ACCOUNTS, BOARD OF: Power of city council to abolish Board of Public Works and Public Safety and place authority of such boards under new board created by House Bill No. 529, Section 8½. May 1, 1933.

Hon. Wm. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of April 28th, requesting an official opinion relative to House Bill No. 529, particularly my interpretation of Section 8½ as to the power of the city council to at once abolish the Board of Public Works and Board of Public Safety and place the authority of such boards in the new board created by that act.

In my answer to this request, I shall limit myself to the particular question asked in your letter, since a general interpretation of the act might involve the decision of many questions, concerning which there is no issue at this time.

In construing Section 8½ of this act, attention must be given to the other provisions of the act and to reconcile all the provisions of the entire chapter in order to accomplish the purpose which the legislature had in mind.

Section 1 provides that the classification set out in the act shall become effective on the first Monday in January, 1934. Section 22 provides that the salaries authorized by the act shall become effective on the first day of January, 1934.

With these two dates governing classification and salary by mandate of the act in mind, we must now consider Section 8½, which provides that,

"where in any city the provisions of this act will abolish, combine, or consolidate any of the offices of any city separately officered at the time of the taking effect of this act, such abolishment, combination or consolidation shall not, by mandate of this act, be effected until January 1, 1935, but such abolishment, combination or consolidation may, by action of the common council, be effected prior to such date, as provided in this act;".

It is to be noted, under the provisions of Section 8½, that even though change in classification will take place on the first
Monday in January, 1934, such change in classification will not operate to abolish, combine, or consolidate any of the offices of any city, separately officered, at such time but that such offices, as they existed at the time of the taking effect of the act, will continue until January 1, 1935, by mandate of the act itself, unless effected prior to that time by action of the common council.

It is to be noted again, in the last clause of such Section 8½ that

"until such abolishment, combination or consolidation becomes effective, such offices shall be officered as before the passage of this act, but salaries of the officials serving in such offices shall be provided for and regulated as provided in this act, on and after January 1, 1934."

In other words, even though the abolishment, combination or consolidation of such offices are left to the mandate of the act itself, and therefore will not be effected until January 1, 1935, yet the salaries will be controlled by the salary provisions of the act on and after January 1, 1934. This position is borne out by Section 22 above referred to, which provides that the salaries authorized by the act shall be effective on and after 12:00 o'clock noon of the first day of January, 1934.

Such being the case, we come to the single question as to the meaning of the phrase, "but such abolishment, combination or consolidation may, by action of the common council, be effected prior to such date, as provided in this act;". The words "prior to such date" fix a definite time for the close of the period in which the council may act but do not fix a time when such period of possible action by the common council begins. Hence, it is my opinion that such period during which the council may take such action to overcome the mandate of the act, began as soon as House Bill No. 529 became an approved act, to wit, on March 9, 1933, and that the common council of any city has had the power since March 9, 1933, and will continue to have such power until January 1, 1935, to set aside and overcome the specific mandate of the act and to abolish, combine and consolidate the various offices in accordance with the provisions of the act at any time during such period from March 9, 1933, to January 1, 1935.

It has been suggested that the phrase "as provided in this
act” as found at the close of the first clause of Section 8½ might relate to the time at which such abolishment, combination or consolidation of offices may take place.

It is my opinion, however, that this phrase refers merely to the manner of such abolishment, combination or consolidation and not to the time, and that it does not prevent action by the council before January 1, 1934, but that it does require the abolishment, combination or consolidation by action of the council to follow the plan set out in the act.

While the salary provisions of the act are effective, by mandate of the act, on and after January 1, 1934, it follows as a matter of course that where such abolishment, combination or consolidation is effected by the common council prior to such date in accordance with the provisions of the act, and the result of such action is to abolish certain offices, such persons, whose offices are thus terminated, would cease to be entitled to the salary of such offices so abolished. Such officers, who, under the provisions of the act, would succeed to the duties and functions of such offices so abolished and consolidated, would not thereby become entitled to the salaries of such offices as they were prior to such change, but would be immediately controlled as to their salaries, by the salary schedule effective after January 1, 1934.

Such being the case, the ordinance of the common council of such city which provides for such changes under Section 8½ should likewise, if such change is made prior to January 1, 1934, include a salary schedule for the various officers within the limits set out in the salary sections of said act and being Sections 11 to 20, according to the population of such city.

MOTOR VEHICLES, BUREAU OF: Duty of department concerning issuance of automobile and drivers’ licenses.

May 2, 1933.

Hon. Frank Finney, Commissioner,
Department of Treasury,
Bureau of Motor Vehicles,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of May 2, 1933, reading in part as follows:

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