

(Opin. Atty. Gen. 1933, pp. 167-169). This statement has not changed either by statute or by judicial interpretation since the same was adopted and in my opinion, is still the law.

I therefore conclude that John Sheehan, Jr. has a legal settlement in the State of Illinois with his mother and adopted father, Josephine and Felix Santos, and that they are entitled to his custody when released by your institution.

OFFICIAL OPINION NO. 62

October 8, 1947.

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

Dear Mr. Ruston:

Your letter of September 10, 1947 has been received requesting an official opinion on the following questions:

"1. Is the Department of Sanitation of the City of Indianapolis, managed by the Board of Sanitary Commissioners created by Chapter 157 of the Acts of 1947 a department of the civil city or is it a separate and independent unit of government?

"2. In either case do the provisions of Chapter 150, Acts of 1935 as amended by Chapter 275, Acts of 1947 and Chapter 119, Acts of 1937 as amended by Chapter 41, Acts of 1947 apply

"(a) relative to preparing, advertising and submitting an annual budget?

"(b) relative to emergency appropriations?"

The Department of Sanitation in cities of the first class was created by Chapter 157 of the Acts of 1917 same being Section 48-4201 et seq. Burns' 1933. Section 1 of said Act, same being Section 48-4201 Burns' 1933, provides in part as follows:

"In addition to the existing executive departments of cities of the first class, as such cities are defined

in an act entitled 'An Act concerning municipal corporations,' approved March 6, 1905, and acts amendatory thereof, there is hereby created a department of public sanitation, * * *."

It provides for the appointment of the members of The Board of Sanitary Commissioners to be made by the mayor of such cities.

Section 2 of said Act, same being Section 48-4202 Burns' 1933, provided the city controller and city treasurer should perform the same duties for said sanitation department as performed for other executive departments of said city and authorize said board to employ engineers, chemists, etc., and other employees as it might deem necessary to carry out the provisions of the Act and to regulate the compensation to be paid to them.

Section 3 of said Act, same being Section 48-4203 Burns' 1933, defined the powers and duties of said board which in general concerned exclusive control over sewage disposal, garbage and ash collection, the prevention of pollution of rivers, and the protection of public health. Other numerous duties are therein specified including the erection and maintenance of disposal plants.

Section 4 of said Act, same being Section 48-4204 Burns' 1933, provided that said board could *in the name of the city* maintain all actions relating to the carrying out of such duties.

Section 5 of said Act, same being Section 48-4205 Burns' 1933, created a sanitary district within the boundaries of such city and included the territory of any incorporated town lying within such boundaries.

Thereafter, under said Act it is generally provided for the establishment of sewage disposal plants and the levying of a special tax in such sanitary district for expenses incurred in establishing such structures. Under Section 48-4217 Burns' 1933, same being Section 17 of said Act, said board was authorized to issue bonds in the name of said city, such bonds to be against the sanitary district, to defray construction costs, which bonds were to be signed by the mayor of such city and attested by the city controller and to be paid by a tax levy authorized by Section 48-4219 Burns' 1933, same being Section 19 of said Act.

For the general expenses of said board and the general maintenance and repair of plants, sewers, etc., a tax was authorized to be levied by the common council of the city for sanitary purposes, to be in addition to the taxes of said city. (Section 21, Chapter 157, Acts 1917, same being Section 48-4221 Burns' 1933.

In determining whether the board of sanitation of the city of Indianapolis was a department of said city, the Supreme Court in the case of *State Board, etc. v. State ex rel.* (1926), 198 Ind. 343 at page 350 held:

“When the department of public sanitation was added to the existing executive departments of the city of Indianapolis in 1917, that department came under all the general taxing laws for departments of cities of the first class, except where the act under which it was created provided otherwise. When established, its tax rate for general expenses and maintenance was a fixed amount. Later, the legislature twice changed and increased the rate so as not to exceed a certain number of cents for each \$100.00 of taxable property. After the act was first amended in that particular, the tax rate for that department could only be determined by the proper officers in the same manner that tax rates were fixed for other executive departments. *There is no merit to the contention that the Sanitary District is a separate entity—a distinct municipality.*” (Our emphasis).

Thereafter, said act of 1917 was amended by Chapter 159 of the Acts of 1935, same being Sections 48-4239 to 48-4248 Burns' 1945 Supplement. Under Section 1 of said Act, same being Section 48-4239 Burns' 1945 Supplement, The Board of Sanitary Commissioners created under the 1917 Act was abolished and all the liabilities, rights, powers and duties conferred by law upon said Board were continued in full force and effect and transferred to a new board thereby created and known as “The Board of Public Works and Sanitation.”

