OFFICIAL OPINION NO. 15
February 21, 1946.

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

Dear Sir:

This is in response to your request of January 16, 1946, for an opinion as to whether or not municipally owned utilities are required to comply with the provisions of Chapter 99 of the Acts of 1945 in the purchase of their supplies and materials. This Act requires that notice be given and bids be taken and certain forms be used in making purchases.

On April 10, 1943, I gave an opinion construing Chapter 129 of the Acts of 1943 which is similar to the 1945 Act and I held that the 1943 Act did not apply to municipal utilities.

See 1943 Indiana O. A. G., p. 231.

Section 1 of the 1943 Act and the 1945 Act are alike so far as that section is pertinent here, and the main body of the section is in part as follows:

"That any person, officer, board, commissioner, department commission, or purchasing agent hereinafter designated as purchaser, duly authorized and empowered by law or delegated and entrusted with authority, to make purchases of material or materials, equipment, goods and supplies, except current utility bills, payment for which is to be made from any appropriation of public funds made under the provisions of the budget law, * * *". (Our emphasis.)

See also Section 8, p. 219.

My opinion in 1943 was that the 1943 Act only applied to these public officials and boards where the payment for the goods purchased was to "be made from an appropriation of public funds under the provisions of the budget law."—That in substance means from money raised by taxation, and I referred to the budget law as set out in Burns’ Ann. Stat. Ind. Supp., pages Title 64-1331.
As stated in your letter there is an added provision in Section 1 of the 1945 Act which was not in the 1943 law. This provision was added to the end of Section 1 and is as follows:

“Providing that municipally owned utilities in case of emergency only may purchase repairs and equipment without the giving of notice and receiving bids.”

Sec. 53-501 B. R. S.

This proviso takes it for granted that the money to be expended in the operation of municipal utilities for their repairs and supplies comes from taxation. This is a mistaken assumption. The funds used by municipally owned utilities in the procurement of their repairs and equipment do not come from taxes. It comes from their patrons for service rendered in supplying them light, heat, power, water or transportation.

There is an obvious reason why the Legislature would enact a law throwing certain safeguards around the expenditure of public money raised by taxation.

However, a municipality in owning and operating a utility plant is to some extent carrying on a proprietary business enterprise rather than exercising a governmental function.

City of Logansport v. Public Service Commission (1931), 202 Ind. 523.

It may be in competition with a privately owned public utility. Circumstances may arise when it would not be practical to comply with all the purchasing requirements set out in the 1945 Act, and on the other hand it may be a wise policy for municipal utilities to follow the requirements of the 1945 statute when possible.

My opinion goes only to the extent that municipally owned utilities in the operation of these plants are not legally obligated to comply with the requirements of Chapter 99 of the 1945 Act, except in a possible situation when funds raised by taxation may be involved. The inclusion of the proviso at the end of Section 1 which purports to bring municipally owned utilities within the purview of a law designed to control the expenditure of funds raised by taxation is simply one of those
legal anomalies that sometimes come about because of the unskilled drafting of a statute.

OFFICIAL OPINION NO. 16
February 23, 1946.

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

Gentlemen:

I am in receipt of your letter of February 7th as follows:

"This board has received inquiries regarding the interpretation of Section 1 of Chapter 2 of the Acts of the first special session of the 83rd General Assembly (1944) appearing in the 1945 Acts at page 6. These inquiries reveal a particular doubt in the minds of local officials as to the length of time that veterans of the armed forces are entitled to poll tax exemption after discharge from service, and as to whether there is a distinction between one who is discharged before the termination of hostilities or afterwards.

"Will you kindly give this board an official opinion outlining your interpretation of this section in this regard."

The section to which you refer reads as follows:

"That all members of the active militia of the State of Indiana, by whatever name the same may be designated, for and during the time they may be members thereof, and all persons who have been, now are, or shall hereafter be, members of the armed forces of the United States of America, and receiving pay therefor from the United States Government, are hereby declared to be exempted from the payment of any and all poll taxes assessed for, and during, the time of such service after January 1, 1941, until twenty-four months after the termination of the present hostilities, or until