

economy, it may, in its discretion, buy certain articles in quantity, or may contract for the purchase of particular commodities or services to be delivered or furnished to the institution over such period of time, and to be paid for at such rate or price, as it may determine. Such fact, however, shall be particularly stated in the notices. Blank forms for bids shall be furnished to all applicants but bids shall not be rejected because not contained on such form. Any or all bids may be rejected."

It is my opinion that the word "services" applies to contracts for electrical current and therefore it will be necessary for the board to invite competitive bids after proper publication as provided by the section above quoted. Otherwise it is my opinion that the contract is legal.

ACCOUNTS, STATE BOARD OF: Salary of city controller and clerk-treasurer.

March 1, 1937.

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

Dear Sir:

This is in response to your recent request for an opinion construing certain statutes which provide the compensation to be paid city controllers and city clerk-treasurers.

You refer particularly to chapter 233 of the Acts of 1933 (Burns Statutes 1933, Sec. 48-1202 to Sec. 48-1240), and especially to section 21 of that Act.

The Act classifies cities according to their population and provides how the salaries for each office in each class of cities shall be determined. Section 21 is as follows:

"Council — Ordinance — Salaries — When Fixed — Change.—The common council of each and every city shall, by ordinance duly enacted on or before the first Monday in September, 1933, and thereafter on or before the first day of April of the year in which elections for election of city officers are held, fix the an-

nual salaries of all officers provided for in this Act at not to exceed the amounts herein specified, and such salaries when so fixed for such officers shall not be changed during their respective terms of office. 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 additional salary shall not exceed the sum total of six hundred dollars (\$600) per year. (Acts 1933, Ch. 233, Sec. 21, p. 1042)."

Burns Indiana Statutes 1933, Sec. 48-1233.

The question is whether a clerk-treasurer of those cities which have that officer is entitled to the additional salary provided in section 21 above for a city controller.

The various City and Town Acts have always made a distinction between cities based on population and the fiscal officer of the larger cities have usually been designated as "controller," and the duties of that officer, especially in larger cities, is quite extensive.

Under the 1905 Towns and Cities Acts (Acts 1905, Chap. 129, page 219), a department of finance was provided for in cities, and this department was put in charge of a city controller. The office of controller was in addition to that of city clerk and city treasurer.

The various amendments of the 1905 law continued this distinction. Cities of the first and second class have controllers. The 1933 Act, heretofore referred to, provided that in third class cities the elective officers should include a city clerk. The mayor was empowered to appoint a city controller where that office had theretofore existed, and where there was no controller, his duties were to be performed by the city clerk, and it was provided that such city clerk should be clerk

of the board of public works and safety without additional compensation. (Sec. 6). In 1935 this section was amended and a special provision was added which gave the clerk extra compensation for his services in acting as clerk of the board of public works and safety. (Acts 1935, Chap. 307, page 1491, Sec. 1).

In fourth class cities the 1933 statute provides for the election of a "clerk-treasurer." The offices of city clerk and city treasurer are abolished, and the clerk-treasurer is required to perform such duties as were performed by the city clerk, city treasurer and the controller and, although there are provisions for additional compensation for certain other city officers, there is no provision giving the clerk-treasurer extra compensation for any statutory duty. (Sec. 7). Much the same provisions are contained in the Act governing fifth class cities. (Sec. 8).

It appears from a review of these various statutes that the legislature did not use the terms "city clerk" or "clerk-treasurer" and "city controller" interchangeably, and when the statute refers to additional salary for a "city controller" it is not permissible for us to construe the Act so as to include additional salary for a city clerk-treasurer.

I understand that your office has uniformly construed the language in section 21, which is set out in the forepart of this opinion as not including the clerk-treasurer of fourth class cities, and this administrative construction not appealed from and not at variance with any court decision, is entitled to weight in interpreting the statute.

The unfairness of requiring extra work without extra pay has been urged as a reason why the statute should be construed so as to allow the payment of additional salary. However, the courts have not recognized any official duty as extra and therefore requiring extra compensation, if the performance of the duty is within contemplation of the Acts providing for the office. The argument of unfairness is one for consideration by the legislature rather than the department of law.

My opinion, therefore, is that your construction of the statute, which limits the additional salary feature of the Act to a city controller and does not apply it to the office of city clerk-treasurer, is a correct construction.