ence to property valuation or property assessments in the ordinary sense of that term and in my opinion the amount of intangibles in a given township, if that amount could be accurately determined, could not be included in determining whether the "assessed valuation, as shown by the last preceding assessment, amounts to thirty million dollars ($30,000,000) of taxables or more."

ACCOUNTS, STATE BOARD OF: City controller may be treasurer of sanitary board and receive compensation therefor.

July 16, 1936.

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

Dear Sir:

This is in answer to your letter of July 8, requesting an opinion with respect to a situation that arises out of the operation of the new sewage treatment plant built pursuant to Chapter 61 of the Acts of 1932 by Michigan City.

The sewer and the sewage treatment plant are being operated and the revenue bonds, issued to build the plant, and interest thereon are being paid for by a monthly service charge against all the property owners that make use of the sewer. The charge to each user is measured by the amount of city water consumed on his property. The common council of the city passed an ordinance placing the custody, administration, operation and maintenance of the sewer system and disposal plant under the supervision and control of a sanitary board, composed of the mayor and two other persons named by the common council, one of whom is a registered professional engineer. This is in accordance with Section 16 of the 1932 Acts. Michigan City is a third class city with a population of 26,735.

The sanitary board desires to employ the city controller to act as treasurer of the sanitary board and to make collections for it from those who use the sewer service.
Your questions are as follows:

"1. Can the sanitary board legally employ the city controller to make collections and to act as treasurer of such sanitary board, and pay the city controller a salary to be fixed by the sanitary board for such services?

"2. Is Section 21 of Chapter 233 of the Acts of 1933 applicable to Sewage Treatment Plants and Sewage Disposal Plants, and if so, are the members of the board of public works and safety entitled to the compensation provided therein?"

The answer to your first question depends somewhat on the answer to question No. 2.

I have no doubt but that the sewer works of Michigan City is a public utility in a general sense. In Valley City Salt Co. v. Brown, 7 W. Va. 191, the Court said that the words "public utility" are synonymous with the words "public use," and in the case of State v. Miller, 21 Okla. 448, 96 Pac. 747, sewers were held to be a public utility and to come within the meaning of a provision of the Oklahoma Constitution which permitted cities to become indebted "for the purpose of purchasing or constructing public utilities." However, the Indiana Public Service Commission Act of 1913, as amended in 1933, contains a definition of the terms "utility" and "public utility" and neither term includes a sewer system or treatment works. Burns Indiana Statutes 1933, Section 54-105, Chapter 233 of the Acts of 1933, to which you refer, is a City Classification Act and fixes the salaries of city officers. It was amended in 1935, Acts of 1935, Chapter 307. In Section 7 it is provided that certain duties are to be performed by a board of public works and safety, composed of the mayor, city attorney and city civil engineer. See opinion of Supreme Court in Long v. Kinney et al., May 20, 1936. Section 21 of the Act has to do with the fixing of salaries of city officials and then follows this language:

"The salaries as herein authorized shall be in full for all services performed for the city, including services for any public utility or utilities owned and operated by such city; except that the common council of any city which owns and operates a public utility or
utilities shall, by ordinance duly enacted on or before
the first Monday in September, 1933, and thereafter on
or before the first day of April in the years in which
elections for election of city officers are held, provide
that the mayor, city attorney, city civil engineer, and
city controller of such city may receive, from the funds
of such utility or utilities, a salary in addition to the
annual salary herein otherwise authorized, which addi-
tional salary shall not exceed the sum total of six
hundred dollars per year."

In my opinion, there is nothing in either the Public Service
Commission Act or the City Classification Act just referred
to that indicates any intention of the legislature to make
any part of those statutes applicable to the problem at Michi-
gan City. The 1932 Act was amended in 1933, but that amend-
ment was with reference to the bonds and other matters not
connected with the authority or duty of the sewer works sa-
nitary board. The fact that the Public Service Commission
Act, which defined public utilities, was amended in 1933, after
the 1932 sewer statute was enacted, and no change was made
in the definition of utilities so as to include sewer disposal
plants, is an indication that the lawmakers intended the 1932
statute should stand alone and that sewer works, under a
sanitary board, should not be dealt with the same as other
public utilities owned or operated by municipalities and which
fall within the definition of utilities as given in the Public
Service Commission Act.

It is my opinion that Section 21 of Chapter 233 of the Acts
of 1933 does not apply to the Michigan City situation and the
answer to your question No. 2 is in the negative.

This leaves the sanitary board free to employ such assist-
ance as may be reasonable and necessary to operate the sewer
works.

It is no part of the regular duty of the city controller to
make collections for the sanitary board or to act as treasurer
for that board and those duties are a very necessary part of
the sanitary board's obligation in maintaining and operating
the plant and in providing for the payment of interest, etc.,
on the bonds. Section 16 of the Acts of 1932 contemplates
that there be a secretary and a treasurer who shall give bond,
and I see no legal objection to the employment of the person who is city controller.

Your question No. 1 is answered in the affirmative.

BARBER EXAMINERS, STATE BOARD OF: Transfer of funds may be made from one division to another division of same department provided amount transferred when added to appropriation does not exceed annual collections made by said department.

July 18, 1936.

Mr. Frank McKamey,
Secretary, Indiana State
Board of Barber Examiners,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion which reads as follows:

"Section 21 of the Barbers License Law, Acts of 1933, provides for the establishment of a 'Barbers Examiners Fund.' It also provides that all expenses, including per diem and salaries, shall be paid from this fund, etc.

"Section 22 of the same Act, provides the number of employees that may be employed to carry out the provisions of this Act. In 1935 the Legislature in the regular biennial appropriation bill, appropriated the following amounts:

Personal Service..............$9,000.00
Other Operating..............$6,000.00

for each year of the period. These amounts are insufficient to carry out the provisions of the Law and during the year just closed, it was necessary for the Governor to advance from his Emergency Contingent Fund $4,172.49.

"The question is, in your opinion, can this Board have the Department of Treasury, acting under provisions of the Board of Finance, transfer from the receipts in excess of the appropriation, sufficient moneys to carry out the provisions of this Act."