"The statute under which a municipal corporation is created is its organic act. Such a corporation can only exercise the following powers: 1. Those granted in express words; 2. Those necessarily implied in or incident to the powers expressly granted; 3. Those essential to the declared objects and purposes of the corporation, *not simply convenient, but indispensable.* * * The presumption is that any power has been withheld that is not expressed or fairly implied, and, therefore, all reasonable doubts as to the existence of a power in a municipality must be resolved against it."

Bearing in mind these powers which can be exercised by a municipal corporation, and measuring your question by them, we find: (1) No expressed power; (2) Pensions are gratuities of government and the power to grant them would not be incident to the power to own and operate a utility; (3) Pensions are not indispensable to the declared objects of the municipal corporation.

Since, then, there is no statute which authorizes the establishment of pensions, save and except the one heretofore referred to, no municipally owned utility, except those within the class set up by chapter 10 of the Acts of 1923, *supra*, can establish a Pension Retirement Fund for its utility employees unless the charter of the municipal corporation grants it such right.

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**ELECTION COMMISSIONERS, STATE BOARD OF:** City Councilmen. Nomination and election of City Councilmen in second, third, fourth and fifth class.

March 28, 1938.

Indiana State Board of
Election Commissioners,
Indianapolis, Indiana.

Gentlemen:

I have at hand your letter of March 23 wherein you request an official opinion of the effect of chapter 276, Acts of 1935 upon the nomination and election of city councilmen in second, third, fourth and fifth class cities as formerly provided by
chapter 233, section 9, Acts of 1933. Chapter 276, Acts of 1933 reads as follows:

"Be it enacted by the General Assembly of the State of Indiana, That section 9 of the above entitled Act be amended to read as follows: Sec. 9. The number of members of the common council in cities of the second class, as herein defined, shall be nine (9) and no more; in cities of the third and fourth class, as herein defined, shall be seven (7) and no more; and in cities of the fifth class, as herein defined, shall be five (5) and no more; and such members of the common council shall be known as councilmen-at-large, and shall be elected by the electors of the entire city except in cities of the second class, as herein provided, and such councilmen shall not be elected by wards: Provided, That in cities of the second class there shall be elected in each of the councilmanic districts herein provided one councilman, and the whole city shall elect three councilmen-at-large. Any city coming within the provisions of this Act, for the purpose of carrying out the same, shall, by the common council of such city, be divided into districts, to be known as councilmanic districts. The number of councilmanic districts of cities of the second class shall be six (6); in cities of the third and fourth class of five (5) and in cities of the fifth class, shall be four (4). Each district shall contain, as nearly as possible, an equal number of electors, and in elections in cities of the second class not more than one councilmanic candidate of any political party or organization shall be named or nominated from either or any one of said districts.

"On or before March 27, 1934, the common council of cities of the second, third, fourth and fifth classes, shall, by ordinance, establish councilmanic districts as herein provided and the nomination of candidates and the election of members of the common council in the year 1934 and each election thereafter shall be in accordance with the provisions of this Act and the laws governing primary and general elections.

"In cities of the third and fourth classes each and every legal voter shall have the right to vote for any
seven (7) candidates for the office of councilman, and the seven who shall receive the largest number of votes of those cast for candidates for the office of councilman shall be declared elected. In cities of the fifth class each and every legal voter shall have the right to vote for any five (5) candidates for the office of councilman, and the five who shall receive the largest number of votes of those cast for candidates for the office of councilman shall be declared elected.” (Our italics.)

You will note from the foregoing that cities of the second class were excepted from the general provisions of the Act providing that all councilmen in second, third, fourth, and fifth class cities shall be elected at large, and that the provision of the former Act “not more than one councilmanic candidate of any political party or organization shall be named or nominated from either or any one of said districts” has now been limited in effect to cities of the second class. In view of the fact that the Act provides for fewer councilmanic districts than councilmen the question is presented as to how many candidates can now appear upon the ballot in cities of the third, fourth, and fifth class and how it is to be determined which of the candidates filing in the primary will be nominated to places upon the fall ballot.

Suffice it to say that the language of the proviso relative to second class cities is sufficient enough in itself to need no interpretation. The primary candidates in such cities will stand for nomination in the councilmanic districts of their declaration, each party being entitled to nominate one candidate per councilmanic district and three candidates for councilman-at-large who have declared as such. Thereafter, in the fall elections, the vote will be by councilmanic districts for representation by such districts and a vote at large to select the three councilmen standing as councilmen-at-large.

The provisions relative to the procedure in the third, fourth, and fifth class is ambiguous and open to question and is subject to an interpretation to obtain the intent of the Legislature passing the amendatory Act. By the plain language of the first paragraph of the amendatory Act it is beyond question that the Legislature intended to retain the plan of electing councilmen by a vote at large, whether the vote is for a declared candidate of a certain councilmanic district or for a council-
man-at-large. This interpretation is supported by the provi-
sions of third paragraph of the amendatory Act, supra.

The provisions of the Act relative to the division of the
cities into councilmanic districts and its retention in the amend-
atory Act is evidence of the intent of the Legislature to con-
tinue the practice of declaration of candidacy for councilman
by district, even though those successful of nomination are
voted on at large. This position is supported by the Act of
the Legislature in limiting the single "candidacy-organization"
provision solely to cities of the second class.

The practical aspect of such an interpretation is that all
candidates for the office of city councilman declare for that
office as a candidate of a certain district or as a councilman-at-
large and as such candidates stand for nomination by vote of
the city at large. This insures each councilmanic district rep-
resentation upon the council, for otherwise, there would be
little or no reason for the division of the cities into districts.
In other words, the vote at large at the primary nominates for
all parties a councilmanic candidate for every councilmanic
district and likewise candidates at large. In the latter case,
the candidates at large are those who declared as such and did
not stand for nomination by districts, and will be, two in the
cities of third and fourth class, and one in cities of the fifth
class. This insures to the parties a full slate of candidates for
all councilmanic offices.

In view of the foregoing, I am of the opinion that the pro-
visions of sec. 9, of the 1933 Act, interpreted to provide for
minority representation, are by the amendatory Act obviated,
and that the voters are entitled to vote upon a slate of candi-
dates of each party equal to the number of councilmen to be
elected.

The provisions for election in the general election are
clearly provided for by the third paragraph of the amendatory
Act and needs no further comment.