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
of the city, in addition to the salary or compensation of such deputies or other employees fixed and provided by law and paid from the general fund of the city?

"4. Do the provisions of Chapter 129, Acts of 1943, apply to the purchase of materials, equipment, goods and supplies from the funds of a city derived from the operation of parking meters?

"5. Is the common council of a city authorized to provide by ordinance or otherwise that any part of the funds derived from the operation of parking meters shall revert to the general fund of the city?"

With your letter you enclose copy of an ordinance of the city of Evansville and call particular attention to the fact that the ordinance provides that the money received from the use and operation of the parking meters shall be deposited with the City Treasurer to the credit of the City of Evansville in a special fund called "Parking Meter Fund" which said fund shall be disbursed and paid out only upon order and under the direction of the Board of Public Works for the following purposes only:

"* * * First, for the payment of the purchase price and installation of said parking meters; second, for maintenance, operation, and necessary and reasonable repairs of said parking meters; third, for the repair and maintenance of the public streets of the City of Evansville, Indiana, and for the purchasing or leasing and maintenance of public parking grounds or lots in the City of Evansville to be used for the parking of motor vehicles and all of said funds when collected are hereby appropriated therefor.

"The Board of Public Works of said City of Evansville, shall have the right and authority to expend said funds without any additional appropriation therefor. That warrants for such expenditures shall be drawn by the Controller of said city upon a voucher of the Board of Public Works of the City of Evansville, signed by the President or Vice-President and Clerk of said Board of Public Works. All money remaining in the City Treasury to the credit of said 'Parking Meter Fund' at the end of any calendar year, shall remain in
said fund and shall not revert to the general funds of said city."

There has been considerable conflict of opinion on the validity of parking meter ordinances. In 1940 the Attorney General had a question presented relating to a parking meter ordinance and said:

"It is also worthy of notice that municipal corporations do not possess the right to rent or lease a part of the highways or streets for a commercial purpose, but that the right to regulate parking is an exercise of the police power of the State. Therefore, amounts received by a municipality from parking meters is not received from a 'proprietary activity or business' within the meaning of subsection (a) of section 1 of Chapter 117 of the Acts of 1937."

O. A. G. 1940, p. 50 at 53.

So far as the State of Indiana is concerned, the question of the validity of parking meter ordinances is settled in the recent case of Andrews et al. v. City of Marion et al. (1942), 221 Ind. 422. In the above case such an ordinance was held valid as a police regulation of traffic. The general rule relative to fees in such cases is that they must be consistent with the expense of enforcement of the ordinance and that such an ordinance can not be used as a revenue measure. This question was raised in the City of Marion case above cited. At page 430 of the opinion the court said:

"The fact that the ordinance imposes a charge for parking in the public street does not make the ordinance invalid nor make it a revenue measure. A reasonable fee may be properly charged against those enjoying the privilege of parking, for the purpose of raising funds for the expense of acquiring, installing and maintaining the meters and the other expenses incidental to the enforcement of the ordinance. The charge is only incidental to the regulation of parking in this manner. The evidence does not show any substantial excess in the amount to be collected over the amount necessary to pay for the costs and expenses of
enforcement. The ordinance, therefore, cannot be held invalid as being a revenue measure. * * *."  

It would seem, therefore, that the ordinance should not contemplate the raising of substantially more funds than necessary to pay cost of carrying out and enforcing the ordinance and matters connected with and incident thereto. The funds raised by this ordinance are to be regarded as raised by the city in its governmental capacity and not in a proprietary capacity. They are therefore subject to the law and procedure related to governmental funds rather than that applicable to proprietary funds. Section 48-1411 Burns' R. S. 1933 provides as follows:

"No order or warrant for any purpose shall be drawn against the funds of any city, in the hands of the treasurer or other officer, unless an appropriation has been made by ordinance for such purpose and such appropriation is not exhausted, or unless such order or warrant shall be for a salary fixed by statute or ordinance, or in payment of a judgment which such city is compelled to pay, or for interest due on city bonds. (Acts 1905, ch. 129, sec. 56, p. 219.)"

Section 48-1406 Burns' R. S. 1933, provides in part as follows:

"The common council of every city shall have power to pass all ordinances, orders, resolutions and motions for the government of such city, for the control of its property and finances and for the appropriation of money. No appropriation shall be made for the payment of money otherwise than by ordinance, specifying by items the amount thereof and the department for which the appropriation is made. * * *"

(Acts 1905, ch. 129; sec. 52, p. 219.)

Specifically answering your questions:

1. In my opinion the fund created by the receipts from parking meters is subject to the above quoted statutes requiring an appropriation and they can not be expended without an appropriation for such purpose being first made by ordinance passed by the common council.
2. Your second question is answered by the above answer to your first question.

3. Deputies and employees of the city or one of its departments in performing services in connection with or growing out of said parking meter ordinance are performing the same in a governmental and not in a proprietary capacity. Their compensation or salary is as provided by or fixed in accordance with the statutes relating to cities of that class. If said ordinance makes additional work, that is a matter to be considered in fixing their salaries, but they can not be paid a separate salary from the parking meter fund in addition to their salary as fixed by or in accordance with the applicable statutes for performing a governmental service. Generally speaking, the fund derived from parking meters is to be handled no differently than any fund derived from license fees charged under the police power of the city. This does not apply to additional services that might have been performed by an employee from the effective date of the ordinance to the end of that current year in carrying out and enforcing said ordinance.

4. The pertinent part of Chapter 129 of the Acts of 1943, page 385, is as follows:

“That any person, officer, board, commissioner, department commission, or purchasing agent herein-after 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, for any unit of the state, county, township, city or town government shall comply with the requirements of this act whenever the total amount of any purchase exceeds one hundred dollars; * * *.”

(Section 53-501 Burns’ R. S. 1933, Pamphlet Part.)

As pointed out heretofore, the receipts from the parking meters are to handled like any local license fees collected under a regulation passed under the police power of the city. The estimated receipts should be included in the city budget.
in the same manner as other local license fees collected under the police power. I am therefore of the opinion that the provisions of Chapter 129 of the Acts of 1943 apply to purchases made from funds received from parking meters.

5. Section 48-6917 Burns' R. S. 1933, is as follows:

"Where there is a public fund or funds in the custody of any department of any city, and where any such fund, or any part thereof, is not being used for the purpose for which it was created, and where there is actual need for all or any part of the money in such fund for use in some other fund in order that such city may carry on its necessary governmental functions, the common council of such city may transfer such fund or funds or any part thereof to the general fund of such city to be used for the usual purposes thereof, as by ordinance provided. Such transfer shall be authorized only after the common council shall have given ten (10) days' notice by posting written or printed notices thereof in at least three (3) public places in such city stating the time and place when and where such common council will meet to consider the proposed transfer. (Acts 1933, ch. 129, sec. 1, p. 743.)"

It is therefore my opinion that any unused part of said fund may be transferred to the general fund of the city if the requirements of the above statute exist. In this connection I point out that Section 26-524, Burns' R. S. 1933, providing for any unexpended item of appropriation reverting to the general fund at the end of the calendar year, does not apply to cities and I find no other statute making the unexpended balance of appropriations of cities revert to the general fund at the end of the year. Therefore under existing statutes any unexpended balance in any item of an appropriation of a city would not automatically revert to the general fund at the end of the calendar year.