

vides. The statute repealed is treated as still remaining in force for the purpose of sustaining any proper action for the enforcement of such liability.

Burns Indiana Statutes Annotated, 1933, Section 1-307.

In my opinion, the liability of paying officials who have failed to remit to the teachers' retirement fund the amount of deductions made from teachers' salaries is clear and that such liability may be enforced by an action upon the official bond of such officer.

Your further inquiry is as to whether interest is allowable in such a case. I think it is. The statute authorizes interest at the rate of six per cent on forbearance of money when the parties do not agree on the rate.

Burns Indiana Statutes Annotated, 1933, Section 19-2001.

Interest is allowable on money wrongfully or unreasonably withheld.

Hazzard v. Duke, 64 Ind. 220, 223;

The Wayne Pike Co. v. Hammon, et al., 129 Ind. 368, 379.

HEALTH, STATE BOARD OF: Right of cities of second class to issue bonds for payment of sewage disposal plant.

October 21, 1937.

W. H. Frazier,
Assistant Director,
Indiana State Board of Health,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Frazier:

Receipt is acknowledged of your request for an official opinion dated October 15, 1937. This request is as follows:

"Section 9, Chapter 152, Acts of 1935, provides that if a municipal corporation has received a final order from the Department of Commerce and Industries, the cost (a) shall be paid out of funds on hand available for such purposes or (b)

out of the general funds, or if there not be sufficient funds on hand or unappropriated then (c) the necessary funds shall be raised by the issuance of bonds; also, that if the estimated cost would not raise the total outstanding bonded indebtedness in excess of the constitutional limit, then the necessary bonds may be issued (d) as direct obligation of the municipal corporation but if the estimated cost is such that the bond issue would exceed the constitutional limit or if the municipal corporation should determine against the issuance of direct obligation bonds, (e) then such municipal corporation shall issue revenue bonds."

I would like your opinion as to whether a municipal corporation could adopt and issue sanitary district bonds under the provisions of Chapter 157, Acts of 1917, as amended, if the Department of Commerce and Industries has issued a final order against the municipality under the provisions of Chapter 152, Acts of 1935.

Chapter 157, Acts of 1917, as amended, provides in Section 26-a that "This act shall apply to all cities of the second class which shall adopt the same by ordinance * * *"; and specifically provides in the following paragraph of the same section for the appointment of a sanitary commission for cities of second class.

Chapter 159, Acts of 1935, abolishes the board of sanitary commissioners for cities of first class and sets up a board of public works and sanitation and provides different provisions for appointment of its members.

I would like your opinion as to whether Chapter 159, Acts of 1935, would apply to cities of second class who adopted chapter 157, Acts of 1917, as amended.

Following the request a paragraph pertains to an opinion having been heretofore rendered on your questions by the firm of Matson, Ross, McCord and Clifford.

Section 9, Chapter 152 of the Acts of 1935 (Burns Indiana Statutes Annotated 1933, Section 68-509) provides for the manner of payment of the cost of construction, etc., of a sewage disposal plant. The section is not a mandatory provision, but is what may be designated as administrative procedure.

Section 26-a, Chapter 157 of the Acts of 1917, which is amended by Chapter 258 of the Acts of 1921 (Burns Indiana Statutes Annotated 1933, Section 48-4227) applies to cities

of the second class which shall adopt the procedure by ordinance, etc. Chapter 159, Acts of 1935 (Burns Indiana Statutes Annotated 1933, Section 48-4239) abolishes the Board of Sanitary Commissioners for cities of the first class and sets up in lieu thereof a Board of Public Works and Sanitation. No provision is made for changing the law as applicable to second-class cities. In other words, the 1917 Act remains unrepealed as pertains to cities of the second class.

With reference to your first question above set out, please note the following: Chapter 159 of the Acts of 1935 abolishes the Board of Sanitary Commissioners created and existing under the Acts of 1917, Chapter 157, and abolishes the Board of Public Works (see Sections 1 and 2) and substitutes for said two boards a board known as the Board of Public Works and Sanitation. Section 9 of the Act provides in substance that the Board of Public Works and Sanitation shall have the power to construct or authorize the construction by contract and the payment by the city, in whole or in part, of the costs of a sewer project *under the laws relating to the sewers and drains in such cities*. This Chapter 159 pertains to cities of the first class only. Cities of the second class are not affected by this act and are not prohibited from adopting the provisions of Chapter 157 of the Acts of 1917, as amended, in compliance with a final order issued against the municipality under the provisions of Chapter 152 of the Acts of 1935. A first-class city may proceed under the terms and provisions of the 1917 Act, as amended, in compliance with a final order against it, issued under the provisions of Chapter 152 of the Acts of 1935, the administering authority thereof being the Board of Public Works and Sanitation.

With reference to your second question above set out, Section 1, Chapter 159 of the Acts of 1935 (Burns Indiana Statutes Annotated 1933, Section 48-4239) reads in part as follows:

“Provided, that nothing in this Act shall be construed as repealing or affecting any other provisions or part of any Act of the General Assembly relating to the creation, powers, duties, rights, obligations and liability of such Department of Public Works and of such Department of Public Sanitation, except such as related to such abolished boards and are in direct conflict with any provisions of this Act.”

My conclusion is that Section 15 of Chapter 152 of the Acts of 1935 does not repeal any existing law or the provisions of any existing law relating to the pollution of lakes or streams or relating to the powers and duties of the State Board of Health, but that the Act shall be deemed and construed as ancillary and supplementary thereto. That Chapter 159 of the Acts of 1935 establishes a new board known as the Board of Public Works and Sanitation, which board performs the duties heretofore performed by the Board of Sanitary Commissioners and the Board of Public Works in cities of the first class, under the provisions of Chapter 157 of the Acts of 1917, as amended. That cities of the second class are not affected in any manner by Chapter 159 of the Acts of 1935. That cities of the second class are not prohibited by the provisions of Chapter 152 of the Acts of 1935 from adopting the provisions of Chapter 157 of the Acts of 1917, as amended, and finally, that Chapter 159 of the Acts of 1935 does not apply to cities of the second class who adopted the provisions of Chapter 157 of the Acts of 1917, as amended.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Banks and banking—private banker may sell banking business.

October 22, 1937.

Honorable R. A. McKinley,
 Director, Dept. of Financial Institutions,
 State House,
 Indianapolis, Indiana.

Dear Mr. McKinley:

This will acknowledge receipt of your letter of October 18th, 1937, submitting the following question:

“We will appreciate the benefit of your opinion as to whether or not an individual operating a private bank in this state, under authority of either the Private Banking Act of 1905 or the Private Banking Act of 1907, or both, can legally sell, transfer, or assign such authority to engage in the banking business to another individual.”

In regard to this question, beg to say that our Appellate Court in the recent case of *Lindley v. Seward*, 5 N. E. (2d)