STATE BOARD OF TAX COMMISSIONERS: Whether cities have the power to issue bonds for the purpose of constructing a building to be owned by the city to be leased for manufacturing purposes to a manufacturing firm.

June 11, 1943.

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

Dear Judge Bedwell:

I am in receipt of your letter of June 7, 1943, requesting my opinion concerning the legality of the act of a city in the State of Indiana in issuing its bonds and expending its public funds for the purpose of constructing a building to be owned by the city and then rented by the city to a particular manufacturing firm, at an attractive rental, to be used for manufacturing purposes. Your letter states that the city authorities claim the legal right to do such acts by virtue of the “General Welfare” clause of the municipal code, which is clause 53 of Section 48-1407, Burns’ R. S. 1933.

Burns’ R. S. 1933, Section 48-1407, defines the powers of the common council of each and every city in the State of Indiana. This statute reads in part as follows:

“The common council of every city shall have power to enact ordinances for the following purposes:

“* * * *

“Fifty-third. To carry out the objects of the corporation, not hereinbefore particularly specified.”

Previous to clause fifty-three, above quoted, the Legislature has set forth fifty-two separate and distinct clauses expressly delegating to the common councils of each and every city the right to do certain specific things. Nowhere in this section of the statute, or in any other statute which I have been able to find in Indiana, has the Legislature specifically granted to the common council of a city the right to construct a building for manufacturing purposes and rent the same to a manufacturing firm or concern. It is a firmly established principle of law in Indiana that a municipal corporation can exercise such powers only as are granted in
express words, and as are necessarily incident to the powers expressly granted, or as are essential to its declared objects and purposes; that all reasonable doubts as to the existence of a power in a municipality must be resolved against it. Furthermore, that an implied power of a municipality must be directly and immediately appropriate to the exercise of the principal authority and power expressly granted to the municipality by some provision of statute.

Scott v. City of La Porte, 162 Ind. 34, pp. 43 to 46; Bartles v. City of Garrett, 89 Ind. App. 349; City of Jeffersonville v. Nagle, 191 Ind. p. 70.

Again, it is a firmly established principle of statutory construction that where words particularly designating specific acts or things are followed by and associated with words of general import, comprehensively designating acts or things, the latter are generally to be regarded as comprehending only matters of the same kind or class as those particularly stated under the doctrine of *ejusdem generis*.

Applying the above principles of statutory construction to all of the provisions of Section 48-1407, *supra*, and especially clause 53 above quoted and referred to in your letter, I am unable to find any authority under the language of clause 53 which would authorize a city to do the acts referred to in your letter. In support of this conclusion I call your attention to the following language of the Supreme Court of Indiana, as contained in the case of Scott v. City of La Porte, 162 Ind. 34, on p. 43, as follows:

"The powers conferred upon municipalities must be construed with reference to the object of their creation, namely, as agencies of the state in local government. 'A municipal corporation,' says Mr. Justice Bradley, 'is a subordinate branch of the domestic government of a state. It is instituted for public purposes only; and has none of the peculiar qualities and characteristics of a trading corporation, instituted for the purposes of private gain, except that of acting in a corporate capacity. Its objects, its responsibilities, and its powers are different. As a local governmental institution, it exists for the benefit of the people within its corporate limits. The legislature invests it with
such powers as it deems adequate to the ends to be accomplished.’ * * * "The statute under which a municipal corporation is created is its organic act. Such a corporation can only exercise the following powers: First, those granted in express words; second, those necessarily implied in or incident to the powers expressly granted; and, third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. * * *

Also it is my opinion that the question propounded in your letter is specifically answered by the Appellate Court of Indiana in the case of Bartles v. City of Garrett, Ind., supra. This was an action to recover damages for the breach of a contract entered into between the appellant, Bartles, as a contractor, and the appellee, city of Garrett, for the erection of a certain public building known as a community building, to be built according to plans and specifications under the authority of a certain resolution enacted by the common council of the city of Garrett. A demurrer was sustained to the complaint and the grounds of demurrer were that the complaint failed to state facts sufficient to constitute a cause of action, for the reason that the complaint failed to disclose any authority upon the part of the mayor and common council of the city of Garrett, Indiana, to execute the contract sued upon, or to build such a building. In discussing the authority of the mayor and the common council to construct such a building, the Appellate Court of Indiana declares the law as follows:

"The appellant contends that the power is granted by section 10284, Burns’ 1926 (Acts of 1905, page 256, c. 129, Sec. 53), and relies upon article 51 of that act which reads: ‘The common council of every city shall have power to enact ordinances for the following purposes: * * * To establish, maintain and regulate pounds, market-houses, market places, houses of refuge, pest houses, hospitals, dispensaries, engine houses and all other public city institutions.’ Article 53 reads: ‘To carry out the objects of the corporation, not hereinafter particularly specified.’
“(1) It is a principle of statutory construction everywhere recognized and acted upon not only with respect to penal statutes, but to those affecting only civil rights and duties, that, where words particularly designate specific acts and things are followed by and associated with words of general import, comprehensively designating acts or things, the latter are generally to be regarded as comprehending only matters of the same kind or class as those particularly stated under the doctrine of *ejusdem generis*. Lewis' Sutherland Statutory Construction, Sec. 422, and cases there cited.

“(2) The statute under which a municipal corporation is created is its organic act. Such a corporation can only exercise the following powers: (1) Those granted in express words; (2) those necessarily implied in or incident to the powers expressly granted; and (3) those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Dillon Mun. Corp. (4th Ed.), Par. 89, and cases there cited. Muncie Nat. Gas Co. v. City of Muncie, 160 Ind. 97, 66 N. E. 436, 60 L. R. A. 822; Pittsburgh, C., C. & St. L. R. Co. v. Town of Crown Point, 146 Ind. 421, 45 N. E. 587, 35 L. R. A. 684; Kyle v. Malin, 8 Ind. 34; Smith v. City of Madison, 7 Ind. 86.

“(3) The presumption is that any power has been withheld that is not expressed or fairly implied, and therefore all reasonable doubts as to the existence of a power in a municipality must be resolved against it. Lake County Water & Light Co. v. Walsh, 160 Ind. 32, 65 N. E. 530, 98 Am. St. Rep. 264; State ex rel. City of Indianapolis v. Indianapolis Union R. Co., 160 Ind. 45, 66 N. E. 163, 60 L. R. A. 831.

"* * *"

“(5) The general rule is that a city has power under the general law to erect buildings designated and adapted to certain legitimate interests of the municipality, for example, a city hall, city council chamber, and the like, and if, in connection therewith, the buildings are such that the public may be
allowed to use the same as a hall for lectures, entertainments, and public meeting places, it will not be outside the general powers granted to municipalities. The question herein involved is fully discussed in the case of Brooks v. Town of Brooklyn, 146 Iowa 136, 124 N. W. 868, an Iowa case, and reported in 26 L. R. A. (N. S.) 425, with copious notes and citations of authority to which we refer.

"A perusal of the statutes of this state will disclose the fact that public buildings such as auditoriums, coliseums, natatoriums, and the like are only permitted to be built under acts authorizing the several kinds of buildings mentioned, and are generally authorized by petition or by special election called for the purpose of authorizing the same. Park boards and public school boards are also given authority under special acts to make public improvements and erect buildings.

"(6) The appellant does not point out any statute under which authority was specifically given to the mayor and the common council of the city of Garrett, or a city of the class in which Garrett belongs, to enter into such a contract, and we have been unable to find any such authority. We therefore hold that the court did not err in sustaining the demurrer to the appellant’s complaint."

Applying the law as declared by the Supreme and Appellate Courts of Indiana in each of the above quoted cases, as well as many others which could be cited to the same effect, it is my opinion that in the absence of a statute expressly delegating to the common council of a city the right to build a building for manufacturing purposes and to rent the same, that such city has no power nor authority to construct the kind of a building mentioned in your letter, or to issue bonds therefor, or expend any of its public funds derived from taxation for such purposes, and that clause 53 of Section 48-1407 does not delegate any such authority to the common council of any city in the state of Indiana, and that any attempt upon the part of the city to erect such a building, or issue bonds in payment therefor, would be wholly illegal and void.