A city possesses manifold miscellaneous implied powers which arise as the result of a statutory enactment or of an inherent power. See McQuillen on Municipal Corporations, Second Edition, Revised Volume 1, Section 384.

As I have suggested before, the right and duty of a governmental unit to insure its property against loss by fire, etc., is incidental to the unit's power to own and manage its property. It therefore seems analogous that a similar duty to insure against the positive statutory liability imposed by Chapter 71 of the Acts of 1941, which latter liability is not limited and which because of the hazardous employment involved could conceivably be even more disastrous from the financial standpoint than a loss by fire. Since the liability which is fixed under Chapter 71 of the Acts of 1941 must be paid from the general fund, any loss thereunder would come from tax funds and I am of the opinion that the city and its taxpayers are entitled under the law to be protected in so far as is possible from such liability. This power does not extend to carrying insurance against acts or under circumstances in which a municipality has no liability.

It is my opinion, therefore, that a city is empowered to carry insurance on the liability which is created by Chapter 71 of the Acts of 1941 and the opinion of the Attorney General under date of October 9, 1941, on the same subject is superseded.

OFFICIAL OPINION NO. 65

June 24, 1946.

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

Dear Sir:

This will acknowledge receipt of your letter of June 21, 1946 in which you ask for my opinion concerning the legality of the payment by the Auditor of Hendricks County of certain funds raised by taxation to Central Normal College. In your letter you state that the funds in question were raised
by a tax levy made pursuant to the provisions of Chapter 114, page 243, of the Acts of 1945. In your letter you also state that there has been publicity to the effect that said college is to be taken over or in some way affiliated with the Episcopal Church. You also state that there is now on hand in the treasury of Hendricks County between $18,000 and $19,000 which was raised by virtue of the levy payable by the taxpayers in May and November of 1946. Upon these facts you request an opinion as to whether it would be legal for the County Auditor to draw his warrant to the college for said funds now in the county treasury.

Section 5 of Chapter 114 of the Acts of 1945 provides that all revenue accruing from the tax levy in question shall be paid to the county treasury and shall be kept as a separate and distinct fund and shall be paid to the proper fiduciary officer of such college or normal school on warrant of the county auditor in conformity with an order to that effect by the Board of County Commissioners.

Your question involves the effect and construction of said Chapter 114 of the Acts of 1945 and Section 6 of Article 1 of the Constitution of Indiana. Section 1 of said Chapter 114 authorizes such a levy by a county within the population range specified in which there is located a college, university or normal school which has been in existence for fifty years or more, which is non-sectarian, and provides a four year course of teacher training approved by the State Board of Education and which affords educational opportunities to all the people of such county.

Section 6 of Article 1 of the Indiana Constitution is as follows:

"No money shall be drawn from the treasury, for the benefit of any religious or theological institution."

As I understand it your question does not involve the validity of any of the proceedings by which said fund has been raised and, for the purposes of this opinion, it is assumed that all of the required and necessary steps have been taken to validate said levy and this opinion is limited to the question of the legality of the County Auditor now drawing his warrant to the proper fiduciary officer of the school upon an order to that effect by the Board of County Commissioners.
The fact that a majority or more of the members of the Board of Trustees have their religious affiliation with a particular church would not of itself make the college a sectarian or religious institution. Therefore, for the purpose of obtaining further facts bearing upon the question, I have caused the records of the office of Secretary of State to be examined. Such an examination discloses that Central Normal College filed Articles of Association under the Volunteer Association Act of 1881, as amended, particularly under the amendment of March 3, 1893. This act was repealed by Section 38 of the Acts of 1901, page 289, and does not appear in the present revision of Burns’. It may be found, however, in Burns’ Revision of 1894, Section 4583, et seq. The amendment of 1893 may be found in the Acts of that year at page 289.

In this connection I wish to point out that this was not a statute designed primarily for the incorporation of educational institutions, but was a general corporation act. However, one of the purposes set forth in said act is as follows:

“Second. To establish and maintain schools or institutions for the education of males or females under such terms and conditions, and upon such plan or system as shall be agreed upon.”

The Articles of Incorporation provided for 300 shares at $50 each for a total of $15,000. Article 3 provides:

“The object of this association shall be to establish, maintain and operate a normal school for the education of both males and females and to confer degrees upon those attaining a standard prescribed by this institution.”

