by a long line of cases, the party entitled to the fruits of the action has been held to be the real party in interest, unless the party comes within an exception provided for by the statutes."

To summarize, it is my opinion that a personal action may be brought to recover delinquent taxes and the plaintiff in such an action would be the State of Indiana; that in such an action taxes due the state and its subdivisions may be recovered.

PUBLIC SERVICE COMMISSION: Fee to be charged Public Utilities on refunding operation.

August 14, 1944.

Hon. George N. Beamer, Chairman, Public Service Commission, State House, Indianapolis, Indiana.

Dear Sir:

I have your letter of August 2nd in which you set forth that The Indiana-Michigan Electric Company desires to retire preferred stock bearing 6 and 7 per cent interest and to issue new preferred stock in its place bearing a lower rate of interest. I quote from your letter:

"The present authorized capital stock of the Company is 100,000 shares of 7% preferred ($100.00 par value), 50,000 shares of 6% preferred ($100.00 par value) and 1,000,000 shares of common stock (no par value.) There are presently outstanding 39,585 shares of 7% preferred stock, 35,718 shares of 6% preferred stock, and 870,976 shares of common stock. The Company proposes to purchase and redeem its presently outstanding shares of 6% and 7% preferred stock and to issue and sell 120,000 shares of similar preferred stock, of $100.00 par value, at an annual cost or expense to the Company of not exceeding 4¾%. It is proposed that the entire transaction be completed not later than September 15, 1944. As a means of accomplishing its objective, the Company proposes to borrow
from six New York banks the sum of $7,880,000.00, to be evidenced by six promissory notes of the Company, the proceeds of which are to be deposited with the New York Banks, at which the holders of the present preferred stock are to present their respective certificates for redemption, and this note is to be paid out of the proceeds from the sale of the 120,000 shares of proposed cumulative preferred stock. It is contemplated that the notes will be paid on the same day that the proceeds are realized from the sale of the 120,000 shares of cumulative preferred stock, but in no event the notes to be outstanding longer than fifteen days.

"* * *

"* * * At the present time, the Securities and Exchange Commission requires that the sale of securities in such transaction be through the medium of competitive bidding, and therefore it is necessary to provide, through a loan, the amount of money required to redeem the securities, which are to be refunded, prior to the sale of the new securities and then to use the proceeds from the sale of the new securities to repay the loan. * * *

"We are advised that except for the refunding operation there would be no issuance of notes and that the transaction will be so handled that there is no possibility of notes being issued and the proceeds not used in carrying out the refunding operation.

"We respectfully request your opinion as to whether or not this Commission should assess a fee on the principal amount of said proposed notes to be issued under the circumstances above stated."

Formerly it was the practice to have such a new issue of preferred stock underwritten and the underwriter would advance funds to retire the old stock so that the borrowing of money to retire the old stock was not necessary. That procedure would have to be followed in this case had it not been for the requirement of the S. E. C.

In essence the transaction appears to me to be a refunding operation of old preferred stock by new stock with the bor-
rowing of the money a temporary and incidental step in order to complete the refunding operation.

It is not necessary in this opinion to consider the merits of the transaction, since that is a matter for the Public Service Commission, but your sole question is whether the Commission should charge a fee for the issuance of notes to the New York banks and also charge a fee upon issuance of the new preferred stock.

In regard to fees for issuance of securities by public utilities, Section 96 of Chapter 76 of the Acts of 1913, as amended by Section 1 of Chapter 71 of the Acts of 1925 (54-511 Burns 1933 Indiana Statutes), reads as follows:

"The commission shall charge every public utility and every municipality receiving permission from it to issue any stock, bonds, notes or other securities an amount equal to twenty-five cents (25c) for each hundred dollars of such stock, bonds, notes or other securities, and the same shall be paid into the state treasury before any such stock, bonds, notes or other securities shall be issued. All money accruing from such charges, so made by the commission, is hereby appropriated to the commission for its use in defraying its expenses until and including the thirtieth of September, 1925, and thereafter shall be paid into the general fund of the state: Provided, That as to common stock of no par value, the fee shall be two and one-half cents (2½c). per share."