Under Section 5 of said Act, same being Section 48-4243 Burns' 1945 Supplement, the Board was authorized to appoint the necessary employees, subject to the approval of

the mayor, and the salaries of such officers and employees were to be fixed by the mayor subject to the approval of the common council.

Section 8 of Chapter 159 of the Acts of 1935, same being Section 48-4246 Burns' 1945 Supplement, provides that the common council should continue to adopt separate annual budgets and tax levies for each of the departments so consolidated to-wit: the Sanitation and the Board of Public Works. Under Section 10 of said 1935 Act, same being Section 48-4248 Burns' 1945 Supplement, it was specifically provided that said Board should have all the powers possessed by The Board of Sanitary Commissioners and the Department of Public Sanitation under previous laws.

From the foregoing, it is clear that no substantial change was made as far as said Sanitation Department continuing to be an executive department of the City of Indianapolis.

Therefore, Section 17 of Chapter 157 of the Acts of 1917 was finally amended by Section 3, Chapter 107, Acts 1943, same being Section 48-4217, Burns' 1945 Supplement, to authorize the Board of Sanitary Commissioners to issue *in the name of said city* the bonds of said sanitary district for such construction work, and further, in part, provided:

“* * * It shall be unlawful for said board of sanitary commissioners to cause to be issued, under this section of this act, any bonds of said sanitary district payable by special taxation when the total issue for that purpose, including the bonds already issued and to be issued, is in excess of two (2) per cent of the total assessed valuation (after deducting all mortgage exemptions) of the property within said sanitary district, and all bonds or obligations issued in violation of this provision shall be void. Said bonds shall not, in any respect, be a corporate obligation or indebtedness of said city, but shall be and constitute an indebtedness of said sanitary district, as a special taxing district, and said bonds and interest thereon shall be payable only out of a special tax levied upon all the property of said sanitary district as in this act provided, and said bonds shall so recite such terms upon their face, together

with the purpose for which they are issued:
* * *”

Section 21 of Chapter 157 of the Acts of 1917, *supra*, was also finally amended by Section 4, Chapter 107, Acts 1943, same being Section 48-4221 Burns' 1945 Supplement, to provide that said Board of Sanitary Commissioners could annually levy a tax on all the taxable property in said sanitary district for the expenses of said Board and salaries of employees, and other expenses not chargeable into the cost of property acquired under resolution for which special taxing district bonds were issued. Said section also provided in part:

“* * * and the county auditor shall estimate said taxes and enter the same upon the tax duplicate, and the county treasurer shall collect and enforce such taxes, in the same manner as state and county taxes are estimated, entered, collected and enforced. Any said county treasurer shall between the first and tenth day of each month, notify the board of sanitary commissioners of the amount of such taxes collected during the preceding month, and upon the date of notification above referred to, the county treasurer shall credit an account to be known as sanitary maintenance and general expense fund with such amount of taxes for sanitary purposes as may have been collected at that time, and such fund shall be used and expended for no other purpose than as stated in this section. The said board of sanitary commissioners shall have full, complete and exclusive authority to expend for and on behalf of said district, all sums of money thus realized: Provided, That warrants for such expenditures shall be drawn by the controller of such city upon vouchers of such board of sanitary commissioners. * * *”

Attention is further called to the provisions of Section 2, Chapter 107, Acts of 1943, which amend Section 5, Chapter 157, Acts 1917, same being Section 48-4205 Burns' 1945 Supplement, authorizing the board of trustees of any town, the common council of any city, the majority resident free-

holders in any platted subdivision, or the owners of any unplatted land not within the boundaries of an incorporated city or town located within the county in which first class city is located, to be included in such sanitation district upon their filing their petition therefor with such sanitary commissioners.

From the foregoing, I am of the opinion the 1943 amendments did not change the character of The Board of Public Works and Sanitation, as being an executive department of the city of Indianapolis, except to create a separate taxing district co-extensive with the boundaries of such city, or which could also include any other territory that thereafter might be included in said sanitary district due to the petition of persons in such county requesting that their land be included within such district. This would not in my estimation remove such sanitation department from being an executive department of such city.

