by a municipality, if reasonable and within the scope of its authority, are enforceable.

Spitler v. Town of Munster (1938), 214 Ind. 75, 14 N. E. (2d) 579, 115 A. L. R. 1395.
Medias v. City of Indianapolis (1939), 23 N. E. (2d) 590, 594.

In conclusion, it is my opinion that an alcoholic beverages permittee who is entitled to receive a dancing permit from your Commission and to whom such permit has been issued, may not be required to obtain a license for dancing for the same place under a municipal ordinance but that such permittee is subject to all other provisions of such municipal ordinance not in conflict with Section 5 of Ch. 237, Acts 1941, and the rules and regulations adopted pursuant thereto by the Commission.

STATE BOARD OF TAX COMMISSIONERS: Indianapolis Coliseum Corporation, method of assessing fixtures placed in Coliseum at Fairgrounds.

June 11, 1941.

Honorable Henry S. Murray,
Chairman, State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge the letter of the former Chairman of the State Tax Board asking this office for an official opinion with respect to the assessment of $75,000.00 against the Indianapolis Coliseum Corporation. I quote the letter requesting the opinion:

> "The County Council of Marion County placed an assessment of $75,000.00 against the Indianapolis Coliseum Corporation for the improvement placed by said Corporation in the coliseum in the State Fair Ground. The contract entered into, as shown in the lease, provides that the corporation should pay a minimum rental of $12,000.00 per annum for ten years, and it also provides that if the lease is not renewed

then the State shall pay the Corporation $50,000.00 for such improvement.

"The Coliseum Corporation contends that as the improvements are permanently part of the building it is not personal property and cannot be assessed as such.

"We refer you to Clause 8, Section 10, of the Tax Law, Page 33 of the Indiana Tax Law, and also Section 33, page 49, and ask a legal opinion as to whether this improvement is taxable against the Coliseum Company.

"We are attaching a brief and a copy of the lease."

From the brief submitted by the Indianapolis Coliseum Corporation and from an examination of the lease executed by that Corporation with the State Board of Agriculture, and from our own independent investigation, the following facts appear:

1. On June 27, 1939, the State Board of Agriculture executed a written lease to the Indianapolis Coliseum Corporation for a term of ten years with an option to renew the same for an additional five year period. After this lease was executed, the Indianapolis Coliseum Corporation installed certain machinery at considerable expense for the purpose of constructing an ice surface on the floor of the building to serve as an ice skating rink and for the presentation of hockey games, ice shows, et cetera, the receipts from which were to be shared by the State on a percentage basis graduated on the amount of gross receipts. I cannot review here all of the provisions of this lease except that the general purpose was for the improvements thus made to become the property of the lessor on termination of the lease with a clause providing that the lessor should be required to pay $50,000.00 to the lessee for the improvements if the lessor refused to grant the option of a five year extension of the lease.

2. The improvements made by the Corporation are constructed below the surface of the floor and are covered entirely by a concrete slab and are not removable.

3. The Marion County Tax Board of Review made an assessment of $75,000.00 against the Coliseum Corporation and it does not appear that any other action by public officials or taxing authorities of Marion County was taken before or after the assessment referred to.

4. An examination of the transcript of appeal to the State Board of Tax Commissioners, reveals that the Coliseum Corporation made a return showing personal property in the amount of $450.00 and that after hearing, the Marion County Board of Review fixed the valuation of the *personal* property of the Corporation at $75,450.00.

I gather from your letter that this is an appeal to the State Board of Tax Commissioners by the Indianapolis Coliseum Corporation from an assessment of $75,000.00 against that Corporation made by the Marion County Board of Review and originating in that body. It also appears from the brief filed by the Corporation that no notice was given to them of said assessment by the Marion County Board of Review.

The first question to be decided is whether the improvements made by the Coliseum Corporation are personal property or whether they constitute real property. While the improvements consisting of refrigerating machinery and other ice installation machinery may originally have been chattels, they have now become fixtures and, as such, have become a part of the real estate itself. Unquestionably, this ice installation machinery cannot be removed and has, in fact, been annexed to the Coliseum building proper and, furthermore, it has been adapted to the general uses of the building and from the terms of the lease above referred to, there is a clear intention to make the improvements a permanent accession to the freehold. Measured by these criteria, all of the improvements installed by the Coliseum Corporation are, in fact, fixtures and have become a part of the realty owned by the State through its Board of Agriculture. The Supreme Court of Indiana said in the case of Ochs v. Tilton, 181 Ind. 81, at page 85:

> "A general rule, recognized by the weight of authority, is that the true test of a fixture requires the united application of the following requisites: (1) Annexation of the article, which may be actual or constructive; (2) Adoption to the use of the realty, or part thereof, with which the article is connected; (3) The party annexing must have intended thereby to make the article a permanent accession to the freehold."

For further authority see also the case of *Greensburg Bank v. Department of Financial Institutions,* ..... Ind. App. ....., (1938), 11 N. E. (2d) 1008. I should point out also that these

decisions are in conformity with the provisions of Section 64-104 Burns' Indiana Statutes Annotated, 1933, which provides:

> "For the purposes of taxation, *real property* shall include all lands and lots within the state and all buildings and *fixtures* thereon, and appurtenances thereto, except as otherwise expressly provided by law; * * *" (Our italics.)

The brief submitted by the Coliseum Corporation points out that the Marion County Board of Review did not take the necessary procedural steps required by statute for the placing of omitted real property on the tax duplicate. The brief also asserted that the property of the Corporation was or should be exempt from taxation. It is unnecessary for me to determine the merits or applicability of these arguments since it is my opinion that the improvements made by the Coliseum Corporation must be considered as real property. It follows, therefore, that the Marion County Board of Review was in error and did not have the power to increase the *personal* property of the Corporation by $75,000.00 since that increase was based upon the erroneous belief that this property was personalty and not to be considered as real property. In the light of this opinion, therefore, it will be necessary in your decision for you to advise the Marion County Board of Review that the increase of $75,000.00 in the assessment of the Coliseum Corporation is erroneous and must be erased.

The next to the last paragraph of your letter refers me to Clause 8, Section 10 (Sec. 64-404 Burns' Indiana Statutes Annotated 1933) and also Section 33 (Sec. 64-513 Burns Indiana Statutes Annotated 1933) of the Indiana Tax Law on the theory, evidently, that these sections are related to this particular question. The first section above mentioned is as follows:

> "Eighth. All personal property of any person situate upon, also all buildings situate and being upon the land of the United States, or of this state, or upon the lands of any county, township, town or city, shall be deemed personal property for purposes of taxation and assessment, and shall be assessed as personal property to the owner or occupant thereof in the township, town or city to which said lands belong or of which

> they form a part, and such buildings shall be subject to sale for taxes in the same manner as herein provided for personal property: Provided, however, It shall not be necessary to remove such buildings for the purpose of sale."
>
> Sec. 64-404 Burns' Indiana Statutes Annotated 1933.

In the first place, this section refers broadly to all *personal* property and as I have said before, the improvements made by this Corporation should be considered as real property. Insofar as this section applies to property other than personal property, it says: "Also all buildings situate and being upon the land * * * of this state * * *." It is obvious that this section cannot be construed to mean the Coliseum building proper because that was built by the State and is not the property of the Coliseum Corporation. I think, therefore, that this section probably applies only to buildings erected by a taxpayer and, consequently, subject to sale for taxes. In other words, an applicable situation would be where a building was erected by an individual upon naked real estate owned by a governmental unit.

The second section referred to is as follows:

> "33. When real estate which is exempt from taxation, is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof or his assignee, as real estate."
>
> Sec. 64-513 Burns' Indiana Statutes Annotated 1933.

In commenting upon this section, it is only necessary for me to say that the section evidently contemplates an assessment as in all other cases of assessments for real estate, with the exception that the assessed figure is to be determined by the value of the leasehold estate. It is unnecessary to determine the applicability of this section in the present appeal to your Board because, as I have pointed out, the Marion County Board of Review erred in considering the Coliseum Corporation's improvements as personal property and, consequently,

had no power to increase the personal property assessment for such improvements. However, it appears probable that if the property of the Corporation is taxable at all, it is taxable under this section, which means, in practical terms, that the local taxing authorities, if they determine to tax the Corporation, must place the property of the Corporation on the tax duplicate as real property and, further, that the valuation of such real property is to be arrived at by determining the value of the leasehold estate.

AUDITOR OF STATE: Motor fuel, certificate of use of.

June 11, 1941.

Hon. Richard T. James,
Auditor of State,
State of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for my opinion under date of June 6, 1941, relating to certain proposed regulations which your office wishes to adopt in connection with the administration of the law covering tax exempt sales of motor fuels other than gasoline, as provided in Chapter 78, Acts of 1939, Section 5 (a).

The regulations proposed to be adopted and set out in your letter read as follows:

"1st. That a copy of the sales ticket, which is a carbon copy of the original sales ticket, bearing the following: 'I, the undersigned, do hereby certify that the motor fuel other than gasoline shown on this invoice will be used for purposes other than propulsion of motor vehicles on the public highways of the State of Indiana.' signed by the purchaser, would be considered as the original certificate of use.

"2nd. That the dealer or distributor shall file with his report of motor fuel other than gasoline, a certificate which would be a recapitulation of the certificates that he has on file for the taxing period. Such certificate would be substantially as follows: 'I hereby certify that ..... has sold, free from the collection of tax, the following quantities of motor fuel other than gasoline. That I have on hand certifi-