> "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 question is answered in the affirmative, and the transfer, if accomplished by a deed of conveyance reciting a valid consideration, 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 desires 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 authorized to do so upon passing an ordinance for that purpose, 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 platting 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 accomplished 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 construction 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 beyond the scope of a city's inherent power, and in concurrence therewith the decisions of this state expressly prohibit the gift, or even sale, of city property held for a public purpose in absence of an express legislative authority to so alienate.

> 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 property 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."