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

Dear Sir:

Your letter of October 11, 1944, received requesting an official opinion upon the following questions:

"1. Does Chapter 229, Acts of 1927, as amended, authorize the levy of a tax for the township fund upon all of the taxable property within such township, including an amount sufficient for the purchase, maintenance and operation of fire fighting equipment for use in such township both outside and within the corporate limits of any incorporated town or city in such township, if such town or city maintains its own separate adequate fire department?

"2. Does Chapter 229, Acts of 1927, as amended, authorize the levy of a tax upon the taxable property within the township, outside the limits of any incorporated town or city, in such township, which maintains its own separate fire department for the purchase, maintenance and operation of fire fighting equipment?

"(a) For use in such township outside the corporate limits of any town or city within such township which maintains its own separate fire department?

"(b) For use within the corporate limits of any town or city within such township which maintains its own separate fire department, under a cooperative agreement between the trustee and such town or city?"
Chapter 229 of the Acts of 1927 is Section 65-501, et seq., Burns 1933. This is a statute specially applicable to the furnishing of fire protection "in any township in this state within the limits of which any city or town or any part thereof is located, or in any township contiguous to the township in which such city or town or any part thereof is located."

Section 1, Ch. 260, Acts of 1937, as amended, same being Sec. 65-501, Burns' 1943 Supp., reads as follows:

"For the purpose of extinguishing fires which may occur in any township in this state within the limits of which any city or town or any part thereof is located, or in any township contiguous to the township in which such city or town or any part thereof is located, the trustee of any such township is hereby authorized to contract with any city or town, that has and maintains adequate fire-fighting equipment, for fire protection or to cooperate with the proper authorities of any such city or town in the purchase, maintenance and upkeep of such fire-fighting apparatus and equipment as may be deemed necessary to afford the requisite fire protection to such city or town and to the township or townships within which such city or town or any part or parts thereof is located, or to any township contiguous to the township in which such city or town or any part thereof is located."

Section 2, Ch. 229, Acts of 1927, same being Sec. 65-502, Burns 1933, authorizes the common council of such city or the board of trustees of such town to enact such ordinances necessary to accept and carry out the provisions of said Act.

Section 3, Ch. 229, Acts of 1927, same being Sec. 65-503, Burns 1933, is as follows:

"The trustee of any township contemplated in this act, desiring to cooperate with any such city or town in the purchase, maintenance and upkeep of such fire-fighting apparatus and equipment as may be necessary to afford the requisite fire protection to such city or town and to such township, may file a petition in writing with the common council of such city or the board of trustees of such town, setting forth that such township desires to cooperate with such city or town in the
purchase, maintenance and upkeep of such fire-fighting apparatus and equipment. The common council or board of trustees, as the case may be, shall consider such petition, and, if an ordinance for that purpose shall have been enacted, as provided in section two (§ 65-502) of this act, the common council or board of trustees shall accept or reject the prayer of such petition. If the common council or board of trustees accept such petition, such common council or board of trustees, on behalf of such city or town, and the trustee, on behalf of such township, shall enter into a contract which shall expressly stipulate, among other things, the terms and conditions upon and in compliance with which such city or town and such township are to cooperate, and the interest that each shall have and hold in and to the equipment and apparatus purchased by such city or town and township, and the proportionate amount of funds which each is to contribute.”

Section 4, Ch. 229, Acts of 1927, same being Sec. 65-504, Burns 1933, provides that any such cooperative contract shall provide that the fire-fighting force shall be employed and under the exclusive control of the city or town; and that the equipment may be jointly owned or severally owned by each corporation, but shall be available to extinguish fires occurring within the limits of either corporation.

Section 5, Ch. 229, Acts of 1927, as amended by Sec. 2, Ch. 260, Acts of 1937, same being Sec. 65-505, Burns’ 1943 Supp., provides as follows:

“The trustee of any township of the state of Indiana is hereby authorized and empowered by and with the consent of the township advisory board to contract with any such city designated in section one (§ 65-501) of this act, that has and maintains adequate fire-fighting apparatus and equipment for fire protection for said township or to purchase for such township fire-fighting and fire-extinguishing apparatus and equipment for use in extinguishing fires within the limits of such township and outside the limits of any incorporated town or city therein. All purchases of such apparatus and equipment shall be made in the manner and form
now provided by law for the purchase of township supplies and not otherwise."

Section 10, Ch. 229, Acts of 1927, same being Sec. 65-510, Burns 1933, prior to its amendment in 1943, provided as follows:

"All expenses which may be incurred by any township in carrying out the provisions of this act shall be paid out of the township general fund, and the township advisory board may increase the general fund levy by a sufficient amount, annually, to defray the expenses which may be incurred in carrying out the provisions of this act."

