STATE BOARD OF ACCOUNTS: Whether municipal water works plant created under Section 48-5365 of Burns' Indiana Statutes Annotated 1933 provides for the election of a treasurer to handle the utility fund; whether city or town treasurer should have the custody of said funds.

Mr. Otto K. Jensen,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein you refer to Section 48-5365 Burns' Ind. St. Ann. 1933, providing for the creation of a Board of Trustees to control and manage a waterworks plant, and ask the following question:

"Where a Board of Trustees is so created, may this Board elect its own officers, including a Treasurer, who will have custody of the funds of the utility, or does the City or Town Treasurer serve as custodian of the utility funds?"

The statute referred to was by amendment in 1927 made a part of the Act of 1921 (Chapter 96, p. 205), entitled as follows:

"An Act to authorize cities, towns and other municipal corporations to purchase and acquire waterworks and to issue bonds therefor, payable from the revenues and receipts of such works."

The 1921 Act, as originally passed, contemplated that the management of such waterworks would be in a city council or other governing body of the municipal corporation. By the amendment of 1927 (Chap. 190, p. 557, Sec. 48-5365) supra, the governing body of the municipality was authorized to adopt an ordinance, placing the management and control of the waterworks plant "in the hands of a board of five trustees, three of whom shall be appointed by the Mayor of said city or the President of the Board of Trustees of said town" subject to the approval of the council or town board. The Mayor or Town Board President and the Chairman of the
Board of Public Works were also made members of the Board of Waterworks Trustees. The statute contained the following language:

"Said Board of Trustees shall have complete control of said water-works plant and shall be charged with the duty of managing the same for the benefit of said city, town or municipal corporation, and shall have full and complete authority to employ a superintendent and through such superintendent to employ, discharge and fix the compensation of all employees of said water-works plant, and shall have the power directly or through its authorized agents, to make all contracts for the purchase of supplies and fuel, and the construction or acquisition of extensions, betterments and improvements to said water-works plant, and, subject to the jurisdiction of the public service commission of Indiana, shall have power to make rules and regulations governing the furnishing of service to patrons and for the payment of same, and for providing for discontinuance of service to those failing to pay therefor, when due, until payment is made, and the governing body of the municipality, upon the recommendation of said board of trustees, shall provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge thereof, and to provide penalties for all interference, trespassing or injury to any such water-works system appliances or premises on which the same may be located."

It will be noted that the statute makes no provision for the custody of funds derived from the operation of a waterworks utility. Consequently, other statutes in effect at the time of the passage of the foregoing provisions, insofar as not inconsistent with the provisions of this Act, must be considered in determining your question.

Authority was originally given by the Municipal Corporation Law of 1905 (Chap. 129) for the construction, purchase or lease of municipal utilities, including waterworks, and the procedure was therein outlined. Section 251 of the 1905 Act (Sec. 48-7205, Burns', etc., 1933) authorized an ordinance
to place the management and control of the utility in the Board
of Public Works, a committee of the Council or a Board of
Trustees who could employ superintendents, clerks and other
employees.

The following specific provision was made for the custody
of the funds of such utility:

"Provided, That every such superintendent shall,
once each week, pay over to the treasurer of any such
city or town, and take his receipt therefor, all moneys,
rents and income of such water-works, * * * which
shall have come into his hands during the previous
week. Such treasurer shall be the custodian of all
funds belonging to any such works, whether derived
from taxation, appropriation of such common council
or board of trustees, or from rents or other income of
any such works; and the funds belonging to each of
such works shall be kept by such treasurer as a sepa-
rate and distinct fund."

This was a general provision which would remain effective
as to subsequently acquired municipal utilities and municipal
utilities thereafter constructed or acquired pursuant to new
statutory authorization, in the absence of inconsistent provi-
sions as to the custody of such utility funds.

There is nothing contained in Section 48-5365, to which you
refer, or any other provisions of the statute which may be
said to be inconsistent with the provision contained in Section
48-7205 as above quoted.

Therefore, there is no authority for the election of a treas-
urer by such a board of trustees to have the custody of such
utility funds. On the contrary, the City or Town Treasurer
should have the custody of such utility funds.