is to be given to a term used in an Act, that meaning must be given to such term as so used.

Chicago, etc., Railroad Co., v. State ex rel. (1899), 153 Ind. 134, 138, 139;
State ex rel. v. Grange (1929), 200 Ind. 506, 510 and 511.

I am therefore of the opinion the aforesaid state institutions in the operation of their flour mills connected with said institutions, would not be controlled by the provisions of Chapter 264 of the Acts of 1945.

It is further respectfully submitted our office would not be authorized to advise what should be done in this respect as a matter of policy, which question is referred to in your letter. That is entirely the province of the administrative branch of the government.

OFFICIAL OPINION NO. 31

April 2, 1946.

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

Dear Sir:

I have your letter as follows:

"I have had inquiries from a number of municipalities with reference to Chapter 183 Acts of 1945, an Act concerning the assignment of wages, as to its application to municipalities in permitting such assignments to purchase hospitalization insurance. The same question has also been presented by the Blue Cross Hospital Plan in this state.

"I would like your official opinion on the following questions."
“1. Can a municipality of the State of Indiana be considered an ‘employer’ under the term so used in this Act?

“2. If the answer to question one is in the affirmative, may the municipality accept assignment of wages or salaries from its employees under subsection (c) (1), Section 2 of the Act?”

Chapter 183, page 452 of the Acts of 1945 (40-213 et seq. Burns’ 1933) reads in part as follows:

“Section 1. Any direction hereafter given by an employee to his or her employer to made a deduction from the wages to be earned by said employee, after said direction is given, shall constitute an assignment of the wages of said employee.

“Section 2. Any assignment of the wages of an employee hereafter made shall not be valid unless:

“(a) It is in writing and signed by the employee, and is, by its terms, revocable at any time by the employee upon written notice to the employer, and such assignment is agreed to in writing by the employer.

“(b) An executed copy thereof is delivered to the employer within ten (10) days after its execution.

“(c) It is made for the purpose of paying the:

“(1) Premium on a policy of insurance obtained for the employee by his or her employer.

“* * *

Whether a municipality is an employer within the terms of Chapter 183 (supra) or not, there is the preliminary question whether, as a matter of public policy, wage deductions may be made by municipalities upon authorization of employees.

The answer to that inquiry presents two aspects:

First, whether a municipal employee may authorize a deduction, and second, whether the municipality has the power and authority to honor the authorization.
As to the right of employees to authorize a deduction, it has been uniformly held in practically all states that an assignment of the unearned salary by a public officer is contrary to public policy. See:

Schmidt v. Dooling (1911), 140 S. W. 197 (Ky.);
Batesville Casket Co. v. Fields (1942), 155 S. W. (2d) 743.

This principle is predicated on the theory that to permit a public officer to tie up his future earnings impairs his incentive for public service. Consequently, the principle has not been applied to public employees.

Kimble v. Ledford (1936), 57 Pac. (2d) 163 (Calif.); See also:
Walker v. Rich (1930), 249 Pac. 56 at 59 (Calif.).

Also, since the principle is based upon an alienation of future earnings, it should not be applicable to a revocable authorization of wage deductions.

I find nothing in the laws of Indiana nor in the cases of this or other states which would impair the right of a municipal employee to authorize deductions from his wages for legitimate purposes.

As to the authority of the municipality to honor deduction authorizations, while it is true that municipal corporations have only such authority as is expressly given by statute, or necessarily implied, it is likewise true that when powers are conferred upon municipal corporations to do certain things, the corporations are clothed with reasonable discretion to determine the manner in which those things shall be done. See:

Walker v. Jameson (1894), 140 Ind. 591 at 602.

Municipal corporations are, of course, authorized to hire employees and to pay them for services rendered. Except for the fact that they can be paid only on proper warrant, (except in certain cases) there is no detailed provision for the exact method of payment. The only provisions with
respect to payment, which I am able to find are those contained in the powers and duties of controllers and particularly subparagraph 10 of Section 88, Chapter 129, page 219, Acts of 1905, as amended, (Section 48-1602 Burns' 1933 Annotated Statutes). Of course, in cities of fourth and fifth class, the duties of the controller are performed by the City Clerk-Treasurer. That section provides briefly that the controller shall prescribe the forms of accounts and pay rolls, manner in which salary shall be drawn, and the mode in which employees shall be paid.

