In the first place, I think it is very clear that the Workmen’s Compensation Liability of such Department is an administration expense and, while following the practice which has been followed by other Departments of paying this item out of “Personal Service Appropriations” is, I think, valid, it appears to me that in this case it may be desirable to budget such an item where it can be determined with any degree of accuracy as would be the case where an award has already been made.

LIBRARIES: Whether tax limitation in Township Act applies to city or town libraries.

November 27, 1940.

Miss Hazel B. Warren, Chief,
Extension Division,
Indiana State Library,
Indianapolis, Indiana.

Dear Miss Warren:

I have before me your request for an official opinion concerning certain questions arising under the various Acts for the establishment of libraries. You call attention first to Section 41-601 of Burns’ Indiana Statutes Annotated, 1933, which is Section 1 of Chapter 110 of the Acts of 1896 as amended in 1933 by Chapter 35 of the Acts of 1933. This Act is entitled:

“AN ACT authorizing township trustees to levy a tax for the increase and maintenance of libraries established by private donation, and for the purchase and improvement of real property for such libraries.”


It provided among other things, that in any township in which there has been or may hereafter be established by private donations a library of the value of $25,000.00 or more, including the real estate and buildings used for said library, for the use and benefit of all the inhabitants thereof, the township trustee was required annually to levy and collect a tax upon the taxable property within the limits of the township of not more than six cents (6c) on the one hundred dollars.
It also provided that, with the consent of the Board of Commissioners of the county there might be levied and collected for a period of not more than three years, an annual levy of not more than five cents (5c) on the one hundred dollars for the purchase of additional property and the enlargement of the library building. This Act was amended in 1933 so as to make the levy of the annual tax in both instances discretionary.

You next call attention to Sections 41-307 and 41-310 of Burns’ Indiana Statutes Annotated, 1933, the same being sections in later Acts. Section 41-307 is Section 7 of Chapter 55 of the Acts of 1901. This Act originally enacted in 1901 made provision for the establishment and maintenance of public libraries in cities and towns. Section 41-307, supra, provided, among other things, as follows:

“It shall be the duty of such library board to determine the rate of taxation that shall be necessary to establish, increase, equip and maintain the public library and pay any outstanding bonds and certify the same to the common council or town board and the county auditor: Provided, That said levy shall not exceed one (1) mill on each dollar of all taxable property assessed for taxation in such city or town as shown by the tax duplicate for the year immediately preceding the fixing of such levy. When the assessment for such public library purposes shall be certified to the common council or town board and the auditor, by the public library board, the same shall be placed on the tax duplicate of such county and city or town and collected in like manner as other taxes are levied and collected.”

You submit the question first, as to whether a library board organized pursuant to Chapter 55 of the Acts of 1901, supra, is influenced in the tax rate which may be fixed by it by the provision of Burns’ Indiana Statutes Annotated, 1933, Section 41-601, supra. I think the answer to this question must be that Section 41-601 in no sense controls the rate which may be fixed by a library board organized under the 1901 Act, supra. The reason for this is obvious. In the first place, they deal with two different subjects and in the second place,
the 1901 Act is the later Act and, if either one of the two must fall by reason of the other, the Act of 1895 would be the one which would fall. In my opinion, however, there is no irreconcilable conflict between the two and that both may stand.

You ask next as to who has the power to determine the rate in case of a town library by which, I infer, you have reference to a town library organized under the 1901 Act. The above quoted provision from Section 41-307, supra, makes the answer to this question very obvious. The duty is clearly settled upon the library board to determine the rate of taxation which is necessary. The rate so determined is then to be certified to the common council or the town board and the county auditor, who, by the express terms of this statute, are required to place the same on the tax duplicate of the county, city or town. It should be remembered, however, that the rate so fixed by the library board and certified to the tax levying officers, is subject to review by the County Tax Adjustment Board and also, on appeal, by the State Board of Tax Commissioners. (See Section 64-314 of June, 1940 Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated, 1933.)

Section 41-310 of Burns' Indiana Statutes Annotated, 1933, is a 1911 Act providing a method by which public libraries in cities and towns may be made available to the residents of the township outside of such cities and towns. You inquire as to who has the power to make the township levy in such a case under the above section. The statute very definitely says that the Advisory Board has such power. This rate also, of course, is subject to review by the County Tax Adjustment Board and, upon appeal, by the State Board of Tax Commissioners.