I am therefore of the opinion that upon the basis of the showing made by the exhibits submitted and representations made by the attorneys for the Amalgamated Life Insurance Company, Inc., it is not transacting business in Indiana, within the purview of the Indiana Insurance Act.

CITIES AND TOWNS—Employees—Increase of salary.

June 8, 1944.

Opinion No. 54

Hon. Otto K. Jensen, State Examiner,
Department of Inspection and Supervision
of Public Offices,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 31st, in which you ask the following questions:

"Can the Board of Public Works and Sanitation and the city council, if necessary, by resolution or ordinance, establish increases in the various salary and wage scales provided in the 1944 budget, payable from the unappropriated balance in the General Fund of the Sanitation District?"

We call your attention to the last part of Section 2 of Chapter 307 of the Acts of 1935 (p. 1496), which amended Section 10 of the Acts of 1933, which is as follows:

"* * * Provided, however, That in cities of the first class the employees of the board of sanitary commissioners shall be appointed as now provided by law and that the number and salaries of such employees shall
be fixed by the mayor with the approval of the common council, which may reduce but in no event shall raise the salary so fixed by the mayor and when so fixed it shall be the duty of the common council to appropriate the money necessary to pay said salaries. All salaries fixed by the mayor with the approval of the common council in accordance with the provisions of this act, shall be fixed on or before the first Monday in September of each year for the next calendar year immediately ensuing and when so fixed shall not be increased during such ensuing calendar year except as provided in this act.” (Emphasis ours.)

Section 48-1222, Burns’ R. S. 1933.

We find no provision in said act which would permit increases in the various salaries and wage scale provided in the 1944 budget which was fixed on or before the first Monday in September, 1943.

We also call your attention to Section 5 of Chapter 159 of the Acts of 1935 (p. 582). This section also provides that the board shall appoint all other necessary officers and employees, subject, however, to the approval of the mayor; and that the salaries of such employees shall be fixed by the mayor subject to the approval of the common council. It was also provided by this latter act in Section 3 that in all other respects than therein set out the “provisions of law now or hereafter in effect relating to the board of public works of such cities are continued in effect and shall apply to such successor of that board.” This act abolished the former board of sanitary commissioners and transferred all its liabilities, rights, powers and duties to the Board of Public Works and Sanitation.

Section 5 of Chapter 159 and Section 2 of Chapter 307 above referred to each apply to cities of the first class and to employees of the Board of Public Works and Sanitation. I see nothing in irreconcilable conflict in the two sections and in my opinion the language in Section 10, as amended, prohibiting an increase in the salaries of the employees of the board applies.

In this connection I call your attention to an official opinion given to you on August 3, 1943 and published at page 477 of the Opinions of the Attorney General for 1943. While the
question was different in that opinion, it was therein pointed out that the section above referred to prohibited the increase of salaries during the ensuing calendar year. See also: Opinions Attorney General for 1941, page 420 at page 422, in which opinion the Attorney General had before him the effect of Section 48-1222, Burns' R. S. 1933, and after quoting said section stated in the opinion as follows:

"The only salaries exempt from the rule established in the foregoing language are 'those fixed by the common council under the provisions of this Act,' Sections 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the same Act (i.e.: Chap. 233 of Indiana Acts of 1933), are devoted to enumerating specific instances wherein the annual salaries for designated officers shall be fixed by the common council. Employees of the police and fire departments are not enumerated in such sections and under the Act the salaries for such employees are fixed by the mayor with the approval of the common council.

"Consequently the salaries of policemen and firemen may not be increased by appropriate action of the common council in the operating year of the budget. Generally speaking, the salaries of members of the other departments of a civil city are fixed by the mayor with the approval of the common council and are not subject to increase during the year for which the budget has been adopted." (Emphasis ours.)

In your letter you state the Board of Public Works and Sanitation of the City of Indianapolis is faced by a serious personnel situation in the operation of the city Sanitation plant due to the low wage scale provided in the 1944 budget. The only provision in the law which I find for making additional appropriations during the year appears in Chapter 150 of the Acts of 1935 (Section 64-1331, Burns' R. S. 1933) which act is limited in its application to cases "of casualty or accident or extraordinary emergency," and provides a procedure to be followed in such cases.

It is very doubtful if this act would be applicable to the question submitted by you in the face of the above quoted express prohibition against increase of salary during the ensuing year, but if applicable at all it would apply only to
a case of casualty or accident or extraordinary emergency which arose after the budget was fixed. The facts outlined in your letter do not indicate that a casualty, accident or extraordinary emergency has arisen since said budget was fixed.

COMMISSIONER OF LABOR: Trade Unions. Right of governmental employees to join a trade union—collective bargaining procedures not applicable to governmental employees.

June 10, 1944.

Opinion No. 55

Hon. Thomas R. Hutson,
Commissioner of Labor,
Room 225 State Capitol,
Indianapolis, Indiana.

Dear Sir:

I have your letter in which you request an official opinion upon the following questions:

"1. Do state, city and county employees have the right to join a union of their own choosing without fear of intimidation, coercion or restraint?

"2. Is there any legal bar to the recognition of a union representing a majority of its employees by state, city or county officials?

"3. To what extent can recognition as a collective bargaining agent be implemented by accepted collective bargaining procedures? Specifically, may union committees meet with and negotiate wages, hours and working conditions with city councils, mayors, boards of county commissioners, boards of education, boards of trustees of public institutions, chairmen and boards of commissions and departments, etc?

"4. To what extent may such a process of negotiating or bargaining be formalized in a written document which outlines the duties, privileges and responsibilities of each of the parties of the negotiations?

"5. What would be the character of such a document under the present laws of the State of Indiana? What would be the maximum amount of protection