

**ACCOUNTS, STATE BOARD OF: Municipal light plants,  
right to loan funds belonging thereto.**

July 14, 1937.

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

Dear Sir:

This will acknowledge receipt of your letter of July 6, submitting the following question:

“Does a city, owning and operating a municipal electric utility, have legal authority to make a loan to a corporation formed under the provisions of the Rural Electrification Act of 1935, for the purpose of constructing necessary lines, etc., the city to have a second lien on all of the corporation’s property, securing the payment to it of money loaned?”

In reply to the same your attention is directed to section 48-301, Burns Indiana Statutes, 1933 Revision, which defines the powers of the board of trustees of municipal corporations. Without quoting therefrom, suffice it to say that in none of the powers specified does there appear the right of a municipal corporation to loan money to private concerns. In construing the powers of a municipal corporation our courts have held that:

“The presumption is that any power has been withheld that is not expressed or fairly to be implied, and therefore all reasonable doubts as to the existence of a power in a municipality must be resolved against it.”

Scott v. City of LaPorte, 162 Ind. 34;  
Bartles v. City of Garrett, 89 Ind. App. 349.

This same authority makes the further statement that:

“Such transactions may not be unknown to the mercantile world, but the assumed underwriting of a financial project by a municipal corporation on behalf of a private corporation, in the absence of a statute clearly authorizing it, would certainly be ultra vires.

A municipality can not loan its credit to purely private undertakings."

The fact that the municipality desires to make this loan with the hope and expectation that the revenues of the municipally-owned light plant may be increased does not, in my opinion, afford a basis of justification for this loan. This is a speculative transaction in which the municipality is placed in a position of loaning public funds on a second mortgage security. Whether or not such funds will ever be repaid depends upon the success of the venture. Here again our Supreme Court, in the case of *Scott v. City of LaPorte* above cited, has held that a city can not, without legislative authority, enter into speculative transactions. The rule seems to be that:

"\* \* \* any power to contract, whether conferred upon or inherent in a corporation, does not authorize the making of every sort of contract; but of such only as are fit, usual and necessary, to enable the corporation to carry into effect the purposes for which it was chartered."

*Scott v. City of LaPorte, supra.*

It has accordingly been held that:

"\* \* \* a municipal corporation can not become a surety, that it can not expend money for objects foreign to the purposes of its organization, that it can buy property only for municipal requirements, and can not issue commercial paper."

Your attention is further directed to section 48-6920, Burns Indiana Statutes, 1933 Revision, which provides that:

"Any city in the State of Indiana having established an electric lighting and power plant which is owned and operated by such city and which has outstanding its bonds issued for the purpose of establishing such plant and which has from the earning(s) of such plant accumulated a surplus after having paid the current expenses thereof and after having set aside a sufficient amount to provide for the depreciation thereof and after having set aside a sinking fund for

the payment of such bonds, in an amount which at three (3) per cent compound interest computed to the date of maturity, shall equal the face value thereof, such city shall be and is hereby by this Act authorized and empowered to transfer any such surplus to its general fund and use the same as a part of its general fund for any of the lawful purposes for which its general funds may be used and applied.”

This statute authorizes the using of surplus funds derived from the operation of the municipally-owned light plant. I can find no authority which authorizes the use of this surplus in any other manner. The general authority conferred upon cities to improve and extend their municipally-owned utilities does not carry with it the power to loan money to private corporations for purposes of building transmission lines.

As was said in the case of *Cincinnati, et al., v. Harth*, 128 N. E. 263,

“A city must be the sole proprietor of property in which it invests its public funds, and it cannot unite its property with the property of individuals or corporations, so that, when united, both together form one property.”

I am not unmindful of the decision in the case of *Bank of Commerce v. Huddleston*, 291 S. W. 422, which approved an extension of credit to an improvement district comprising the town in question for the purpose of constructing a system of waterworks and electric lights. This, however, was under an arrangement whereby the system of waterworks and electric lights ultimately became the absolute property of the city. This condition does not prevail in the case in question, for as I understand your situation, the City of Crawfordsville will never own any part of the distribution system which they seek to aid in building.

It is my opinion, therefore, that the City of Crawfordsville is without legal authority to loan their funds as proposed in your question. Your question is accordingly answered in the negative.