"public funds" and "public libraries" should be limited to those public funds and public libraries over which the State may exercise its sovereignty. For instance, a construction could not be placed upon the Act which would bring within its terms a librarian of the library for the Federal District Courts in Indiana although those libraries are supported by federal public funds. So applied, the Act would not require a supervisor in the position of the W.P.A. supervisor to secure a certificate from Indiana in order to hold that position. And likewise, the W.P.A. library would not be a public library within the life certificate provision.

I am consequently of the opinion that without other compliance with the Library Certification Act, a life certificate should not be issued in the case you set forth.

STATE BOARD OF ACCOUNTS: Cities and towns—special attorney cannot be appointed by city council. City attorney has charge of city's legal business.

August 10, 1944.

Opinion No. 73

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

Dear Mr. Jensen:

This will acknowledge receipt of your letter of July 31st in which you ask the following questions relative to the common council of the City of Gary appointing and employing its own special counsel to carry on or effect settlements in certain pending litigation involving Barrett Law bonds and funds:

"1. Can the common council create and set aside a fund from unexpended funds, and employ its own attorneys for the purpose of carrying on Barrett Law litigation in which the city is involved, such attorneys to take orders from and to be accountable to the common council only, the common council making all
arrangements for fees, etc., out of such specially created fund?

“2. Can the common council appoint its own attorney and pay such attorney out of the city funds from an account created by the common council by ordinance for that purpose?

“3. If this can legally be done, how would it affect the liability of the city controller in respect to paying out money to a special attorney at the request of the common council from the account so specially created?

“4. If your answer to either question No. 1 or question No. 2 is in the affirmative, can such fund or account be created by any method other than by a special appropriation subject to the approval of the State Board of Tax Commissioners as provided by Section 1 of Chapter 150, Acts of 1935?”

Under the provisions of Section 48-1801, Burns’ R. S. 1933, the head of the legal department of every city is the city attorney. Said section, in part, provides as follows:

“The head of the department of law in every city shall be the attorney and counsel of such city. He shall be appointed by the mayor, shall hold office as hereinafter provided, and give bond with surety in the sum of five thousand dollars ($5,000), to be approved by the mayor, except in the cities of the fifth class, the city attorney shall be appointed by the common council. He shall have the management, charge and control of the law business of such city and for each branch of its government, shall prosecute all violators of city ordinances, shall be the legal adviser of all its departments and officers, shall draw up ordinances, leases, deeds, contracts or other legal papers for such city and its various departments, when requested to do so by the proper officer, shall be the custodian of the papers properly appertaining to his office, and shall turn the same over to his successor in office. He shall conduct all legal proceedings authorized by this act, and all appeals of every nature whatsoever in which such city or the public shall have an interest, shall make all searches and examine all abstracts of title required
in opening, widening or changing any street, alley or public place, or required in any public work of any kind. * * * And in all cities, the city attorney shall employ such other assistants as he may be authorized to do by ordinance, and no other. The city attorney of every city shall promptly commence all proceedings necessary or advisable for the protection or enforcement of the rights of such city or of the public. * * *.”

(Our underscoring.)

The above section has been superseded as to salary provisions, but in my opinion the above quoted part remains in effect.

The above section was before the Appellate Court in the case of Williams v. City of Michigan City (1934), 100 Ind. App. 136, and the court said at page 138:

“* * * However, the complaint on its face shows that he was not city attorney for appellee nor assistant to the city attorney at the time he rendered his said services. § 10335, Burns’ 1926, § 48-1801, Burns’ 1933, § 11469, Baldwin’s 1934, provides that it is the duty of the city attorney, who is appointed by the mayor, to commence all proceedings necessary or advisable for the protection or enforcement of the rights of such city or of the public. The right to employ assistants to perform such duties, under said section, is vested in said city attorney, subject to the passing of an ordinance authorizing such employment.

“Appellant contends that there existed an emergency by reason of the fact that the peace, safety, and welfare of the city were in jeopardy and since the services rendered were requested by the mayor and council, valuable to and accepted by the city, that an implied contract existed and recovery should be allowed. Burns 1926, § 10284 enumerates the powers of the council and no where therein do we find the right, power or provision to employ counsel for such alleged emergency. Any one dealing with a city council, in this state, must take notice of the powers and authority vested in such bodies. City of New Albany v. New Albany St. R. Co. (1909), 172 Ind. 487, 87 N. E. 1084.
The newly elected mayor had the power to appoint appellant city attorney or he could have appointed a city attorney, who in turn could have employed this appellant as an assistant, as provided by § 10335, supra.

"The intent of the legislature in § 10335, supra, which is written in plain and unequivocal language, is clear. That statute means just what it says and, therefore, needs no construction. Cheney v. State (1905), 165 Ind. 121, 74 N. E. 892; In re Whisler (1914), 56 Ind. App. 269, 105 N. E. 158. The appointment of an attorney and his assistants to represent the city is fixed by the above statute and such appointments being statutory we are bound thereby."

Section 10-284, Burns 1926, referred to by the court now appears as Section 48-1407, Burns' R. S. 1933.

It is therefore my opinion that the common council of the City of Gary cannot appoint its own attorney and pay him out of any fund of the city. The litigation in question is by statute under the "management, charge and control" of the city attorney and his assistants.

In view of my conclusion above expressed, it is unnecessary to answer the remainder of your questions.

STATE BOARD OF TAX COMMISSIONERS.
TAXATION: Personal action may be brought to recover delinquent taxes.
PARTIES: Public Administrative Boards can sue in own name only when expressly authorized. State of Indiana can sue without relator to enforce its claims.

August 14, 1944.

Opinion No. 74

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of August 1st, which reads as follows: