ADJUTANT GENERAL: Armories—Power of city to borrow money and issue bonds to aid in providing or erecting an armory.

October 24, 1938.

Mr. Elmer F. Straub,
Adjutant General of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your letter of October 20, 1938, which reads as follows:

"This office has now under consideration the construction of a new National Guard building, to be located in the City of Kokomo, Indiana. The City of Kokomo desires to contribute the sum of $8,000.00 to the Armory Board of the State of Indiana which funds will be used by the State Armory Board for the purpose of equipping the proposed Kokomo Armory with desks, bleachers, lockers, and similar equipment, which is all necessary for an armory.

The City of Kokomo does not now have funds out of which this contribution can be made. However, the City of Kokomo is willing to borrow the funds under discussion and to issue its note or bond as evidence of the obligation to repay the money borrowed.

Will you please give this office your opinion as to whether the City of Kokomo has power to borrow money for the purpose indicated above, and whether the note or bond of the City of Kokomo given as evidence of the obligation to repay such loan is valid and binding on the City of Kokomo."

I call your attention to section 45-307, Burns’ Indiana Statutes Annotated 1933, which recites as follows:

"Such armory board shall have power to receive from counties, cities, municipalities or other sources donations of land or contributions of money, to aid in providing or erecting armories throughout the state for the use of the national guard of Indiana, and which shall be held as other property for the use of the State of Indiana, and such counties, cities or other munici-
palities are hereby authorized to make such contributions for the purposes of this Act.” (Our italics.)

It will thus be seen that this section vests in the city authority to make such contributions.

With regard to the constitutionality of this section see the opinion from this office addressed to you under date of May 22, 1934.

The next question which presents itself is whether or not the city may legally borrow this money and issue bonds therefor. Your attention is directed to section 48-1410 Burns’ Indiana Statutes Annotated 1933, which recites in part as follows:

“The common council of every city shall have power to manage the finances thereof, subject, however, to the powers and duties vested by this Act in the several executive departments of cities of the first, second, third, and fourth classes. Such common council, on passage of an ordinance for that purpose, shall have power to make permanent loans of money to an amount not exceeding two (2) per cent of the taxable property of said city, to be determined by the last assessment for state and county taxes previous thereto, and power to issue bonds for the purpose of refunding such loans, as in this Act provided. Such loans may be made only for the purpose of procuring money to be used in the legitimate exercise of the corporate powers of such city and for the payment of corporate debt. * * *” (Our italics.)

From this section it will be noted that the city may make loans and issue bonds in order to exercise its legitimate corporate powers and since by statute (sec. 45-307 Burns’ Indiana Statutes Annotated 1933, quoted above), a contribution of money to aid in providing or erecting an armory is authorized, it follows that such action is a legitimate exercise of corporate power.

I have assumed for the purpose of this opinion that the proper procedure with regard to making the appropriation and the issuance of the bonds will be complied with. However, I especially call your attention to section 7, chapter 119, Acts of 1937, which reads in part as follows:

“Sec. 7. No tax levies or rates to meet the principal
and interest of any obligations hereafter issued under clause (d) of section 6 hereof shall be made unless prior to the issuance of such obligations a petition or petitions shall be filed by at least 50 owners of taxable real estate in the municipal corporation desiring to issue such obligations praying for the issuance of such obligations, or if such number of petitioners shall be greater in any case than a majority of the owners of taxable real estate in any such municipal corporation, then by a majority of such owners. Said petition or petitions shall be filed with the body vested with authority to authorize the issuance of such obligations and shall be verified under oath of one or more of the signers and shall have attached thereto a certificate of the auditor of the county to the effect that all such petitioners are owners of taxable real estate in such municipal corporation; if said body shall determine to issue said bonds petitioned for, then notice of the filing of such petition shall be given by publication one time in two (2) newspapers of opposite political parties published in such municipal corporation * * * and by posting such notice in three (3) public places in such municipal corporation: Provided, however, That if in any case within thirty (30) days after the publishing of such notice, a remonstrance or remonstrances shall likewise be filed by owners of taxable real estate in such municipal corporation greater in number than the number of petitioners, which remonstrance is likewise duly verified and certified praying that no such obligations be issued, then no such obligation shall be issued. No further petition shall be filed for the issuance of such obligations which have been defeated by remonstrance, within a period of one year after the filing of such remonstrance.

Nothing contained in this section shall be construed to repeal any other requirements of any other law of this state relating to the issuance of bonds.* * *”

This section is, I believe, self-explanatory. It is, therefore, my opinion that the City of Kokomo, Indiana, has power to borrow money for the purposes mentioned in your letter, provided the requirements mentioned in this opinion are complied with.