The records in the Secretary of State’s office also show that on July 12, 1910 said corporation filed its acceptance of the Act of March 3, 1909, which act now appears in Burns’ Revised Statutes, Sections 25-3302 to 25-3310, inclusive. In substance this Act of 1909 provides that corporations theretofore created and then existing could accept the provisions of that act upon an affirmative vote of not less than two-thirds of the stockholders and they could elect a board of trustees, which board of trustees would thereafter select their own successors. Said act also provided that at the same meeting,
the stockholders could by a two-thirds vote provide that all
the capital stock be assigned and turned over to the trustees
to be held by them for the benefit of the corporation and
when all the stock of said corporation, by virtue of the pro-
visions of the act, had come under the control of said trustees,
they should then cancel the entire capital stock of the corpora-
tion and said corporation should then cease to be represented
by any capital stock. The acceptance of the act filed with the
Secretary of State contained copies of the resolutions accept-
ing the act and assigning and turning over to the trustees
of said Central Normal College all of the capital stock to be
held by said trustees for the use and benefit of said college.
I am informed that since that time until now said corporation
has continued with a self-perpetuating Board of Trustees
under the provisions of said act and said acceptance.

It is my opinion under these facts that said corporation now
exists and acts under and by virtue of its Articles of Incor-
poration so filed in 1900 under the Acts of 1881, as amended,
and is controlled by Article 3 of the Articles of Incorporation,
above quoted, as to its object and purpose.

I am informed that it is proposed that at a meeting of
the present Board of Trustees to be held on July 8, 1946 that
members of the present board will resign and their successors
will be elected; that their successors will be members of the
Episcopal Church who have been selected or designated for
the purpose by said church. The question thus arises as
to whether under these circumstances it would be illegal
for the county money to be turned over to such corporation
as in violation of the said Act of 1945 or the provisions of
Section 6 of Article 1 of the Indiana Constitution. In 5
A.L.R. commencing at page 866 is a lengthy collection and
discussion of cases bearing upon the question as to what con-
stitutes sectarianism in schools. Commencing at page 879
is a collection of cases construing constitutional provisions
similar to that of Indiana. The same question is also dis-
cussed in 47 American Jurisprudence under Schools, Sec-
tion 208, page 446, et seq. See also 42 American Juris-
prudence, Section 66 under Public Funds, page 767. The
Supreme Court of Indiana recently had occasion to write a
rather extended opinion on the question of what constituted
withdrawal of money from the treasury for the benefit of
religious or theological institutions. See State ex rel. Johnson v. Boyd v. Viets v. Krach (1940), 217 Ind. 348. One of the tests laid down by the court in this opinion appears at page 372 where the court said:

"* * * Whether these schools, during the period in question, were parochial or public schools is determined by their control. * * *"

We have examined the bulletin which will be published after the change in personnel of the present Board of Trustees on July 8, 1946. In this bulletin it is stated that the diocese of the Episcopal Church has taken action approving the "assumption of control of the college by a board of trustees made up of members of the Episcopal Church." Assuming the above statement is a correct statement of the action of the diocese and it is effected, it would appear that after the proper and necessary steps have been taken to carry that into effect that the college will become a sectarian or religious institution within the meaning of the constitutional provision, and that thereafter no money could be drawn from the county treasury for its benefit.

This does not, however, determine the right or duty of the Auditor to draw his warrant for the money now on hand to the present fiduciary officer of the college as now constituted and prior to the contemplated assumption of control by the Episcopal Church. The school was not a sectarian or religious school at the time of the budget in September, 1945, nor at the time the levy was made and became a lien. It is not now a sectarian or religious institution.

Bearing upon this latter question we are further advised that at the time of the inclusion of a sum in the September budget of 1945 for the 1946 levy, it was agreed by the college that if such item was included and such levy made that students who were residents of Hendricks County would be permitted to enroll and attend the school without payment of tuition. I am further advised that pursuant to that arrangement there are now more than fifty students who are residents of Hendricks County and who are attending said school without having paid tuition. I am further informed that during the year 1946 the college, acting under its present Board of Trustees and in anticipation of the levy already
made, has expended funds and incurred obligations in the amount of more than $19,000, including the obligation to give tuition free to those residents of Hendricks County who have already enrolled with that understanding. During none of this time has it been a religious or sectarian school.

It is my opinion that to the extent that said college acting by its present and past Board of Trustees has expended or incurred liabilities against said fund raised by said tax levy and to the extent that it may expend or properly incur such obligations up to the time the control of said school passes to the new Board of Trustees, that it will be legal for the Auditor to draw his warrant for such sums to the proper officer of said college, and that this would not be the drawing of money from the treasury for the benefit of a religious or theological institution in violation of the constitutional provision or the 1945 Act.

OFFICIAL OPINION NO. 66
July 8, 1946.
Hon. William C. Stalnaker, Director,
Department of Veterans' Affairs,
431 North Meridian Street,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of July 1, 1946, received requesting an official opinion on the following questions:

"1. Is the widow of a soldier who served in World War I and who was killed in action during his service in World War II entitled to the $1,000.00 exemption on property tax?

"2. Would the widow of a soldier who served in World War I and who was killed in action during his service in World War II be entitled to $2,000.00 exemption property tax? Would the death of the soldier be construed as the same as a 100 percent service connected disability?"