STATE EXAMINER: Lucrative offices—Whether a person may hold the office of City Engineer and membership on the School Board at the same time.

October 21, 1936.

William P. Cosgrove, State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This is in response to your request for an opinion in answer to the following question:

"Can a person holding the position as City Engineer of a city of the second class and receiving compensation therefor, also serve as a member of the school board of such city and receive the compensation provided for such member?"

You enclose with your inquiry a letter from Senator Lynch of Hammond, which states that the position of engineer inquired about carries a salary of $3,000 per year, and that the school board members receive a salary of $500.00 per year.

The applicable provision of the State Constitution is as follows:

"No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: Provided, that offices in the militia to which there is attached no annual salary, and the office of Deputy Postmaster where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: And provided, also, that counties containing less than one thousand polls, may confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person."

Article 2, Section 9, Indiana Constitution.

Membership on the school board is provided for by state law. It is a lucrative office and has to do with the state-wide matter of education. In the case of Wells v. State ex rel.,
175 Ind. 380, the Supreme Court held that one could not legally occupy the position of school trustee and deputy auditor at the same time. In an opinion from this office, it was ruled that the trusteeship of a school was a lucrative office within the meaning of the above provision of the Constitution.

As to the position of city civil engineer, I am not able to say that there are duties in the office that pertain to other than purely municipal affairs. In the case of Chambers v. State ex rel., 127 Ind. 365, 367, the court, after reviewing earlier decisions, says:

"It must, therefore, be regarded as the settled law of this State that if an office is purely municipal, the officer not being charged with any duties under the laws of the State, he is not an officer within the meaning of the Constitution, but if the officer be charged with any duties under the laws of the State, and for which he is entitled to compensation, the office is a lucrative office within the meaning of the Constitution."

Upon the basis, therefore, that a city civil engineer has no duties except such as are purely municipal, it is my opinion that your question should be answered in the affirmative.

SINKING FUND FOR PUBLIC DEPOSITS: Whether proposed legislation violates the Federal Act prohibiting the payment of interest on deposits.

October 26, 1936.

Mr. Ross Teckemeyer, Secretary,
Sinking Fund Division,
Department of Treasury,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion as to the validity of certain proposed legislation creating a separate state fund to be known as the "public deposits insurance fund" made up of assessments levied by the Board of Depositories set up by the proposed legislation against banks acting as