorial Act and therefore there is no conflict between Chapter 279 of the Acts of 1947 and said Section 12 of the Special Session of 1920.

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OFFICIAL OPINION NO. 49

August 22, 1947.

State Board of Tax Commissioners,  
301 State House,  
Indianapolis 4, Indiana.

Gentlemen:

I am in receipt of your letter of July 21, 1947 in which you ask my official opinion as follows:

“We receive numerous requests for approval of additional appropriations, emergency loans and bond

issues and we respectfully request that you furnish us with an official opinion on the following questions as they are limited or restricted by the sections set out herein in Burns' 1933 Revised Statutes:

"Section 65-313, Burns' Revised Statute provides for the procedure to be followed by the township trustee and the advisory board when making an emergency loan.

"Section 64-309 limits the amount of tax levy and Section 64-312 provides that the limits as stipulated in Section 64-309 shall not apply in certain instances or rather that the levies as set out in Section 309 can be exceeded in certain instances. The two instances with which we are confronted arise out of clause C and D of Section 64-312. Section 64-313 prohibits the making of rates or levies to meet obligations issued after March 9, 1939 (see Chapter 97 of the 1939 Acts) whenever the obligations are issued under clause D of Section 64-313, unless a petition directed therein is filed.

"Is it necessary that a petition signed by the requisite number of taxpayers be filed in addition to the action taken by the township trustee and advisory board as provided for in Section 65-313?

"If the township trustee and advisory board declare that an emergency exists other than those set out in clause C of Section 64-312, is it necessary that a petition be filed by the requisite number of taxpayers before a levy can be made to retire the principal and interest of the obligation issued?

"In several instances the township trustee and advisory board declare that an emergency exists and approve the issuance of obligations when the emergency is not one of those arising out of flood, fire, pestilence, war or other major disasters.

"We also find that some township units are attempting to borrow money to repair school buses without a petition being presented on the theory that the depreciation to the school buses was a result of the war,

in that, proper repairs could not be made during the war.

“Must the need for the money requested arise out of and be a direct result of one of the emergencies set out in clause C of Section 64-312 or may the emergency be as remote as the one herein above mentioned where the trustee is alleging that the repairs needed for the school bus are a result of the war?”

“Can emergency loans be made by the township trustee and advisory board for ordinary operating expenses without a petition being filed by the requisite number of taxpayers?”

The pertinent statutes are as follows:

“Neither the total rates fixed in section three (§ 64-309) of this act nor any other provisions of this act shall apply to levies or rates required by municipal corporations for any of the following purposes: (a) To meet the principal and interest upon any funding, refunding or judgment funding obligations of any municipal corporation; (b) to meet the interest or principal upon any outstanding obligations of any municipal corporation or of any judgment taken against any municipal corporation; (c) to meet the interest and principal upon any obligations issued by any municipal corporation to meet an emergency growing out of a flood, fire, pestilence, war or other major disaster; (d) to meet the interest and principal upon any other obligations hereafter issued which in their issuance have been petitioned for and issued in accordance with the provisions of this act; (e) to meet the requirements of the county welfare fund for public welfare services. In complying with provisions of this act, the levies or rates referred to in this section shall be excluded from consideration by the county board of tax adjustment, the county auditor and the state board of tax commissioners, except to determine that said levies and rates do not exceed the amount actually necessary for said purposes. The levies and rates referred to in this section shall be added to and be-

come a part of the levy and rate finally fixed for each municipal corporation. It shall be the duty of all officers and governmental bodies having to do with the levying of taxes to levy taxes for the purposes referred to in this section in an amount sufficient to meet said purposes, any provisions of this or any other statute to the contrary notwithstanding.

“The term ‘outstanding obligations’ as used in this act shall be deemed to include any obligations where notice of sale of such obligations has been published prior to the effective date of this act. (Acts 1937, ch. 119, § 6, p. 646.)”

“No tax levies or rates to meet the principal and interest of any obligations hereafter issued under clause (d) of section six (§ 64-312) hereof shall be made unless prior to the issuance of such obligations a petition or petitions shall be filed by at least fifty (50) owners of taxable real estate in the municipal corporation desiring to issue such obligations praying for the issuance of such obligations, or if such number of petitioners shall be greater in any case than a majority of the owners of taxable real estate in any such municipal corporation, then by a majority of such owners. Said petition or petitions shall be filed with the municipal body vested with authority to authorize the issuance of such obligations, or in the case of a township, shall be filed with the township trustee, who shall lay the same before such body so vested with such authority, and such petition shall be verified under oath of one or more of the signers and shall have attached thereto a certificate of the auditor of the county to the effect that all such petitioners are owners of taxable real estate in such municipal corporation; if said body shall determine to issue said bonds petitioned for, then notice of the filing of such petition shall be given by publication one (1) time in two (2) newspapers of opposite political parties published in such municipal corporation or in one (1) such paper if only one (1) be there published, or in case no newspaper is there published, then, the same shall be published in any two (2) newspapers

representing the two (2) leading political parties, published in the county and having a general circulation in such municipal corporations, or if only one (1) such paper be there published then such notice published in such paper shall be sufficient to comply with the requirements herein, and by posting such notice in three (3) public places in such municipal corporation: Provided, however, That if in any case within thirty (30) days after the publishing of such notice, a remonstrance or remonstrances shall likewise be filed by owners of taxable real estate in such municipal corporation greater in number than the number of petitioners, with the municipal body or officer with whom the petition or petitions were filed, which remonstrance is likewise duly verified and certified, praying that no such obligations be issued, then no such obligation shall be issued. No further petition shall be filed for the issuance of such obligations which have been defeated by remonstrance, within a period of one (1) year after the filing of such remonstrance.