That there is no uniform public policy against such alienation of employees' salaries is exemplified by the fact that the old Indiana Garnishee Law (declared unconstitutional on other grounds) (Chapter 61, page 204 of the Acts of 1925, Section 2-4501 Burns' 1933 R. S.) included municipalities as potential garnishees. Also, the statute concerning proceedings supplemental to execution (Section 596, Chapter 38, Acts of 1881 (Special Session as amended, Section 2-4403 Burns' 1933 R. S.) provides that such proceedings supplemental may run to municipal corporations, the state, or political subdivisions thereof.

I am therefore of the opinion that as a matter of policy and aside from any statute, it is within the reasonable discretion of the proper municipal authorities to permit pay roll deductions if they deem it desirable.

Of course, there would seem to be little question but that the municipality is authorized in its discretion, to refuse to accept assignments of authorizations. See:

State ex rel. v. Kent (1903), 71 S. W. 1066 (Mo.).

Considering your second inquiry first, (I am assuming that you are using the word "assignment" as it is used in Chapter 183, supra; i.e., as a revocable authorization) the question remains if the municipality is an employer within the meaning of Chapter 183, whether the purpose for which the authorization is made in this particular case falls within one of the classifications in Chapter 183. It seems to me that there is little question but what the so-called certificate of membership of Blue Cross Hospital Service is actually a
policy of insurance insuring against the risk of hospitalization. It also seems to me that the authorized deductions are actually premiums upon the policy of insurance. The question remains whether the policy of insurance is obtained for the employee by his or her employer within the meaning of subsection (c) (1), Section 2, Chapter 183, supra.

As an individual, a policy of insurance cannot be obtained in the Mutual Hospital Insurance, Inc. The insurance is originally instigated by a specified percentage of employees of one employer. The employer is then contacted and the employer must consent to the solicitation, to the collection of application cards, and to handling the records and payments. In addition, the employer must consent to make the deductions and to remit the deductions to the insurance company. Obviously in the case of municipal corporations, the employer could not bind itself to insure or guarantee payments nor to continue with any specified pay roll deduction plan, but it does become apparent that without the cooperation of the employer, the employee cannot possibly obtain the benefits offered in this particular policy.

"Obtained", as defined by Webster, means "to get hold of by effort, to get possession of, to procure, to acquire in any way, * * *"). See:

Ominsky v. George J. Cook (1912), 172 Ill. App. 507 at 509.

It seems fair to say that the policy itself is obtained through the combined efforts of the employer and the employee. Under those considerations, I am of the opinion that the deduction here requested is authorized under (c) (1) of Section 2 of Chapter 183, supra. In passing, it should probably be added that I do not believe that the authorization mentioned in Chapter 183 applies only to group insurance. If it had, it would have been very easy for the Legislature to have so stated that assignments of wages could be made to pay "the premium on a policy of group insurance." It is significant that such language is not used, hence, the Legislature must have intended the word "obtained" to mean something more than "purchased" for the employee.
Thus, the answer to your first question would not be controlling. If the municipality is not an employer within the meanings of the term used in Chapter 183 (supra) such a pay roll deduction is clearly valid, and if the municipality is an employer, the deduction is valid under subsection (c) (1) of Section 2.

I am therefore of the opinion that within the discretion of the municipal corporation, it may accept assignments of wages for payment of premiums upon memberships in the Blue Cross Hospital Service.

OFFICIAL OPINION NO. 32
April 2, 1946.

Hon. Earl K. Parson, Secretary,
State Board of Embalmers and Funeral Directors,
801 West Adams Street,
Muncie, Indiana.

Dear Sir:

Your letter of March 25, 1946, received in which you request an official opinion as to whether or not Clause (e) of Section 6, Chapter 165 of the Acts of 1939 is unconstitutional in that it permits a person to form a partnership with a licensed embalmer owning one-third of the interest in the business and thereby permits such individual to secure a funeral director’s license without meeting all the requirements contained in such section of the statute for the issuance to other persons of a funeral director’s license.

In your letter you desire to know if the exception contained in Clause (e) of said statute discriminates against persons regularly licensed as a funeral director under the other provisions of said section of said statute to an extent that would render Clause (e) of said statute unconstitutional.

Clause (e) of Section 6, Chapter 165, Acts 1939, same being Section 63-722 Burns’ 1943 Replacement, reads as follows:

“In lieu of any and all requisites and requirements set forth in subsections (b), (c) and (d) of this sec-