ACCOUNTS, STATE BOARD OF: Right of cities to establish pensions. Utility employees right to pension.

March 28, 1933.

Hon. William P. Cosgrove,
State Examiner,
Division of Accounting and Statistics,
Indianapolis, Indiana.

Dear Sir:

In your letter of March 17 you say that during the past several months you have had many inquiries from municipally owned and operated utilities that desire to establish a Pension Retirement Fund for their utility employees. You say that it is proposed that the employees pay monthly dues and that the utility make a contribution to the Pension Retirement Fund out of its operating budget. You then submit this question:

"Can a municipally owned utility legally establish a Pension Retirement Fund for its utility employees?"

Chapter 10 of the Acts of 1923 provides for the establishment of a pension fund for every city of the second class having a population of more than 50,000 and which operates both an electric light plant and a water works plant as public utilities, or which operates any two or more public utilities. The Act provides for the setting up of a board of trustees, also for the sources of revenue, investment of funds, medical examination, benefits, the discontinuance or reduction of benefits and the inapplicability of the Workmen's Compensation Act.

Thus, then, so far as this statute is applicable, municipally owned utilities may establish a Pension Retirement Fund for its utility employees.

In the event, however, that the city belongs to any class other than that set out by statute, the municipally owned utility could not establish a Pension Retirement Fund for its employees. That is true because of the well settled rule that a municipal corporation has only such powers as are expressly or impliedly granted and those which are essential to the declared purpose of the corporation. The rule has been well stated in the case of Bartles v. City of Garrett, 89 Ind. App. 349, where it is said:
"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, \textit{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, \textit{supra}, can establish a Pension Retirement Fund for its utility employees unless the charter of the municipal corporation grants it such right.

---

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