“Nothing contained in this section shall be construed to repeal any other requirements of any other law of this state relating to the issuance of bonds.

“Nothing in this act relating to the issuance of obligations shall be construed to apply to the issuance of notes or warrants representing temporary loans issued by any municipal corporation in any year, payable out of taxes levied in the course of collection.

“The term ‘municipal corporation’ as used in this section, shall be construed as meaning all municipal corporations or parts thereof, the property in which would be subject to taxation for any obligations so petitioned for and issued under the provisions of this section. (Acts 1937, ch. 119, § 7, p. 646; 1939, ch. 97, § 1, p. 507.)”

It will be noted that Section 64-312, *supra*, merely exempts certain types of bond issues from the limitation of the total rates fixed in Section 64-309 and Section 64-313 applies only to those bond issues issued under clause (d) of Section 64-

312. Therefore this act, being an act limiting the amount of tax levies, does not invalidate bonds issued under procedures other than those set forth in that act, but if issued in accordance with the procedures there set forth, the bond issue is not affected by the tax limitation act. Thus, bonds or obligations issued under procedures other than those set forth in the tax limitation law are valid and may be repaid so long as the tax levy, including the levy for repayment of such bonds and obligations, does not exceed the limitation set forth in Section 64-309.

Clause (c) of Section 64-313 exempts from the tax limitation in Section 64-309 those levies which are required "to meet the interest and principal upon any obligations issued by any municipal corporation to meet an emergency growing out of a flood, fire, pestilence, war or other major disaster." This clause has been interpreted in the case of *Murray v. State* (1942), 220 Ind. 323. The facts in this case were that, after the 1941 meeting of the county council, war was declared and a fire destroyed the administration building and equipment of an airport serving transcontinental airlines and also used for training and military flights of army pilots. The county council found that an emergency existed which grew out of a fire and war. This finding was approved by the court, which held that these bonds to rebuild the administration building fell within the scope of clause (c) and need not be issued under clause (d).

The term "emergency" has been held to be synonymous with "pressing necessity" or "exigency" and signifies some sudden or unexpected occurrence requiring immediate or at least quick action.

1944 O. A. G., P. 405 and authorities cited.

The phrase "arising out of" has been many times interpreted in regard to workmens' compensation acts, although there it is usually coupled with other phrases. One definition so arising is as follows:

"\* \* \* It 'arises out of' the occupation when there is a causal connection between the conditions under which the servant works and the resulting injury. It need not have been foreseen or expected, but after the event it must appear to have had its origin

in a risk connected with the employment, and to have flowed from that source as a rational consequence.

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Coronado Beach Co. v. Pillsbury (1916), 172  
Cal. 682; 158 Pac. 212; L. R. A. 1916 F. 1164.

The question of causal connection is usually a question of fact.

Standard Steel Car Co. v. Martinecz (1917), 66  
Ind. App. 672-678;  
Chicago etc. Co. v. Pritchard (1906), 168 Ind.  
398, 410.

Whether the particular situation in question is an emergency growing out of a flood, fire, pestilence, war or other major disaster is ordinarily a question of fact to be determined by the proper municipal authorities. This does not mean that such authorities could determine that a situation did grow out of the war where reasonable minds could find no causal connection.

In reference to the example which you give of school busses which could not be repaired or replaced during the war and which consequently deteriorated far below their ordinary and usual state of repair and which will require repairs or replacement to such an extent that the expenditure cannot be properly budgeted in one year without causing a grossly excessive tax rate, I am of the opinion that a fact question is presented for the determination of the proper municipal authorities as to whether there was an emergency growing out of war and such determination could only be questioned in a proper court proceeding. Concerning a fact situation about which reasonable minds might differ, this office would not be permitted to substitute its discretion for that of the duly constituted local authorities.

Section 65-313 also permits the issuance of temporary obligations to meet emergencies for operating or other expenses and not growing out of flood, fire, pestilence, war or other major disasters, as set forth in clause (c), and for which a total tax rate in excess of the limitation set forth in Section 64-309 must be levied. In such instance the limitations set forth in Section 64-309 would apply unless compli-

ance is had with the provisions of Section 64-312. In this discussion, it is assumed that any obligation issued will not exceed the debt limitation contained in Section 1 of Article 13 of the Constitution of Indiana.

I am, therefore, of the opinion that an emergency loan made under Section 64-313 for operating or other expenses must be issued under the provisions of Section 64-313, except where such loan may be repaid within the limits set forth in Section 64-309 and except where such loan is made to meet an emergency growing out of a flood, fire, pestilence, war or other major disaster, as set forth in Section 64-312 and as herein discussed.

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OFFICIAL OPINION NO. 50

August 22, 1947.

Mr. Kenneth A. Weddle,  
 Securities Commissioner,  
 State of Indiana,  
 State House,  
 Indianapolis, Indiana.

Dear Sir:

I have your letter in which you state the following facts:

“‘A’ is a Kentucky Corporation and as such is defined as a Public Utility by the statutes of the Commonwealth of Kentucky. As such Public Utility, it is subject to the jurisdiction of the Public Service Commission of the Commonwealth of Kentucky as to the regulation and supervision, of the issuance of the securities of said corporation.

“At the present time the corporation has issued and outstanding within the State of Indiana — shares of its 6%, \$100.00 par value preferred stock and — shares of 7% Junior cumulative preferred stock of \$50.00 par value per share.

“The corporation is now in the process of making a readjustment of its finances and capital structure. As a part of said readjustment of finances, the corporation proposed to exchange all of its presently