OFFICIAL OPINION NO. 12

February 18, 1946.

Hon. C. E. Ruston, State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

I have your letter of recent date in which you ask an official opinion upon the following question:

"Is the city treasurer who collects the city taxes of a city not a county seat, entitled to receive and retain in addition to the salary provided by law a commission on the delinquent city taxes collected by him?"

Section 202 of Chapter 129, Acts of 1905, as last amended by Section 1 of Chapter 202, Acts of 1919, Section 48-6711 of Burns' 1933, provides in part as follows:

"* * * In all cities of this state which are not county seats and have city treasurers, the common council of such city may authorize such city treasurer to receive and collect all taxes shown upon the duplicate of such city for city purposes the same as the county treasurer collects such taxes for other cities * * *. Each of such city treasurers shall be allowed, in addition to the salary provided by law, a commission of six (6) per cent upon all delinquent city taxes collected by him. * * *

Chapter 233, Acts of 1933, as amended by Chapter 97 of the Acts of 1935, Section 48-1201, et seq. Burns' 1933, provides for the classification of civil cities and provides for the salaries of municipal officers of such cities by classes and/or population.

Section 6 of the 1933 Acts as last amended by Chapter 232 of the 1945 Acts, Section 48-1216 of Burns' 1933 (Supp.) provides for the elective office of city treasurer in cities of the third class which are not county seats. This is the only class city in which city treasurers are elected.
Section 15 of the 1933 Act, as amended by Chapter 304 of the Acts of 1943, Section 48-1227 Burns' 1933 (Supp.) provides as follows:

“In cities having a population of twenty thousand (20,000) or over and less than thirty-five thousand (35,000), as shown by the last preceding United States census, the annual salaries for officers herein named shall be fixed by the common council, as hereinafter provided, at not to exceed the following amounts: Mayor, two thousand dollars ($2,000); controller, one thousand eight hundred dollars ($1,800); city clerk one thousand eight hundred dollars ($1,800); city judge, one thousand five hundred dollars ($1,500); county treasurer ex officio city treasurer, six hundred dollars ($600); in all cities having a city treasurer other than the county treasurer as now provided by statute the annual salary of the city treasurer shall not exceed one thousand eight hundred dollars ($1,800); city attorney, one thousand eight hundred dollars ($1,800); city civil engineer, one thousand eight hundred dollars ($1,800); members of the common council, one hundred fifty dollars ($150) each; county auditor, for service to civil city, four hundred dollars ($400): Provided, however, That in any of such cities which owns and operates two (2) or more municipal utilities or plants, notwithstanding any of the provisions of the act of which this act is amendatory, the mayor of any such city for additional services rendered by reason thereof, shall be paid an aggregate annual salary of twelve hundred dollars ($1,200) by such plants or utilities in addition to the annual salary herein otherwise authorized; the city attorney, city clerk and city civil engineer, for additional services rendered by reason thereof, shall each be paid an aggregate annual salary of one thousand dollars ($1,000) by such plants or utilities in addition to the annual salaries herein otherwise authorized: And, provided further, That the proportionate amount of the aggregate salaries to be paid by each of such plants or utilities, shall, in each
instance be determined by the governing board of each such plants or utilities."

Section 21 of the 1933 Act as amended by Chapter 271 of the 1945 Acts, Section 48-1233 of Burns' 1933 (Supp.) provides in part as follows:

"The common council of each and every city shall, by ordinance duly enacted on or before the first day of April of the year in which elections for the election of city officers are held, fix the annual salaries of all officers provided for in this act, and such salaries when so fixed shall not be changed by the common council during their respective terms of office. The salaries as herein authorized shall be in full for all services performed for the city: Provided, however, that in any city which owns or operates a sewage disposal plant or any other utility or utilities, the common council shall, by ordinance duly enacted, provide that the mayor, city attorney, city engineer, city controller, and city clerk or city clerk-treasurer of such city may receive, from the funds of such sewage disposal plant or other utility or utilities, a compensation in addition to the annual salary herein otherwise authorized, which additional compensation shall not exceed the sum total of one thousand two hundred dollars ($1,200) per year; Provided, further, that in cities of the fifth class having three (3) utilities not including a sewage disposal plant said additional compensation shall not exceed $1,500. * * *"

While it is true that Section 48-6711 of Burns' 1933, Sec. 1, Chapter 202, Acts of 1919, specifically provided that the city treasurer of a city which was not a county seat would be entitled to a fee of 6% on the delinquent city taxes collected by him, it is also true that the legislature in 1933 undertook to fix the salaries for municipal officers in all civil cities. Section 48-1227 of Burns' 1933, above set forth, specifically provides that the salary for the city treasurer in third class cities shall be fixed by the common council at not to exceed one thousand eight hundred dollars ($1,800). Section 48-1233 of Burns' 1933, above quoted, expressly pro-
vides that "the salaries as herein authorized shall be in full for all services performed for the city." It is then further provided that additional compensation may be paid certain city officers where such city owns a sewage disposal plant or other public utilities. It is to be noted that the city treasurer is not even included among those officers entitled to additional compensation. (1945 Ind. O.A.G. 382, No. 96.)

It was the evident intention of the legislature by Sections 48-1227 and 48-1233 of Burns' 1933 to limit the salary of city treasurers in cities which are not county seats to a salary of $1,800 per year which was to be in full for all services performed for the city, except as such city treasurer might fall within the exceptions provided for in Section 48-1233. Since the city treasurers involved in this question do not fall within any of the exceptions referred to, it is my opinion that they are not entitled to keep and retain as their own the 6% fee for collecting delinquent city taxes provided for by Section 48-6711, and this latter section of the statute to that extent was impliedly repealed by Sections 48-1227 and 48-1233 Burns' 1933.

OFFICIAL OPINION NO. 13
February 19, 1946.

Hon. Milton Matter, Director,
Indiana Department of Conservation,
Indianapolis 9, Indiana.

Dear Sir:

I have your letter of recent date in which you request an official opinion upon the following question:

"Does the Indiana Department of Conservation have power to purchase state park hotel equipment by giving notes for the purchase price payable July 1, 1946, July 1, 1947 and July 1, 1948, which notes should be paid only from funds which accrue in the revolving fund of the Division of Lands and Waters of the Department?"

"The Department wishes to purchase the hotel equipment and furniture at McCormick's Creek and