inquiring the defendant to appear before the circuit court or criminal court to answer the accusation. The sections following determine the procedure to be followed.

However, if the charge against the officer is that of charging and collecting illegal fees for services rendered or to be rendered in his office, or the refusal or neglect to perform the official duties pertaining to the office, such accusation may be in writing verified by the oath of any person and presented or filed in the circuit court of the county, whereupon a citation is issued by such court requiring the party to appear upon a day named not less than five nor more than ten days from the time such accusation is presented. Upon such day or upon such subsequent day as the court may fix, not more than twenty days from the time the accusation is presented, the court proceeds to hear the accusation and evidence in a summary manner and, if on such hearing it appears that the charge is sustained, the court must enter a decree that the party accused be deprived of his office, and must enter a judgment for five hundred dollars in favor of the prosecuting officer, and such other costs as are allowed in civil cases.

ACCOUNTS, BOARD OF: Whether time warrants constitute legal investments for funds of police pension fund.

March 6, 1933.

Hon. Lawrence F. Orr,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion as to whether time warrants lawfully issued by cities pursuant to section 10286 of Burns Annotated Indiana Statutes of 1926, constitute such securities as are legal investments for funds belonging to the police pension fund as provided by chapter 58 of the Acts of 1931.

Section 10286, supra, provides in part as follows:

"The common council of every city shall have power to manage the finances thereof, subject, however, to the powers and duties vested by this act in the several executive departments of cities of the first, second, third and fourth classes. Such common council, on
passage of an ordinance for that purpose, shall have power to make permanent loans of money to an amount not exceeding two per cent of the taxable property of said city, to be determined by the last assessment for state and county taxes previous thereto, and power to issue bonds for the purpose of refunding such loans, as in this act provided. . . . Such common council may also make temporary loans in anticipation of current revenues of such city actually levied and in course of collection for the fiscal year in which such loans are made, such loans to be authorized by ordinance and the securities evidencing the same to be issued and sold in like manner as is hereinbefore provided in case of permanent loans: Provided, That such temporary loans shall be evidenced by TIME WARRANTS of such city in terms designating the nature of the consideration, the time and place payable, the funds and revenues in anticipation of which the same are issued and out of which the same are payable, and shall be payable at the office of such city treasurer, or at one of the authorized depositories of such city as checks upon the same are payable, upon presentation on or after the date of maturity thereof; and the interest accruing on such warrants to date of maturity shall be added to and included in the face value thereof. The ordinance authorizing the issue of such temporary loans shall appropriate and pledge sufficient of the current revenues in anticipation of which they are issued, and out of which the same are payable to the payment thereof. All bonds and other securities issued and sold by cities pursuant to the provisions of this act shall be negotiable with or without registration, as may be provided in the ordinance authorizing the same, may bear interest not exceeding six per cent per annum, payable annually or semi-annually, may run not longer than thirty years, may contain an option allowing such city to redeem the same in whole or in part at specified times prior to maturity, and may be sold for any price not less than par value.” (Our italics and capitals.)

Section 1 of chapter 58 of the Acts of 1931, supra, provides in part as follows:
"The board of trustees of such police pension shall determine how much of such fund may be safely invested, and how much shall be retained for the needs, demands and exigencies of the fund. *Such investment shall be made in interest bearing bonds of the United States or of the State of Indiana, OR ANY BOND LAWFULLY ISSUED BY ANY COUNTY, TOWNSHIP OR MUNICIPAL CORPORATION OF THIS STATE, or any street, sewer, or other improvement bonds of any city or town of this state.*" (Our italics and capitals.)


It appears from the foregoing that the sole question presented is whether such *time warrants* are bonds within the meaning of the language last above quoted, it being assumed that they are *lawfully issued by the municipality*. Nor is it necessary to consider the question whether the instruments are payable at all events by said municipality or whether they are to be paid out of a specific fund only. The language last above quoted is "any bond LAWFULLY ISSUED by any county, township or municipal corporation of this state." (Our capitals.) The question, therefore, as already stated, is simply the question of whether the securities issued pursuant to section 10286, *supra*, in the case of temporary loans and called *time warrants* are bonds within the meaning of chapter 58 of the Acts of 1931.

In this connection, I think a comparison of the provisions of the above statute as to the issuance, sale and characteristics of *bonds* in the case of *permanent loans* and of *time warrants* in the case of *temporary loans* is significant. The provision as to the issuance and sale of such bonds is as follows:

"Such loans may be made only for the purpose of procuring money to be used in the legitimate exercise of the corporate powers of such city and for the payment of corporate debts. Such ordinance for loans shall provide for the terms and tenor of the bonds or other form of security which shall be issued in evidence thereof, and for the time and character of notice and the mode of making sale of such securities, and a total amount of any issue may be authorized in such ordinance and such issue sold in such parcels and at
such times as the proceeds thereof may be required by said city. The city controller, if any, shall manage and supervise the preparation, advertisement, negotiation and sale of such securities, subject to the terms of such ordinance; and in cities having no controller, such duties shall be performed by the city clerk. Such controller, or clerk, as the case may be, after such securities shall have been properly executed, shall deliver the same to the city treasurer and take his receipt therefor; and, upon the consummation of the contract for the sale of such bonds, or any part thereof, shall certify to the treasurer the amount which the purchaser is to pay therefor, together with the name and residence of such purchaser; and thereupon the treasurer shall receive from the purchaser the amount so certified by the controller or clerk, and deliver to such purchaser the securities so sold, and take his receipt therefor; and the treasurer and controller or clerk shall thereupon report their proceedings therein to the council."

Burns Annotated Indiana Statutes of 1926, section 10286.

The provision as to the issuance and sale of such time warrants is as follows:

"Such common council may also make temporary loans in anticipation of current revenues of such city actually levied and in course of collection for the fiscal year in which such loans are made, such loans to be authorized by ordinance and the securities evidencing the same to be issued and sold in like manner as is hereinbefore provided in case of permanent loans."

As to the negotiability of such time warrants, they stand upon precisely the same basis as such bonds. In fact, the only apparent differences between the two types of securities, is the difference in length of time before maturity and the difference in the funds from which they are paid. Are these differences sufficient to deprive the security designated a time warrant of the essential characteristics of a bond? I do not think so. It is not at all unusual for securities, commonly designated as bonds, to be payable out of some special fund, and I know
of no authority which makes the length of time for which the obligation runs a determining factor.

I think it must be admitted that these instruments designated "time warrants" have all the essential characteristics of "bonds." They are not mere orders to pay an existing indebtedness. They are issued and sold as bonds are issued and sold to raise money, and their issuance and sale creates the indebtedness which they evidence just as in the case of bonds, their issuance and sale creates the indebtedness.

McQuillin on Municipal Corporations (2nd ed.) volume six, section 2421, defines municipal bonds as follows:

"Municipal bonds are obligations, negotiable in form and generally under seal, promising to pay, at a fixed future day, to a person named or his order or to bearer, a certain sum with interest, and usually with coupons attached to represent the interest."

The "time warrants" referred to clearly meet the requirements of the above definition of a bond. They are not "warrants" in the ordinary sense of that term at all. They are not mere orders to pay an existing indebtedness. They are issued to be sold, and when sold create a new indebtedness and the corresponding obligation to pay it. They are, essentially, short-time bonds, having all the qualities of negotiability, fixed maturity, interest-bearing and other characteristics of instruments usually designated as bonds.

As already indicated, the question as to whether, payable, as they are, out of a special fund—as to whether they are "municipal bonds" in the full meaning of the term, is not before me. It is sufficient if they are bonds and are lawfully issued by the municipality. That they are lawfully issued by the municipality, is assumed in your question; that they are bonds within the meaning of chapter 58 of the Acts of 1931, I think, sufficiently appears from what has already been said. In my opinion, said "time warrants," if lawfully issued by the municipality, may be legally purchased by the board of trustees of the police pension fund of the municipality pursuant to chapter 58 of the Acts of 1931, supra.