The consideration of the fact that fees and costs differ essentially, and that fees were originally payable at the time that the service was rendered, is particularly pertinent to the question which you present where no court intervenes to determine the liability of the parties to the officers for such fees, and where, by virtue of a large volume of additional services, it would appear that the determination of the person primarily liable for the payment of such fees (if collection cannot be made from the other party) is important. "Whenever the General Assembly authorizes by new legislation the imposition and collection by a public officer of new and additional fees for the discharge of new and additional duties, * * * such fees * * * when imposed and collected, belong to and are the property of such public officer, unless the law-making power has clearly indicated, in such legislation, that such fees shall be applied in a different way, or to a different purpose."

Henderson v. The State, ex rel. Baldwin, Atty. Gen., 96 Ind. 437 at 441.

"5. Are these charges proper administration charges to be paid out of administrative funds?"

Since the services in question are performed by an independent official as an integral part of the administration and enforcement of the Act in question, the payment for such services is a proper administrative charge and should be disbursed out of such funds as are set aside for the administration of the Unemployment Compensation Act.

TAX COMMISSION, STATE: Construction of section 15, Chapter 34 of Acts of 1937. Flood Control District, who may make levy to cover administration expense.

August 4, 1938.

Hon. Philip Zoercher,
Chairman, State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that the question has been presented to your board by the Board of
Flood Control Commissioners operating under Chapter 43 of the Acts of the General Assembly of Indiana of 1937 as to the proper method of making a levy to cover the expenses of such board during the year 1939. You request an official opinion in answer to said question.

The particular section involved is section 15 which, so far as the same is necessary to the consideration of your question, provides as follows:

“For the purpose of providing for the payment of all general expenses of said board of flood control commissioners, including salaries of officers and employees and other items of expense not properly chargeable into the cost of any property acquired or work done under any resolution of said board for which special taxing district bonds are issued, and for the further purpose of providing for the operation, maintenance and repair of any levees, dikes, retaining walls, reservoirs, drains and any and all other works and improvements in or along any such river, stream or water-course designed to prevent damage and injury through floods, and other permanent works constructed, including the repair and maintenance of equipment, or the performance of any duty imposed pursuant to the provisions of this Act, a tax of not exceeding one cent on each one hundred dollars of taxable property in such city of the first class, and of the county in which such city is located, and in such incorporated towns located within the boundaries of said county, as the same appears on the tax duplicates, which shall be in addition to other taxes of said city, county and towns, shall be levied annually by the common council of said city and the board of county commissioners of said county, and by the board of trustees of said towns respectively, for flood control purposes, and the county auditor shall estimate said taxes and enter the same upon the tax duplicate, and the county treasurer shall collect and enforce such taxes, in the same manner as state and county taxes are estimated, entered, collected, and enforced.” (Our italics.)

The Act of which the foregoing is a part is an Act entitled:

"An Act concerning the department of flood control in cities of the first class, defining its power and duties, creating flood control districts consisting of such cities and incorporated towns and the county in which they are contained, repealing conflicting laws, and declaring an emergency."

It provides for the creation of a department of flood control in cities of the first class to be under the control of a board of three members to be known as the "board of flood control commissioners" two of whom shall be appointed by the mayor of the city and the third member to be the city civil engineer. Of the two members appointed by the mayor, one shall be nominated by the board of county commissioners of the county in which such city of the first class is located.


Section 3 of the Act provides as follows:

"Upon the taking effect of this act, and the organization of such board of flood control commissioners as hereinbefore provided, all of the territory included within the corporate limits of any said city of the first class, and all of the territory within the limits of the county in which is located such city of the first class, including the territory included within the corporate boundaries of all incorporated towns located in said county shall become and constitute a flood control district, for the purpose of protecting them and the citizens thereof from floods or the hazards thereof, and thereafter said flood control district shall be deemed duly created and established under and pursuant to the provisions of this act." (Our italics.)


While the above language contains some duplication (the italicized language alone is sufficient to describe all of the territory in the newly created flood control district) it is evident that the purpose is to create and establish a flood control district co-terminous with the county, to be under the control of the "Board of Flood Control Commissioners" who consti-
tute the board of control of the newly created city department of flood control.

This board has very broad powers, set out specifically in section 4 of the Act, and with respect to the payment of bonds whose issue is authorized by other sections of the Act, is required to levy a special tax upon all of the property of the flood control district. See section 14.


