part, to reimburse the commission for its outlays, and to pro-
vide money for the state to carry on one of its governmental
functions—that is to protect the utilities and the citizens
against the improvident issue and purchase of securities. When
the commission completed its investigation and made the order
permitting the company to issue the stock, the money was
payable.

In view of the constitutional provision against the with-
drawal of money from the state treasury except by action of
the Legislature, it is my opinion that your department does
not have authority to grant the refund asked by the petitioner.

GROSS INCOME TAX, DIVISION OF: Power of municipali-
ties to regulate sales in stores and by auction.

March 18, 1938.

Mr. Fred C. McClurg, General Counsel,
Store License Division,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue
in response to the following inquiry:

"The City of Terre Haute has an ordinance providing
a license for any auctioneer in the City of Terre Haute,
and the same ordinance provides that any one desiring
to hold an auction sale within the city shall pay a cer-
tain license fee per day. The license for an auctioneer
under this ordinance is fifteen dollars ($15) per day
and the license for holding an auction is five dollars
($5.00) per day. This ordinance was passed in 1932
and was evidently passed under the power granted
cities by the Legislature under section 10284, clause 35,
Burns' Indiana Statute 1926 wherein the city council
is given power "to regulate the sale of all kinds of
property at auction, in the streets, stores, shops or
elsewhere in the city and to license auctions."

"Did the Store License Tax Law supersede in any
particular the statute above referred to, and did the
passage of the Store License Tax Law modify the power delegated to the several municipalities to regulate auction sales in stores within their jurisdiction? It has been suggested that by the enactment of the Store License Law the state assumed full regulation of the conduct of stores so that the cities no longer are possessed of power to enforce ordinances relating to auctions in so far as such auctions are conducted within the walls of a store licensed by the state under the Store License Law.”

I must respond to each of your questions in the negative. The common council of cities are granted the power to regulate auctions by the provisions of clause 35 of section 53, chapter 129, Acts of 1905, (9 Burns’. Indiana Statutes Annotated, 1933 Ed., 48-1407, cl. 35; Baldwin’s Indiana Statutes, 1934 Ed., 11432 which follows:

“The common council of every city shall have power to enact ordinances for the following purposes:

(Then follow thirty-four clauses listing specific grants of power.)

“Thirty-fifth. To regulate the sale of all kinds of property at auction, in the streets, stores, shops or elsewhere in the city, and to license auctioneers.”

The power granted by this section of the statute is in the nature of an exercise of the police power. The state has granted to cities the power to legislate on certain subjects which include that which will promote public health, safety, morals and general welfare. This power as here granted relates not merely to public physical safety, but also to public financial safety. This clause of the statutes, and ordinances adopted pursuant thereto, has been sustained by the Indiana Supreme Court as a valid and proper exercise of the police power.

Gordon v. City of Indianapolis, (1932) 204 Ind. 79;
See City of Goshen v. Kern, (1878) 63 Ind. 468,
(The statute there was in an earlier form but was substantially the same as clause 35 in its present form as set forth above).

State Board of Tax Commissioners of Indiana v. Jackson, (1931) 283 U. S. 527.

Since the Store License Tax Law is an expression of the state's sovereign taxing power and makes no attempt to regulate the stores licensed thereunder, it follows that the enactment of this revenue raising measure did not repeal, either specifically nor by implication, the power granted to the cities to regulate auctions and auctioneers under the police power. The suggestion "that by enactment of the Store License Tax Law the state assumed full regulation of the conduct of stores so that the cities no longer are possessed of the power to enforce ordinances relating to auctions" is unsound for the simple reason that the Store License Tax Act does not "regulate" stores, but is an expression of the revenue raising power of the state.

I am therefore of the opinion that the provisions of the Store License Tax Act do not supersede the provisions of clause 35 of section 53, Acts of 1905. The passage of the Store License Tax Act did not modify the power delegated to the several municipalities to regulate sales in stores as an expression of the police power of the state.

ACCOUNTS, STATE BOARD OF: Special Judges. Appropriations, whether per diem of Special Judges may be paid without appropriation. March 19, 1938.

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

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following question:

"Can the per diem for special judges or compensation of judges pro tem be paid by the county auditor