ADJUTANT GENERAL: Municipally owned utility: profits transferable to general fund—cannot be used to erect armory; city’s sale of property: requisite.

May 29, 1933.

Hon. Elmer F. Straub,
The Adjutant General,
State of Indiana.

Honorable Sir:
I have before me your communication requesting an official opinion and presenting the following questions:

"1st: Is it possible for the city of Crawfordsville to divert the profits of its municipally owned electric light plant to the general fund of that city then to be used to erect an armory building?"

"2nd: Is it possible for this property to be sold to the State of Indiana on a lease-purchase basis without the city of Crawfordsville first advertising for bids on this property?"

FIRST.

Your first inquiry presents two separate questions. The first of these is whether or not the city of Crawfordsville may divert the profits of its municipally owned electric light plant to the general fund of that city?

The answer must be in the affirmative. Section 11134 of Burns Annotated Indiana Statutes, supplement of 1929, which authorizes such transfers reads as follows:

"Any city in the State of Indiana having established an electric lighting and power plant which is owned and operated by such city and which has outstanding its bonds issued for the purpose of establishing such plant and which has from the earnings of such plant accumulated a surplus after having paid the current expenses thereof and after having set aside a sufficient amount to provide for the depreciation thereof and after having set aside a sinking fund for the payment of such bonds, in an amount which at 3% compound interest computed to the date of maturity, shall equal the face value thereof, such city shall be and is hereby by this act authorized and empowered to trans-
fer any such surplus to its general fund and use the same as a part of its general fund for any of the lawful purposes for which its general funds may be used and applied."

The second phase of your first inquiry presents for consideration whether the city of Crawfordsville, having transferred the monies under section 11134 of the statutes may use such money to erect an armory building.

The answer to this must be in the negative. The monies in the general fund of any city are to be used for the purely governmental activities of the unit. In the absence of express statutory authority, such monies can not be diverted from the general fund for use of a proprietary function of the municipality. There seems to be no authorization by statute for the city of Crawfordsville to use the money in its general fund in the manner contemplated.

SECOND.

It would not be necessary for the city of Crawfordsville to advertise for bids upon the property before selling the same. The alienation of property owned by any city is authorized by clause 50 of section 10284 of Burns Annotated Indiana Statutes (1926 Revision), which reads as follows:

"To authorize the alienation and conveyance of any property, real or personal, belonging to such city, whether used for public and governmental or for private purposes: Provided, That no such property shall be sold until the same has been appraised by three disinterested freeholders of such city appointed by the judge of the circuit court in the county in which such city is located; and no sale or conveyance of any such property shall be made for a less sum than such appraisement, and, in the case of real estate, only by a two-thirds vote of the common council; such conveyance shall be by the mayor, in the name of the city, attested by the city clerk and with the seal of the city: and Provided, further, That where it is shown to the common council that any personal property does not exceed in value the sum one hundred dollars, the council may authorize the sale thereof without an appraise-ment."