When it comes to the question of raising money to pay administration expenses and operation, maintenance and repair costs, however, the "Board of Flood Control Commissioners" is powerless to make a levy and instead thereof the provision of section 15 supra applies. Just what the intention back of this distinction is, is not entirely clear. It is certain, however, that the distinction was not made because of any doubt as to the right of the Legislature to delegate the authority to the "Board of Flood Control Commissioners" to levy a county wide tax. It had already done so in section 14 of the Act. Whether the Legislature desired to authorize the common council of the city, the board of commissioners of the county and the several boards of trustees of the towns to levy separate taxes within the scope of their several territorial jurisdictions to raise such amounts as they severally might determine was the fair share of such municipality, thus leading to a very evident discrimination within the taxing district, I am not prepared to say. It is evident, however, that the Legislature created a new taxing district co-terminous with the boundaries of the county, an action which is not unusual and which in the absence of other constitutional objections is not invalid on that account. In fact the Legislature in creating such new taxing district was not obliged to use the boundaries of existing political subdivisions, as was done in the case under consideration.

Gilson et al. v. Board, etc., 128 Ind. 65;
Smith et al. v. Board, etc., 173 Ind. 364;
Brown Treas. v. Baltimore, etc., R. Co., 186 Ind. 81;
Johnson et al. v. Board, etc., 202 Ind. 282.

Moreover, while the creation of such districts is not unusual, and while the levying of a uniform tax co-extensive with
the same does not violate section 1 of article 10 of the Indiana Constitution, Gilson et al. v. Board etc., supra, Bright v. McCullough, Treas. etc., 27 Ind. 223, I think that the levy of a tax for the purposes of the district so created which is not co-extensive with the district would violate the above constitutional provision.

It follows that any attempt by the common council of the city or by any of the boards of trustees of the towns to levy a tax limited to their own particular territorial jurisdictions, but for the purposes of the flood control district which is co-extensive with the county would be invalid. This does not, however, render section 15 invalid in toto especially in view of the separability provisions of section 21 of the Act.


Eliminating what I think are the invalid provisions of said section 15 we have the following (use only the italicized words):

For the purpose of providing for the payment of all general expenses of said board of flood control commissioners, including salaries of officers and employees and other items of expense not properly chargeable into the cost of any property acquired or work done under any resolution of said board for which special taxing district bonds are issued, and for the further purpose of providing for the operation, maintenance and repair of any levees, dikes, retaining walls, reservoirs, drains and any and all other works and improvements in or along any such river, stream or water-course designed to prevent damage and injury through floods, and other permanent works constructed, including the repair and maintenance of equipment, or the performance of any duty imposed pursuant to the provisions of this act, a tax of not exceeding one cent on each one hundred dollars of taxable property of the county in which such city is located, as the same appears on the tax duplicates, which shall be in addition to other taxes of said city, county and towns, shall be levied annually by the board of county commissioners of said county, for flood control purposes, and the county auditor shall estimate said taxes and enter the same upon the tax duplicate,
and the county treasurer shall collect and enforce such taxes, in the same manner as state and county taxes are estimated, entered, collected and enforced.

It is my opinion, therefore, that the only levy which can be validly made under said section 15 as it now exists is the levy authorized to be made by the board of county commissioners which is county wide. In this connection, I call attention to the word "respectively" used near the close of the quotation of a portion of section 15 in the early part of this opinion. It is found in that part of the section purporting to authorize the common council of the city, the board of commissioners of the county, and the several boards of trustees of the towns to levy a tax, clearly intending to authorize each group to levy a tax co-extensive with its territorial jurisdiction. The word is not particularly important in view of the conclusion to which I have come except that it shows clearly with reference to its context that the tax to be levied by the board of commissioners is county wide, including the city, the towns and the county outside of the city and the towns.

PUBLIC INSTRUCTION, DEPARTMENT OF: Schools.
License in physical education required of all coaches.

August 8, 1938.

Hon. Grover Van Duyn,
Asst. Supt. of Public Instruction,
Department of Education,
Indianapolis, Indiana.

Dear Mr. Van Duyn:

This will acknowledge receipt of your letter of August 6, in which you submit the following question:

"Pursuant to section 4 of the Acts of 1923, page 36, the State Board of Education in its official meeting on June 2, 1933, passed the following recommendation:

'It is recommended that beginning with the school year of 1934-1935, all coaches of interscholastic athletics in commissioned high schools be required to hold a license or permit in physical education.'

"Pursuant to this action, are coaches in inter-scholastic athletics in commissioned high schools, who were in