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,
shall receive as compensation for the additional services performed by such clerks by reason of duties imposed on such officials by statute enacted subsequent to Chapter 21, Acts 1933, the sum of $300.00 per annum.

"The question is presented as to whether the incumbent clerks of the circuit courts in counties of 15,000 or less, according to the 1930 United States census, are legally entitled to receive the compensation provided in Chapter 303, Acts 1943.

"I would like to have your opinion on this question. "I would also like for you to give consideration to this Act being a violation of Article 4, Section 22 of the Constitution, and wish to make reference to the opinions of the Attorney General, 1935, page 69, and the decision of the court in the case of Campbell v. City of Indianapolis, 155 Ind. 186, 200."

In answer to your first question I wish to advise that Section 2, Article 15 of the Constitution of Indiana reads as follows:

"When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the general assembly shall not create any office, the tenure of which shall be longer than four (4) years, nor shall the term of office or salary of any officer fixed by this constitution or by law be increased during the term for which such officer was elected or appointed."

Section 49-2701, Burns' Revised Statutes 1933, being Section 1, Chapter 5 of the Revised Statutes of 1852, provides as follows:

"At the general election immediately preceding the expiration of the term of the present incumbent, and every four (4) years thereafter, in each county, there shall be elected a clerk of the circuit court, who shall hold his office during such term, and who shall give bond."
As shown by the foregoing statute the office of county clerk is for a definite term of four years. The above constitutional provision has been held to apply to county clerks in the case of Board of Co. Commissioners of St. Joseph Co. v. Nevins, 214 Ind. 706. That case was decided on the opinion of the court in the case of Board of Commissioners of St. Joseph County v. Crowe, 214 Ind. 437, 442 and 446.

It is well settled law in this State that public officers who come within the foregoing constitutional provision against increase in salary during their term of office, take their office cum onere, not only as to existing duties, but subject to such additional duties as may thereafter be imposed by the legislature, and that their salaries cannot be increased during their term of office. As was said in the case of Yeager v. Board, etc. (1884), 95 Ind. 427, at page 430:

"'The person who accepts and assumes to act in the office takes it cum onere, not only of existing duties, but subject to such as may thereafter be legally imposed, and subject to such rights and liabilities as to compensation as the legislature has (declared) or may declare. If the legislature imposes burdensome or unremunerative duties, he must perform (them) as required or resign the office.'"

Also, on this question, see: 46 Corpus Juris 1025; 43 American Jurisprudence 146 and also see authorities cited in a previous official opinion of this office addressed to you under date of July 20, 1943, on the question of increase in salary of officers during their term of office.

When the above statutes are construed together it is clear that incumbent clerks of the circuit courts in counties of fifteen thousand or less according to the 1930 census, as provided for in said Chapter 303 aforesaid, would not be entitled to an increase in salary during their present term of office due to the constitutional prohibition against such increase hereinbefore set out.

The fact that the Act in question recites "This act shall be in full force and effect on and after January 1, 1944," could not supersede the express constitutional prohibition against such increase during the term of office.
In answer to your second question I wish to advise that Chapter 303 of the Acts of 1943, aforesaid, applies only to "* * * the duly elected and qualified clerks of the circuit courts of each county of the state having a population of fifteen thousand or less according to the 1930 United States census. * * *"

Article 4, Section 22 of the Constitution of Indiana provides in part as follows:

"The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

"* * *

"(14) In relation to fees or salaries: except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required; (As amended March 14, 1881.)"

In the case of Campbell v. City of Indianapolis, 155 Ind. 186, the court was called upon to construe the constitutionality of the Act of March 3, 1871, authorizing the organization of a Board of School Commissioners in all cities of thirty thousand or more inhabitants "according to the United States Census for the year 1870." In declaring such Act unconstitutional as violative of Clause 13 of Section 22 of Article 4 of the Indiana Constitution, the court on page 200 of the opinion said:

"Were it not for the express declaration in section one, which absolutely fixes the census of 1870, and confines it to that alone, as the one by which the population is to be determined, it might be viewed as one general in its operation, applying alike to all cities within the classification of 30,000 or more inhabitants. But this express declaration upon the part of the legislature would seem to countervail or destroy whatever general features the act possess by restricting its operation to such cities as had the required population according to the census of 1870. Any and all other cities, which might by a future census be shown to be within the classification of 30,000 inhabitants or more, by this express provision of the statute would necessarily be excluded from its operation. That, under such circumstances, a law of this character must be regarded as
special, and not general, legislation, seems to be, according to the authorities, a well settled proposition."

The case of Campbell v. City of Indianapolis, supra, was cited, approved and followed in the following cases:

Groves v. Board of Commissioners, Lake County, 209 Ind. 371, 376;
Crowe v. Board of Commissioners of St. Joseph County, 210 Ind. 404, 417, 418.

A different construction is made of a classification of counties and cities by population, where the population is based upon the last preceding United States Census. On this question in the case of Groves v. Board of Commissioners, Lake County, supra, at page 376 of the opinion the court said:

"The court takes judicial knowledge of the Federal Census of the population of cities and counties in the state. It is a settled proposition that a statute which classifies counties or cities to be governed by its provisions according to the population of the last United States Census, will be held to apply to all other counties and cities which under a future census may pass into that class. The phrase 'last United States Census' applies to each succeeding census as it occurs. Under such circumstances the law is general in its application and not local or special."

It is, therefore, my opinion that since Chapter 303 of the Acts of 1943 is in violation of Clause 14 of Section 22 of Article 4 of the Constitution of Indiana, it is unconstitutional and void.