The easy answer to your question would be that the issuance of the notes and the issuance of stock are both within the letter of the statute and consequently a fee upon both should be charged, but it is neither fair to the State of Indiana nor to the person or corporation affected by a statute to ascertain rights and obligations from a single section of a comprehensive act. Hence, it is necessary to consider as a whole Chapter 76 of the Acts of 1913, commonly known as the Shively-Spencer Utility Commission Act, with the various amendments thereto, one of which changed the name to Public Service Commission Act. Particular attention should be given to Sections 88 and following (54-501 Burns 1933 Indiana Statutes and following) dealing with the issuance of
securities. Upon reading the Act as a whole, it is apparent that the purpose and intent of the Legislature was a regulation of utilities aimed at the promotion of utilities in Indiana of sound financial structure and which render service to residents of the state at a low rate. In order to do that, it is necessary to supervise the rates, the issuance of securities, at the same time to examine and investigate. In Public Service Commission v. State ex rel., 184 Ind. 273, after reviewing the provisions of the Public Service Commission Act, particularly those dealing with the issuance of securities, the Court said at page 279:

"There can be no doubt that one of the purposes of statutes of the kind under consideration is the prevention of the useless and wasteful expenditure of capital in the duplication of plants and instrumentalities to be utilized in furnishing heat, light or other necessary service to the public. Such statutes proceed upon the assumption that all capital unnecessarily expended in this way will have the effect of increasing the cost of the service supplied to the public, and that, by legislative control and regulation of the rates to be charged the injurious results which might otherwise arise from a lack of competition can be effectually controlled. The State, through its Public Service Commission, has taken complete control of these corporations in so far as necessary to prevent the abuses of monopoly."

See also:

Public Service Commission v. City of Indianapolis, 193 Ind. 37.

Incidental to this supervision and regulation, expenses are incurred by the Public Service Commission and various sections of the statute make provision for the payment of those expenses by the utilities. For instance, the expenses for valuation in connection with rates are provided for by Section 11 of the Act, as amended by Section 1 of Chapter 63 of the Acts of 1925 (54-205 Burns 1933 Indiana Statutes). By that section the reasonable expenses for such valuation are fixed by the Commission and the utilities are required to pay them prior to the issuance of an order. In the event
of investigations, Section 74 of the Act, as amended by Section 1 of Chapter 60 of the Acts of 1925, provides a similar requirement in connection with investigation expenses. It is apparent from the provisions of Section 96, supra, that the fee charged for issuance of securities is likewise to meet the expense of the Commission incident to the determination of whether the securities should be issued. The purpose of the section to be considered therefore becomes apparent, not as a privilege tax, but more in the nature of reimbursement for time spent and expenses involved.

For a similar interpretation of another section of the Act requiring a filing fee for amendments to certificates see Opinions of the Attorney General, 1939, page 194. There it was said:

"I do not believe that the above quoted section 34, which requires the payment of a filing fee of $25.00 where an amendment of a certificate or permit is asked, was intended by the legislature to apply to a situation where simply a change in the name of the same operator is asked. Such a change does not require the commission to hold any hearing or determine any question of convenience or necessity or consider any problem of highway use, or of competitive conditions. * * *

A review of the sections of that Act dealing with the issuance of securities will show that the limitations placed upon public utilities in the issuance of securities, limitations placed upon the Commission in approval of issuance, and necessity of such approval, are all aimed at a preservation of the sound capital structure of a utility. Securities may not be issued unless the issue complies with all of the provisions of the Act and unless the funds derived therefrom are applied to the specific purposes for which they were issued.

In construing the Act as a whole and as applied to the petition of the Indiana-Michigan Electric Company, it appears important to me that the issuance of the notes and the preferred stock are in essence a part of the same transaction and that the notes are merely a temporary device, essential however, to the completion of the transaction. Of equal importance is the fact that those notes are not issued at the
discretion of the petitioner but are required by Federal
regulation.

Only one indebtedness is created since the notes necessarily
will be replaced by new preferred stock when sold, and in
its deliberations the Public Service Commission is put to the
expense of considering only one indebtedness in relation to
the capital structure of the utility.

Having considered the general purpose and nature of the
Act and the essential features of the transaction involved,
our problem then is to apply the fee statute to this transac-
tion in the light of the other provisions of the Act. Was it
the legislative intent in this situation to require a double fee
for the performance of a service incident to one transaction?
As stated in 3 Sutherland Statutory Construction 137, "A
large number of American decisions, and especially the mod-
ern cases, have subscribed to the doctrine extending or re-
stricting the literal expression of a statute according to the
spirit and policy of the legislation." That principle is com-
monly known as interpretation by the equity of the statute,
but by whatever name it is known, it is well exemplified by
the language in Traudt v. Hagerman, 27 Ind. App. 150 at 152:

"In Parvin v. Wimberg, 130 Ind. 561, 80 Am. St.
254, 15 L. R. A. 775, the court says: 'The purpose of
construing a statute is to arrive at the intention of
the legislature. For that purpose the courts will look
to the whole statute and all its parts, and when such
intention is so ascertained, it will prevail over the
literal import and the strict letter of the statute.' The
legislature's intention as collected from an examina-
tion of the whole as well as the separate parts of a
statute will prevail over the literal import of par-
ticular terms and will control the strict letter of the
statute when an adherence to such strict letter would
tend to injustice, to ambiguity, or to contradictory
provisions. 'In the construction of statutes, the prime
object is to ascertain and carry out the purpose of
the legislature in their enactment. To do this, the
words used in the instrument should be first consid-
ered in their literal and ordinary signification, but it
is often necessary to inquire beyond such meaning of
words.'
City of Evansville v. Summers, 108 Ind. 189, 192.
See also Mayor v. Weems, 5 Ind. 547;
Middleton v. Greeson, 106 Ind. 18;
Miller v. State, ex rel., 106 Ind. 415;
Stout v. Board, etc., 107 Ind. 343;
City of Valparaiso v. Gardner, 97 Ind. 1, 49 Am. Rep. 416;
Maxwell v. Collins, 8 Ind. 38;
Taylor v. Board, etc., 67 Ind. 383;
Prather v. Jeffersonville, etc., R. Co., 52 Ind. 16.

"The rule for the construction of remedial statutes is that cases within the reason though not within the letter of a statute shall be embraced by its provisions; and cases not within the reason though within the letter shall not be taken to be within the statute. State v. Canton, 43 Mo. 48; People v. Albertson, 55 N. Y. 50."

In People ex rel. v. Ottawa Banking & Trust Company, 22 N. E. (2d) 963 (Ill. App.), the Court was confronted with an interpretation of a Clerk's fee statute. Although the literal language of the section involved sustained the contention of the appellant, the Court, after construing the statute in the light of its purpose, ruled against the appellant. The principle upon which the opinion is based is stated at page 964 as follows:

"It is only fair and reasonable to assume that the purpose of the statute in providing that circuit clerks should charge certain fees for their services is to enable the clerks to collect a fair and reasonable amount for the services rendered by their offices so that those offices may be to a greater or less extent self-sustaining. Statutes must be interpreted according to the legislative intent and as frequently stated, 'A thing within the intention (of the statute) is within the statute, though not within the letter (of the statute); and a thing within the letter is not within the statute, unless within the intention (of the law makers)'."
In First National Bank of Boston v. Harvey, 16 Atl. (2d) 184 at 187 (Vt.) the Court said:

"If it can fairly be done, a statute must be so construed as to accomplish the purpose for which it is intended, and the intention and meaning of the Legislature are to be ascertained and given effect, not from the letter of the law which is not in all cases a safe guide, but from an examination of the whole and every part of the act, the subject matter, the effects and consequences, and the reason and spirit of the law, although the intention and meaning thus ascertained conflict with the literal sense of the words."

Michigan had a statute similar to that of Indiana with regard to charging fees for approval of issuance of securities. That statute read in part as follows:

"Whenever any stock, bonds, notes or other evidences of indebtedness are authorized by the commission to be issued in accordance with any law of this state, the party or parties upon whose application said securities are authorized shall before the issuance or sale of said securities, pay into the treasury of the State of Michigan a sum equal to one-tenth of one per cent of the face value of the securities so authorized; the sum so paid not to be less than fifty dollars in any case."

The Detroit Edison Company asked the Commission for authority to issue some five million dollars' worth of convertible debenture bonds and also in the petition for authority to issue an equal amount of stock. Purchasers of convertible bonds were entitled to trade them for stock within a certain period of time. The Attorney General of Michigan rendered an opinion (1920 O. A. G. 113) that only one fee need be paid. His reason was as follows:

"My reason for this conclusion is that it was clearly the intention of the legislature to exact a fee only upon such evidences of indebtedness as are outstanding, where authority for the issuance thereof is obtained in one proceeding and at one time. If the bond holders in the present case convert their bonds"
into stock, the bonds are immediately canceled and the stock issued in place thereof. Under such an arrangement, there can at no time be outstanding, either in bonds or stock, an amount exceeding $5,148,000, and such amount outstanding represents the indebtedness of the company upon which a fee should have been exacted.”

To summarize, we therefore have the following situation: (1) A petition for issuance of notes and bonds in one petition as a part of one transaction. (2) The issuance of notes is a required incident to the transaction. (3) A remedial and regulatory statute designed, not to raise revenue but to safeguard public utility customers, providing a fee to reimburse Public Service Commission expense. Under those circumstances, I am of the opinion that the Legislature did not intend to require a double fee but that a fee paid for the issuance of the new preferred stock, which is the aim and purpose of the whole transaction, is all that is required under the statute.

It is my desire to add that, in reaching this opinion, I do so only in the light of the particular facts involved and do not feel justified in laying down any broad rule which would serve to govern in any other case where all of these facts are not present.

---

DIVISION OF LABOR: Child’s Work Certificate—Birth Record; Persons in charge of Vital Statistics cannot charge a fee for certified copies of Birth Records when to be used in securing Child’s Work Certificate.

August 15, 1944.

Opinion No. 76

Hon. Thomas R. Hutson,
Commissioner of Labor,
Division of Labor,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter with reference to work certificates requests an official opinion upon the following question: