taxation for repair shall also be itemized, but the statute (Sec. 26-519, cl. 3) does not require that the location and amount for each bridge shall be stated; therefore a less detailed itemization of such appropriation may be used.

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TAX BOARD: Right of county tax adjustment board to review contracts executed with teachers by the Indianapolis School Board.

Whether a township, part of which is within an incorporated city may levy a township-wide tax to pay for the cost of fire-fighting apparatus.

November 12, 1941.

Hon. Edw. D. Koenemann,
Secretary, Indiana Tax Board,
State House,
Indianapolis, Indiana.

Dear Mr. Koenemann:

I have before me your request for an official opinion in answer to the following questions:

1. Does the Marion County Tax Adjustment Board have the legal power to review the contracts executed on or prior to May 1, 1941, by and between the Board of School Commissioners and the teachers employed by said Board?

2. When a part of a township lies within an incorporated city which maintains by general taxation an adequate fire fighting system, may the township trustee thereof levy a tax upon all the property in the township including that property inside the city limits, for the purpose of purchasing or maintaining township fire-fighting equipment?"

As I understand it your first question involves simply the question as to whether the Marion County Tax Adjustment Board and the Indiana Tax Board have the legal power to diminish the wages to be paid to teachers as provided in contracts executed on or prior to May 1, 1941, between the school board and the teachers employed by the board, referring to the School Board of Indianapolis.
By Section 28-2324 of Burns' Indiana Statutes Annotated, 1933, the Board of School Commissioners is given authority, among other things,

"* * * to employ and pay superintendents, teachers, librarians and all other employees needed in any branch of the work committed to said board of school commissioners, and to disburse, according to law, all moneys of said school city for all lawful school, library and other school city purposes. * * *"

The above provision is found in Section 25 of Chapter 94 of the Acts of the General Assembly of 1931. (See Acts of 1931, p. 291.)

At the time of the adoption of the section from which the above quoted language is taken, the budget provisions of the 1919 Act concerning taxation had been amended to require the several tax levies and rates to be established by the proper legal officers of any municipal corporation after the formulation and publication by them of a budget on forms prescribed by the state board of accounts showing in detail the money proposed to be expended during the succeeding year, et cetera, and providing for an appeal to the state board of tax commissioners, which was given power to reduce the levy and providing further that the levy so fixed should limit the expenditures for the year except in cases of casualty or accident or extraordinary emergency. (Burns' Indiana Statutes Annotated, 1933, Sec. 64-1331; see also the same Section in the June, 1941, Cumulative Pocket Supplement for amendment of 1935.)

In the meantime, in 1933 the Act of 1933 limiting tax levies and providing for the appointment of the County Board of Tax Adjustment was enacted making it the duty of said board, among other things, to examine, and if it deemed such action necessary, to revise, change or reduce but not increase any tax levies and any corresponding item of the budget on which such tax levies are based. (Sec. 64-304, Burns' Indiana Statutes Annotated, 1933.) This section was repealed in 1937 and there was substituted for the entire tax limitation provisions referred to above, Section 64-307 to Section 64-318, both inclusive, of the Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated, bearing date of June, 1941.

By Section 64-311 of the Pocket Supplement referred to, the Adjustment Board is given authority, among other things, to
revise, change or reduce any budget, levy or rate with respect to the total amounts budgeted for each office held within each of the budgeted classifications as prescribed by the state board of accounts; it being provided further that if the County Tax Adjustment Board shall revise, change or reduce any such budget, levy or rate as fixed by the proper officers of any such municipal corporation, the budget, levy and rate as so revised, changed or reduced, by said Board shall be the only budget, levy and rate upon which taxes shall be levied, collected and applied during the ensuing year except as otherwise provided in the Act, apparently referring to the appeal allowed to the Indiana Tax Board. Certain exceptions are made, however, in Section 64-312 of the Pocket Supplement referred to, but none of those exceptions include salaries provided in contracts with school teachers. Independent, however, of the provisions of 64-312, supra, I think it must be admitted that if the contracts with the teachers are valid and legal, the failure to provide a rate sufficient to pay the indebtedness or to make an appropriation therefor, would not discharge the obligation, which could be reduced to judgment and would thereupon come within the express provisions of said Section 64-312.

I am obliged, therefore, to return to the initial question which lies at the foundation of the questions submitted by you; namely, the question as to whether the contracts so entered into with school teachers are valid unless supported by a prior appropriation or approval by the County Tax Adjustment Board. Of course, as to all contracts wherein the salary does not exceed the minimum salary as required by law, such contracts are beyond the reach of the Tax Adjustment Board and also of the Indiana Tax Board. In other words, neither Board has any control over salaries which are fixed by law. The same thing is true with respect to contracts which are renewed under the provisions of Section 28-4521 of Burns’ Indiana Statutes Annotated, 1933, Pocket Supplement of June, 1941. These renewal contracts as to salary are also fixed by law. Unless the Board of School Commissioners, through some legal method, increases them, they cannot be reduced. (See Pocket Supplement, supra, Section 28-4321.)

I think it is evident, too, that the same would be true as to tenure teachers unless the salary is increased by the school board in the method set out in the statute. This reduces contracts involved in your question to those where an increase is made in excess of the Minimum Wage Law or where renewals
are made or tenure contracts are involved, where the salary is increased above that of the previous year, and all new contracts where the salary exceeds the minimum salary as provided by law. As to these contracts, the answer to your question is not quite so clear, although as applied to the School City of Indianapolis, operating under a special law, I am inclined to the opinion that neither board may change the salary of teachers employed by the Board of School Commissioners. I am, of course, assuming in this connection that appropriations have been made by the Board of School Commissioners as provided in Section 28-2311 of Burns' Indiana Statutes Annotated, 1933. And, in this connection, I refer also to Section 28-2315 of Burns' Indiana Statutes Annotated, 1933, providing expressly that:

“No contract, agreement or obligation shall be binding upon the board unless an appropriation therefor shall have been first made by it, * * *”

implying, in other words, that when such an appropriation has been made that such a contract is binding unless there are other infirmities.

In my opinion, your first question should be answered in the negative.

With reference to your second question, I assume that the fire fighting apparatuses have been purchased under the provisions of Section 65-510 of Burns' Indiana Statutes Annotated, 1933, as subsequently amended. If that is correct, the statute expressly provides that:

“All expenses which may be incurred by any township in carrying out the provisions of this act shall be paid out of the general fund, and the township advisory board may increase the general fund levy by a sufficient amount annually, to defray the expenses which may be incurred in carrying out the provisions of this act.”

It seems to me that if these expenses are to be paid out of the general fund, of necessity, they are paid out of money raised by general levy. I am giving no consideration to constitutional questions which may be involved, attempting simply to construe the statute.

Your second question is answered in the affirmative, assum-
ing that the township is proceeding under the law above referred to.

You have submitted a third question which requires no answer in view of the answer given to your second question.

PUBLIC SERVICE COMMISSION: Requisite notice of hearings.

November 17, 1941.

Mr. Frederick F. Eichhorn,
Chrmn. Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your letter which reads as follows:

"A question has arisen concerning publication of notices of hearings under the 1941 Act and the 1927 Act requiring publications in formal hearings of this Commission. Take, as a hypothetical case, a utility having its principal office in Lafayette, Indiana, and the Commission holding a hearing in its rooms at the State House in Indianapolis—where should publication of notice of this hearing be had?"

Until the Act of 1927 which is referred to in your letter, became a law, there was no statutory provision that required the Railroad Commission or its successor, to give any notice by publication in a newspaper of formal hearings held by the Commission.

The 1927 Act concerning legal advertising and the publication of legal notices contains a number of provisions as to notices. Section 5 of the Act applies to notices to be given by the Public Service Commission and is as follows:

"Whenever the Public Service Commission shall order a hearing in any city, town, county or township of the state, notice of such hearing shall be published in two newspapers of general circulation in such city, town, county or township, by one publication in each of such newspapers, not less than ten days prior to the day on which such hearing will be held."