The last quoted section of the statute was amended by Sec. 1, Ch. 25, Acts of 1943, same being Sec. 65-510, Burns' 1943 Supp., and reads as follows:

"All expenses and costs of the purchase of apparatus and equipment which may be incurred by any township in carrying out the provisions of this act for the purchase and operation of equipment which is for use both within said township and within the limits of any incorporated town or city in said township shall be paid out of the township fund, and the township advisory board may increase the township fund levy a sufficient amount annually, to defray the expenses which may be incurred in carrying out the provisions of this act. All expenses and costs which may be incurred by any township in carrying out the provisions of this act in the purchase of apparatus and equipment for use within the limits of such township but outside the limits of any incorporated town or city in said township shall be paid out of the township fire-fighting fund, and the advisory board may, at the annual September meeting of the board levy a tax for the township fire-fighting fund upon all the taxable property within the township, outside the limits of any incorporated town or city in said township in which such apparatus and equipment are not to be used."

The following well-known rules of statutory construction apply to an interpretation of the foregoing statute:
Statutes must be construed as a whole in order to determine the legislative intent.

Snyder v. State, ex rel. Leap (1933), 206 Ind. 474, 478;
State v. Ritter's Estate (1943), —— Ind. ——, 48 N. E. (2d) 993, 998.

Courts will look to the general purpose and scope of a statute to determine the legislative intent.

City of Indianapolis v. Evans (1939), 216 Ind. 555, 567;

A change of legislative intent will be presumed from a material change in the wording of the statute.

State, ex rel. Neal v. Beal (1916), 185 Ind. 192, 197;
Chism, et al. v. State of Indiana (1931), 203 Ind. 241, 244.

Applying the foregoing rules of statutory construction to the statute aforesaid, it is clear the legislature intended that such a township could have available fire protection by one of three means: (1) By direct contract with such city or town already having an established and adequate fire-fighting force for such fire protection; (2) By entering into a cooperative contract with such city or town for the joint maintenance of such fire department in which event the personnel is employed and subject to the control of the city or town and the equipment may be owned by either or both the city or town and the township. This could only be done by following the statutory requirements of conditions precedent to the entering into such cooperative contract. In such event such equipment must be available for fire protection both to the city or town and to the township; or (3) Such township could purchase its own equipment and establish its own fire department and contract with some volunteer fire association for its personnel.

In the last instance, such fire department would be considered legally established only for use outside the corporate limits of the city or town.
It is to be noted that under Sec. 10 of said statute, as originally written, and since the amendment of Sections 1 and 5 of said Act by Ch. 260 of the Acts of 1937, supra, a general township levy which did not exclude taxing of town and city property was to be made for the payment of such expense incurred by such township under either of the three foregoing plans, and the money would be paid from the township general fund. However, under Sec. 10 of said Act, as amended by Sec. 1, Ch. 25, Acts of 1943, same being Sec. 65-510, Burns' 1943 Supp., supra, if provision is made under plans one or two, aforesaid, for such fire protection to the township, such expense should still be paid from the township general fund from a township general levy on all taxable property within a township including cities and towns. However, if the third plan was followed by the township in securing such fire protection, the same could only be paid out of a “township fire-fighting fund” for the support of which a township levy could be made only on the taxable property within the township, lying outside of the limits of such incorporated city or town. The fact the legislature by the 1943 amendment of Sec. 10 of said Act changed the wording and the language of the statute as to what levy shall be made by the township for the support of such different plans followed for such fire protection, clearly shows the legislature did not intend a general township tax levy to be made on all the property within the township including cities and towns to support a fire department established for the protection of that part of the township lying outside of the corporate limits of cities and towns.

I am, therefore, of the opinion your first question should be answered as follows: Unless all of the requirements of the above statute have been compiled with regarding the execution of a cooperative contract by the township and such city or town, such levy could not be made on property within the incorporated limits of such city or town.

In answer to your question 2(a), I wish to advise that where the township has its own separate fire department for use in the township outside the corporate limits of the city or town, the above statute authorizes the levy of a tax upon taxable property within a township, outside the limits of any incorporated town or city located in such township.
In answer to your question 2(b) where a cooperative contract has been executed between the township and a city or town located therein for such fire protection, and all of the conditions of the above statute have been complied with prior to the execution of such contract, such township levy should be on all the property located within the township, including cities and towns.

STATE BOARD OF ACCOUNTS. CITIES AND TOWNS—Validity of parking meter ordinance—receipts are governmental and not proprietary funds. Appropriations are necessary before expenditures. Appropriations do not automatically revert to general fund but may be transferred.

November 17, 1944.

Opinion No. 96

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 October 23rd in which you submit the following questions:

"1. May the funds of a city, derived from the operation of parking meters, be expended for any purpose without an appropriation for such purpose being first made by ordinance passed by the common council?

"2. May the funds of a city, derived from the operation of parking meters, be expended for the purchase of equipment for the general use of the police department of such city if the ordinance authorizing the installation of parking meters does not authorize the use of such funds for such purpose?

"3. May the funds of a city, derived from the operation of parking meters, be expended for the payment of compensation to deputies and/or other employees of the city controller, or other officers or departments