duty enjoined by law upon such circuit, superior, criminal, probate, juvenile or municipal courts, respectively, including the granting of changes of venue from the county in cases where such change of venue is allowed by law, and timely, proper and sufficient motion and affidavit have been filed therefor, and such change of venue has been refused; and also writs of prohibition may issue out of the Supreme Court to such circuit, superior, criminal, probate, juvenile or municipal courts, respectively, to restrain and confine such circuit, superior, criminal, probate, juvenile or municipal courts, respectively, to their respective, lawful jurisdiction.

ACCOUNTS, STATE BOARD OF: Control of Municipally owned utilities by Board of Public Works in fourth class city.

June 17, 1936.

Hon. William P. Cosgrove,
State Examiner, Department of
Inspection and Supervision of
Public Offices,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your recent letter submitting the following question for an official opinion:

"Can the Board of Works and Safety in a city of the fourth class, legally assume the control of operation and management of their municipally owned utilities, which are now operated by a committee of the council?"

In connection with this inquiry, you call attention to the case of Long et al. v. Kinney et al., decided by the Supreme Court of Indiana on May 20th, 1936.

In cities of the fourth class the management of municipally owned waterworks, electric light works and heating and power plants, is placed under the control of the board of pub-

By Section 7 of Chapter 233 of the Acts of 1933, the duties of the board of public works, and also the duties of the board of public safety, were turned over to a newly created board known as "the Board of public works and safety," composed of the mayor, the city attorney and the city civil engineer. Burns Ind. Stat. Anno., 1933, Section 48-1217.

Consideration must also be given to Chapter 190 of the Acts of 1933. Section 19 of this chapter which amended Section 109 of the 1913 Public Service Commission Law, seems to provide several different methods by which a city may manage its own utilities. The utilities may be controlled by the city council, by a committee of the council, or by a utility service board. It is provided further that where a city has a board of public works, such board may manage its utility. Burns. Ind. Stat. Anno., 1933, Section 54-613.

Chapter 233 referred to, is a classification of cities act, and provides for a board of public works and safety. The act names the officers which compose such board and provides that the members shall receive no additional compensation. I believe that this provision in the 1933 Acts clearly contemplates that city owned utilities should be managed under authority of a board of public works and safety.

In the decision of Long et al. v. Kinney et al., referred to in your inquiry, the Supreme Court held that a fourth class city; which had a board of public works, should turn the management of its municipally owned utilities over to the board of public works and safety as provided in Section 19 of Chapter 190 and Section 7 of Chapter 233 of the 1933 Acts, because the proviso in said Section 19 limited the option of the city in controlling its utilities.

The opinion, in referring to Chapter 190, which became a law March 8, 1933, says:

"The Act of March 8, 1933, after providing that the municipal council may operate a public utility, followed with the proviso that in all cities having a board of public works, such board may operate the municipal utility. This proviso does not enlarge or extend the Act. It qualifies and limits that which preceded."
The court in that decision holds that the Municipal Corporation Act of 1905 was not repealed by the 1933 law.

The court also considered the question, Whether or not there might be a conflict between Chapter 190 and Chapter 233 of the 1933 Acts of the General Assembly, and ruled that there was no conflict. On that question, the language of the court is as follows:

"The municipal corporation Act of 1905 expressly provided that cities may own their own utilities, and the control of the same was placed in the board of public works, created by that Act. Since that provision of the 1905 Act was not repealed expressly by the Act of March 8, 1933, this court must say that such provision was in full force and effect on March 9, 1933, when the General Assembly transferred the duties of the board of public works to the new board known as the "Board of public works and safety."

"The appellees contend that this cannot be true for the reason that the Act of March 8, 1933, had the effect of repealing that provision of the Act of 1905, and therefore there was no board of public works in existence on March 9, 1933, and no power or authority was vested in such board on that date to be transferred from it to the new Board of public works and safety.

"It will be noted that the Act of March 8, 1933, purported to be an amendment to the public utilities Act of 1913, and did not undertake to amend specifically the municipal corporation Act of 1905, which created the board of public works in cities of the fourth class and provided that that board shall operate municipal utilities. In addition to this the Act of March 8, 1933, recognized that where such cities had a board of public works, that board may continue to operate the cities' utilities."

The ruling of our Supreme Court, that the 1905 Municipal Corporation Act, as amended in 1923, which provided for a board of public works to manage its owned utilities, is not repealed, and the creation of the board of public works and safety to take over the duties of the old board of works, leads
to the conclusion that municipally owned utilities in certain cities are to be under the management of the board of public works and safety.

However, the Supreme Court in the Long v. Kinney case did not decide that in all fourth class cities, a board of works and safety should assume control of the cities' utilities. The opinion says that Chapters 190 and 233 of the Acts of 1933, which became laws on March 8 and March 9, respectively, are not necessarily in conflict, but may be harmonized. This means that where a city has had a board of public works under the 1905 law, or has recognized a board of public works and safety under the provisions of Chapter 233 of the 1933 Acts, its municipally owned utilities must be operated and controlled by the board of public works and safety, but where there has been no such boards, the city has some discretion in the method of managing its utilities as stated in Section 19 of said Chapter 190.

Subject to what I have just said, your question is answered in the affirmative.

PACKERS AND STOCKYARDS DIVISION: Livestock license fee—No power to refund unused portion.

June 18, 1936.

Geo. H. Newbauer, Director,
Packers and Stockyards Division,
Department of Commerce and Industries,
Indianapolis, Indiana.

Dear Sir:

Receipt is acknowledged of your request of May 28, 1936, on the following:

"On May 29, 1935, we issued a license to J. B. Miller and Company, Frankfort, Indiana, as a buyer of livestock. Mr. Miller paid the annual fee of $125.00 for this license. On November first, the above license was returned to us and the operation of buying livestock by Mr. Miller was terminated on that date.

"J. B. Miller and Company are now asking us to refund to them for the unexpired term of this license. This Department operates under Chapter 203 of the Acts of the 1935 General Assembly."