STATE BOARD OF ACCOUNTS: Budgets; notice required in the establishment of budgets. See Sec. 64-1331 of Burns Pocket Supplement of 1942.

August 5, 1943.

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 dated July 31, 1943, which reads as follows:

"Can a civil town legally establish a budget, without complying with that part of Sec. 64-1331 Burns' Indiana Statute, June, 1943, Pocket Supplement, that requires that notice of the same be published in two (2) newspapers?"

Section 64-1331, Burns' Pocket Supplement, 1942, reads in part as follows:

"The several tax levies and rates shall be established by the proper legal officers of any municipal corporation after the formulation and publication by them of a budget of forms prescribed by the state board of accounts showing in detail the money proposed to be expended during the succeeding year, the valuation of all taxable property within the jurisdiction and the rate of taxation which it is proposed to establish, and after a public hearing within the jurisdiction at which any taxpayer shall have a right to be heard thereon. Ten (10) days' notice by publication of such budget, levies and rates and of such public hearing in two (2) newspapers of opposite political parties published in such taxing district or in one (1) such paper if only
one (1) be there published, and in case no newspaper is there published, then, the same shall be published in any two (2) newspapers representing the two (2) leading political parties, published in the county and having a general circulation in such taxing unit; or if only one (1) such paper be there published then such notice published in such paper shall be sufficient to comply with the requirements herein, and by posting such notice in three (3) public places in such taxing district, shall be required. * * *

The language of the above statute is clear, concise, definite and unambiguous and requires as a condition precedent to the right of any municipal corporation to levy and assess taxes for municipal purposes that the proper legal officials of such municipal corporation shall prepare a budget and hold a public hearing thereon after notice has been given of such hearing. This notice must be published in a newspaper if one be published in the taxing district and if no newspaper is published in the taxing district, then the publication must be in two newspapers of opposite political faith, published in the county wherein said taxing unit is situated, and also by posting notices in three public places in the taxing district. Unless the requirements of this statute with reference to publication and posting of notice is complied with, any assessment of taxes would be illegal and void and could be enjoined by any taxpayer of the district.

The only other question which must be answered is whether or not an incorporated civil town in Indiana is a municipal corporation within the purview of Section 64-1331, supra. This question is answered by the Appellate Court of Indiana in the case of Vaughtman v. The Town of Waterloo, 14 Ind. App., 649, in the following language:

"A municipal corporation is a body corporate and politic, created by the law and invested with special powers relating particularly to the government of its own local affairs. * * *

"* * *

"* * *

"In many jurisdictions the word 'municipal' is applied to any and all subdivisions of the State without
any distinction, * * * whereas in this State, cities and towns are bodies corporate and politic with many of the general powers of private corporations. Their powers are not inherent, but are such only as are specially granted by the law under which they are created * * *.

In addition to the above decision the Legislature has defined "Municipal Corporations" as used in the Budget Act as follows:

"The term 'municipal corporations', as used herein shall include counties, townships, school townships, cities, school cities, towns, school towns, school districts, sanitary districts, park districts and all taxing units within the State."

Burns' Pocket Supp. 1943, Sec. 64-308, Sec. 2, Chapter 119, Acts 1937, p. 646.

Therefore, it is my opinion that no civil town in Indiana can legally establish a budget, without complying strictly with the provisions of Section 64-1331, supra, which requires that notice of such budget be published in two newspapers, as provided in said Statute.

STATE BOARD OF ACCOUNTS: Constitutional law; whether Chapter 303 of the Acts of 1943 is valid.

August 6, 1943.

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

Dear Sir:

Your letter of August 3, 1943, received as follows:

"Chapter 303, Acts of 1943, provides that clerks of circuit courts of counties having a population of 15,000 or less, according to the 1930 United States census,