

OFFICIAL OPINION NO. 43

December 19, 1969

Hon. John K. Snyder
Treasurer of State
242 State House
Indianapolis, Indiana 46204

Dear Mr. Snyder:

This is in response to your request for an Official Opinion on questions presented to you in your additional capacity as a member of the Board of Trustees of Vincennes University. Your questions were as follows:

1. Does a Civil City have the authority to require a tax-supported university to obtain a building permit and to charge a fee based on the cost of construction?
2. Does a Civil City have the right to charge other than a nominal fee for a building permit for a tax-supported university? And what is considered a nominal fee?

It is my opinion that a Civil City in the circumstances you relate may require a tax-supported university to obtain a building permit, but the fee may not be based on the cost of construction. The fee should be nominal. Public buildings, including those of tax-supported universities, come under the primary jurisdiction of the Administration Building Council of the State of Indiana. The Acts of 1969, Ch. 338, Sec. 13, as found in Burns' (1969 Supp.), Section 20-447, outline in detail the examining fees which are to be paid on public buildings to the State of Indiana through the Administrative Building Council.

Acts of 1905, Ch. 129, Sec. 53, as found in Burns' (1963 Supp.), Section 48-1407, authorizes the common council of every city in Indiana to enact ordinances for certain designated purposes. Clause twenty-four (24) provides in part:

"To define fire limits in such city and the character of buildings which are forbidden to be erected within such limits; to prohibit the erection of buildings in such city without a license first obtained therefor * * *"

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The clear intent and purpose of the foregoing clause, as well as the other clauses in the Act, is to clothe the common council with the power to adopt those reasonable rules and regulations which allow the orderly development of their political subdivisions with due concern for all interests of the residents thereof. *Baumgartner v. Hasty* (1884), 100 Ind. 575, 50 A. R. 830. However, the provisions of said Act were not intended to and cannot operate as authority for cities and towns to levy independent excise taxes for revenue raising purposes. 1962 O. A. G., page 355, No. 65.

The obvious reason why a duly promulgated building permit schedule is based upon the costs of construction is a recognition that the amount of time involved in examining and determining compliance with existing ordinances is or should be in direct proportion to the complexity and size of the proposed building. However, the Legislature created the Administrative Building Council of Indiana whose duties include examining and approving plans and supervising the construction of *public* buildings. Acts of 1969, Ch. 338, Sec. 2, as found in Burns' (1969 Supp.), Section 20-436. Any building constructed by a university must comply with the requirements of this Act.

The administration of the Administrative Building Council's rules and regulations shall be enforced in cooperation with local officials. While the city council's ordinances may go into more detail if desired, or contain more stringent requirements, such is expressly prohibited if there is conflict with any rule or regulation of the administrative committee. Acts of 1969, *supra*, as found in Burns' (1969 Supp.), Section 20-453. See also: 1964 O. A. G., pages 9, 13, No. 3.

Thus it follows that the common council of a Civil City may assess a nominal fee for the securing of a building permit by the trustees of a tax-supported university, but that fee cannot be based upon the estimated costs of construction.

In my opinion, the question of what is a nominal fee in this instance is defined by 1964 O. A. G., No. 3, which states that a nominal fee for a building project would not be more than \$10.00 for each project. I concur with that conclusion.