A like situation was before the Supreme Court in the case of Johnson v. Board of Park Commissioners, (1930) 202 Ind. 282 which involved the question as to whether or not the Department of Public Parks in the city of Fort Wayne, Indiana, created by Chapter 68, Acts 1917, violated Article 13, Section 1, of the Indiana Constitution, and whether it created a separate department distinct from the city. On page 288 of the opinion the court points out Section 1 of Article 13 of the Constitution was not violated as the park department bonds were not an obligation of the city. On page 289 of the opinion the court continued:

“* * * It is pleaded that the property acquired under the Act of 1917 is the property of the city, upon which allegation, the point is made that two taxing powers for the city are attempted, to avoid the two per cent debt limitation, which is contrary to Art. 13 of the Constitution. *The Act of 1917 does not provide for the creation of a political or municipal corporation.* This law was enacted to confer additional powers upon the department of public parks; to authorize the creation of park districts (see the title to the act). These powers so granted to the board of park commissioners acting as board of commissioners of the park district are intended to be

but additional (cumulative). § 5 The board of commissioners of the park district is not given the power to sue, neither may this board, as such, representing an entity separate from the city, be sued. *There are no earmarks of a set-up in the act for the organization of a corporation.* The act is, as it says: 'An act concerning the department of public parks,' etc. The act does not violate Art. 13 of the Constitution." (Our emphasis).

Thereafter, by the provisions of Section 1, Chapter 157 of the Acts 1947, the Board of Public Works and Sanitation in cities of the first class was abolished, and it was provided in part:

"* * * All rights, powers and duties conferred, and all obligations and liabilities imposed, by law upon said board are continued in full force and effect; and all such rights, powers, duties, obligations and liabilities which relate to the department of public sanitation of each such city are hereby, as of July 1, 1947, transferred to and vested in the Board of Sanitary Commissioners, created by this act as one of the two successor boards to the aforesaid board of public works and sanitation, to be held and exercised by said Board of Sanitary Commissioners under all laws now or hereafter in force relating to said department of public sanitation; * * * Nothing in this act, however, shall be construed as repealing or affecting any other provisions or parts of any acts of the General Assembly relating to the powers, duties, rights, obligations and liabilities of the department of public works, of the department of sanitation, or of the board of public works and sanitation in such cities, or of any acts amendatory or supplemental thereto, except such as relate to the board hereby abolished and as are in direct conflict with any provisions of this act."

Section 2 of Chapter 157 of the Acts of 1947 reads as follows:

“In place of the board of public works and sanitation hereby abolished, there are hereby created and established, effective on and after July 1, 1947, a new board to be known as the ‘Board of Sanitary Commissioners’ which shall constitute the head of the department of public sanitation in each such city, and a new board to be known as the ‘Board of Public Works’ which shall constitute the head of the department of public works in each such city.”

Section 3 of Chapter 157 of the Acts 1947 provides, in part, as follows:

“The Board of Sanitary Commissioners, hereby created, shall have and exercise all of the rights, powers and duties, relating to departments of public sanitation, now conferred by law upon said board of public works and sanitation hereby abolished, including all rights, powers and duties conferred upon the board in control of such department by Chapter 157 of the Acts of the Indiana General Assembly of 1917, and all Acts amendatory thereof or supplemental thereto, and all rights, powers and duties hereafter conferred by law upon said Board of Sanitary Commissioners. * * *.”

Section 4 of Chapter 157 of the Acts 1947 authorized the board to determine the number and prescribe the duties of its employees.

Section 6 of said act provides that the salaries of the members of the board should be fixed by the mayor in accordance with the provisions of Section 10, Chapter 233, Acts 1933. (Section 48-1222 Burns’ 1945 Supplement).

Section 12, Chapter 157 of the Acts 1947 reads in part as follows:

“Nothing in this Act shall be construed so as to repeal * * * any part of Chapter 157 of the Acts of the General Assembly of 1917, or any Act amendatory or supplemental thereto, under authority of which the department of public sanitation in cities of the first class was created, or to repeal any law or part of law conferring any rights, powers or duties

on the board of public works and sanitation in cities of the first class, except such as are in direct conflict with the provisions of this act. It is the intent of this act to transfer and confer upon The Board of Sanitary Commissioners, hereby created, all of the powers, duties and authority pertaining to and concerning the department of public sanitation and now exercised and enjoyed by the board of public works and sanitation, hereby abolished, * * *.”

