“Any building and loan association may impose and collect fines or additional interest from its borrowing shareholders, their legal representatives or successors in interest, if they fail, neglect or refuse to pay dues, interest, premiums or loan fees when due, but no such fines shall exceed 10 per cent of the amount of the delinquent payments, and such fines shall not be charged more than once for each delinquency. No fines or penalties, other than those herein specified, shall be imposed or collected.”

No where in the Act is there any provision for assessments against stockholders in the event of insolvency of the institution.

It is my opinion, therefore, that there could be no legal assessment levied or imposed against stockholders of a building and loan association who are non-borrowing members. Their loss in the event of insolvency would accordingly be limited to the amount of money paid in for the purchase of their certificates of stock.

POLICE, INDIANA STATE: Cities of fifth class deeding park land to State for State Police barracks.

September 10, 1937.

Hon. Don F. Stiver, Superintendent,
Indiana State Police,
Indianapolis, Indiana.

Dear Sir:

I have before me your recent letter in which you request an official opinion on the following questions:

“1. Whether or not a city of the fifth class, if it purchases land for park purposes, may deed that land, or a part thereof, to the state for State Police barracks.

“2. If not, can such city lease such lands to the State Police for a period of ninety-nine years?”

From the facts stated in your letter the first question can best be answered in two parts, dependent upon whether the city intends to dispose of its park property by deed of sale or deed of gift. If the transfer of the property to the state
is to be accomplished by a sale to the state, your first ques-
tion is answered in the affirmative, and the transfer, if ac-
complished by a deed of conveyance reciting a valid con-
sideration, is perfectly legal.

Ample provision is made by statute for the sale of park
property by a city of the fifth class. Section 48-5714, Burns
Indiana Statutes, Annotated 1933, covers the property here
in question and reads as follows:

"SALE OF LANDS AND MINERALS—CERTAIN
FOURTH AND FIFTH CLASS CITIES—In all cities
of the fourth and fifth class in the State of Indiana,
having a population of less than twenty-six thousand
(26,000), according to the last preceding United States
census, if the common council of any such city de-
sires to sell the park lands or any part thereof, now
owned by such city or that may be hereafter acquired,
or desires to sell the minerals, or mineral rights or
royalties for minerals under such park lands or any
part thereof, such common council is hereby author-
ized to do so upon passing an ordinance for that pur-
pose, which ordinance shall provide for the manner
and terms of any such sale or sales. Such common
council is hereby authorized, if it deems it advisable,
to plat such park lands by laying the same off into
lots, streets and alleys, and then sell such lots; and
in the event any such park lands are to be platted,
the same shall be ordered by ordinance duly passed
by such common council: Provided, That such plat-
ting may be ordered by separate ordinance for that
purpose or in the ordinance for the sale of such park
lands; Provided, further, That if there is a Board of
Park Commissioners in any city contemplated in this
Act, the common council of such city shall proceed,
as provided in this Act, upon a resolution of such
Board of Park Commissioners, duly filed with such
common council. (Acts 1917, Ch. 142, Sec. 1, p. 521;
1929, Chap. 37, Sec. 1, p. 73; 1931, Chap. 45, Sec. 1,
p. 104)."

From a reading of the foregoing it is evident that the
transfer of park lands by the city to the state may be accom-
plished by a sale to the state if the sale and the terms thereof
are approved by ordinance. This is an express statutory
grant of authority to the city to dispose of its park lands by
sale and such grant of power, as strictly construed in all
cases of grants of power, limits the mode of disposition of
park property to sale. However, this grant of authority to
sell implies authority to the city to determine the manner
and terms of sale. In passing upon the question the Supreme
Court of Indiana has said:

"Where a municipal corporation possesses authority
to sell, it also possesses, as an incident to the principal
power, the right to decide upon what terms the sale
shall be made."

City of Terre Haute v. Terre Haute Water Works
Co., 94 Ind. 305.

Therefore, in my opinion, the city may sell and deed to
the state city park property upon whatever consideration
meets with its discretion.

If, on the other hand, it is desired that the city deed the
property to the state as a gift, authority for such action must
be found to rest in the city. Under the rule of strict con-
struction applicable to such, it is my opinion that the above
quoted section does not include disposition of park property
by gift. A further examination of the statutes reveals no
grant of authority to fifth class cities to deed away by gift
city property.

It, therefore, remains clear that such action is precluded
unless such a power is inherent to a city. As a general rule,
such authority to so freely deal with public property is be-

East Chicago Co. v. City of East Chicago, 171
Ind. 654;
City of Terre Haute v. Terre Haute Water Works
Co., 94 Ind. 305;
Lake County Water and Light Co. v. Walsh, 160
Ind. 32.

Therefore, in my opinion, it is beyond the power of a city
of the fifth class to deed away as a gift the public real prop-
erty of such city.
The answer to your second question is in conformity to the reasoning of the latter portion of the above question. That is, to entitle the city to lease its public property would necessitate a grant of legislative authority to the city to so lease. I find no such authorization to a fifth class city in the statutes. Since it is beyond the power of the city to make a gift of its public property by deed of conveyance, it is likewise beyond such city's power to accomplish the same result by the indirect method of resorting to a lease to accomplish the alienation.

Therefore, it is my opinion that your last question should be answered in the negative.

ACCOUNTS, STATE BOARD OF: Penalty for delinquent taxes, whether same may be included in claim against bankrupt's estate.

September 13, 1937.

Hon. W. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Mr. Cosgrove:

I have before me your request for an official opinion in answer to the following question:

"Does the county treasurer have the authority to waive the penalty on delinquent taxes on property where the owner is in bankruptcy?"

Section 93, subdivision (j) of Title II of United States Code Annotated, provides as follows:

"Debts owing to the United States, a state, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law."