claims hereunder shall in no event exceed the penal sum of this obligation as herein stated."

It is to be noted that it is expressly provided that the bond must be in the penal sum of one and one-half times the amount of the proposal made by the bidder. This language is not merely directory but, in my judgment, is mandatory and without the amount of the penalty being named, the bond given does not comply with the statute. A bond to be good as a statutory bond should in general comply in respect to its conditions and execution with the requirements of the act under which it is given, and, if it fails to do so, it certainly can not be said to be a valid bond as required by the statute.

In my judgment, the bond can not now be corrected by inserting at this time the correct amount of the penalty. It is the duty of all the bidders at the time they submit their proposals to also submit a proper and legal bond as provided by statute. All bidders must be on an equality and, therefore, all must submit legal bonds as provided by the act. This is the very purpose of the provision of the act and it can not be evaded either purposely or by mistake.

I desire to call your attention to an opinion given by Attorney General Philip Lutz, Jr., on April 29, 1935, to the Highway Commission, involving practically the same state of facts as contained in your letter. His opinion confirms what I have said herein.

GROSS INCOME TAX DIVISION: Municipal corporations not liable for Gross Income Tax on income from Sewage Disposal Plant or Parking Meters.

March 4, 1940.

Mr. Gilbert K. Hewit, Director,
Gross Income Tax and Store License Division,
Department of Treasury of Indiana,
Indianapolis, Indiana.

My Dear Mr. Hewit:

I have before me your request that an official opinion issue with respect to the liability of municipal corporations for the payment of gross income taxes on receipts derived as fees
from the operation of sewage disposal plants, and from the use of parking meters. After setting forth the applicable section of the Indiana Gross Income Tax Act, your specific questions will be answered in the order in which they have been presented.

Your inquiry requires the determination of the scope of subsection (a) of section 1 of Chapter 117 of the Acts of 1937 (at pages 604-605) which reads as follows:

"(a) When used in this act the term, 'person' or the term 'company', herein used interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, joint venture, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation or any other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context."

Your first inquiry reads as follows:

"Under Chapter 152, Acts of 1935, as amended, a municipal corporation received a final order from the Indiana Department of Commerce and Industries (section 9), and was required by the State of Indiana to construct a sewage disposal plant and complete sewer system. The financing of the project under federal auspices required it be of self-liquidating character, i.e.: a specific fee or charge to cover operating costs and to repay the construction loan is made periodically against all who utilize the sewage system of the city. Are the funds so received to be utilized as a part of the measure of the tax imposed on the municipal corporation by Chapter 117 of the Acts of 1937?"

I must respond in the negative. The courts of this country have been uniform in holding that ordinances relating to the
collection and disposition of garbage and sewage are a means for the protection of the public health,

California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306, 26 S. Ct. 100, 50 L. Ed. 204;

and that in providing and operating sewage disposal systems, municipal subdivisions act in a governmental capacity.

City of Santa Fe v. First National Bank, 41 N. M. 130, 65 Pac. (2d) 857.

The term "governmental function" has always been held descriptive of the execution of legal duties imposed upon the municipal corporation by the state, and which the municipality may not omit with impunity but must perform at its peril.

Robbins v. City of Sheffield, 237 Ala. 674, 188 So. 874.

In view of the foregoing, and the general rule, it is apparent that the receipts by the municipality occasioned by its performance of the state's mandate to provide a sewage system are receipts received in its governmental capacity and are not to be utilized as a part of the measure of the taxes imposed by Chapter 117 of the Acts of 1937.

It should be noted that what has been said applies only to fees received by the municipality in order to permit it to carry on the governmental function of disposing of sewage and thus safeguarding public health. What has been said does not apply to amounts received from the sale of fertilizer or other by-products by such municipalities, even though the by-product is the result of the operation of the sewage system. Such activities are directly competitive with private business, and are conducted for a profit, and are to be distinguished from the governmental functions performed.

Your second inquiry reads as follows:

"Are the funds derived from the operation of parking meters taxable under the Indiana Gross Income Tax Act to the municipality receiving them?"
My response must be in the negative. It should be noted that the object of parking meters is to regulate the flow of traffic, and to prevent congestion and eliminate danger.

Gilsey Buildings v. Great Neck, 11 N. Y. S. (2d) 694, 170 Misc. 945;
In re Opinion of Justices, 8 N. E. (2d) 179;

It is also worthy of notice that municipal corporations do not possess the right to rent or lease a part of the highways or streets for a commercial purpose, but that the right to regulate parking is an exercise of the police power of the State. Therefore, amounts received by a municipality from parking meters is not received from a "proprietary activity or business" within the meaning of subsection (a) of section 1 of Chapter 117 of the Acts of 1937.

ACCOUNTS, STATE BOARD OF: Whether allotment for building purposes for Muscatatuck Colony by budget committee out of funds appropriated in 1938, remains available until completion of any particular contract work on which was commenced during the statutory period of availability.

March 5, 1940.

Hon. C. A. Ketchum,
Director of the Budget,
State House,
Indianapolis, Indiana.

Dear Mr. Ketchum:

I have before me your letter in which you submit a copy of what is said to be a typical Project Proposal addressed to the Works Progress Administration, together with a copy of the sponsor's agreement, being, in this case, the agreement of April 3, 1939, of the Board of Trustees of the Muscatatuck Colony for the Feeble Minded, at Butlerville, Indiana.

The appropriation, which forms the basis for this agreement, is contained in Chapter 4 of the Acts of 1938 whereby