1. In answer to your first question, I am of the opinion said Board of Sanitary Commissioners, created by Chapter 157 of the Acts 1947, is not a separate and independent unit of government, but is still one of the executive departments of said city and governed by the general laws applicable thereto except as otherwise specifically provided. However, it is a separate taxing district for the purposes of its creation and its budget for taxing purposes must be filed pursuant to the provisions of Section 48-4221 Burns' 1945 Supplement, *supra*.

2(a). In answer to your question 2(a), it is submitted that Sections 5 and 8 of Chapter 119 of the Acts 1937, same being Sections 64-311 and 64-314 Burns' 1943 Replacement, were amended by Chapter 41 of the Acts 1947. Chapter 119 of the Acts 1937 generally applies to tax levies, rates and budgets. Section 64-308 Burns' 1943 Replacement, same being Section 2, Chapter 119, Acts 1937, defines the term "municipal corporation" as follows:

“The term ‘municipal corporations,’ as used herein shall include counties, townships, school townships, cities, school cities, towns, school towns, school districts, sanitary districts, park districts and all taxing units within the state.”

Section 1 of Chapter 41 of the Acts of 1947 provides, in part, as follows:

“* * * The officers of each municipal corporation shall, at the time of filing a statement of the tax levies and rates fixed by each of said municipal corporations, also file with the county auditor, at least

two days prior to the second Monday in September, two copies of the budgets on which said tax levies are based, and the same shall be carefully preserved by the auditor for the use of the county tax adjustment board. * * *.”

Therefore, in answer to your question 2(a), I am of the opinion that since the statute itself defines the words “municipal corporations” to include “sanitary districts” and “all taxing units within the State”, that Chapter 119 of the Acts 1937 as amended by Chapter 41 of the Acts 1947, applies to the Board of Sanitary Commissioners created by Chapter 157 of the Acts 1947.

2(b). In answer to your question 2(b), it is submitted Chapter 150 of the Acts 1935 (Section 64-1331 Burns’ 1943 Repl.) as amended by Chapter 275, Acts 1947, refers to the procedure for the establishment of the several tax levies and rates by the proper legal officers of any “municipal corporation”. This Section was originally Section 200, Chapter 59, Acts 1919. Section 202, Chapter 59, Acts 1919, as finally amended by Section 1, Chapter 142 of the Acts 1925, same being Section 64-1333 Burns’ 1943 Repl. reads as follows:

“The phrase ‘municipal corporation’ as used in the five preceding sections (§§ 64-1328—64-1332) shall be deemed to include a county, township, city, incorporated town, school corporation, or any person, persons, or organized body authorized by law to establish tax levies for any purpose.”

Section 1 of Chapter 275 of the Acts 1947, regarding emergency appropriations, provides in part as follows:

“* * * In the event the proper legal officers of any municipal corporation shall contemplate to meet the emergency and determine the expenditure of more money for the current year than was set out in detail in the published budget or in the budget as modified as a result of a hearing before the state board of tax commissioners, said officers shall give 10 days notice by publication in the same manner as provided for publication of the budget and proposed tax levy of such additional amount proposed to be expended,

fixing a date when the same shall be considered and determined upon, and taxpayers shall have a right to be heard thereon. No such proposed additional amount shall be appropriated or expended unless and until such appropriation and expenditure shall have been approved by the state board of tax commissioners, as hereinafter provided. * * *.”

Therefore, in answer to your question number 2(b), I am of the opinion since Chapter 275 of the Acts 1947, under the above definition of “municipal corporations”, applies to “any person, persons, or organized body authorized by law to establish tax levies for any purpose”, that it applied to the Board of Sanitary Commissioners created by Chapter 157 of the Acts of 1947 relative to emergency appropriations.

OFFICIAL OPINION NO. 63

October 9, 1947.

Miss Adeline C. Lehman,
 Superintendent,
 Indiana Girls' School,
 R. R. 2, Box 440,
 Indianapolis 44, Indiana.

Dear Miss Lehman:

Your letter of August 28, 1947, received requesting an official opinion as to the right of the city of Indianapolis to make a transfer charge for tuition for girls committed to your institution, who are thereafter placed by the Board of Trustees of your institution in private homes in the city of Indianapolis. These children are being placed in wage homes and, in some instances, in foster homes, they are still under your strict supervision and subject to recall to the institution and have not been finally discharged from your custody.

In your letter, you specifically desire to know whether Chapter 118 of the Acts of 1947 applies to your school on the above question. Since a study of that statute reveals it is an amendment of Section 10, Chapter 182 of the Acts of