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service board shall be created as hereinafter provided."
(Emphasis added.)

The emphasized portion of the above proviso was added by the 1959 amendment, a clear indication that the Legislature intended the fixing of compensation for employees of municipally owned utilities (a power and authority of a utility service board) be an exception to the general statute concerning the fixing of compensation for municipal employees.

Your letter correctly anticipates my advice. The answer to your question is this :

In cities (except of the first and second class) in which municipally owned public utilities are operated by boards of public works or boards of public works and safety, such boards have the power and authority to fix the compensation of all employees of such utilities, which compensation may be lowered but not raised by the city council. The provisions of Burns § 54-613 govern.

OFFICIAL OPINION NO. 28

August 22

TAXATION—Warrants Issued by Department of Revenue for Collection of Adjusted Gross Income Tax— Assessability of Damages.

Opinion Requested by Mr. William L. Fortune, Commissioner
of State Revenue.

This is in reply to your request for an Official Opinion in regard to the following question :

Is there any provision for the addition of damages to the amount of a warrant or alias warrant issued by the Indiana Department of Revenue for the collection of adjusted gross income tax?

The Gross Income Tax Act of 1933, Acts 1933, ch. 50, as last amended by Acts 1963, ch. 382, § 1, which has been further amended by Acts 1967, ch. 222, § 1, and the Adjusted Gross Income Tax Act of 1963, Acts 1963 (Spec. Sess.) ch. 32, § 603, contain many similar provisions, among which are provisions for the issuance of warrants for the collection of delinquent taxes. These warrant provisions differ, however, in that the Gross Income Tax Act provides for the addition of damages to the tax, penalties and interest due when the warrant is issued, while the Adjusted Gross Income Tax Act contains no such provision.

Section 13(a) of the Gross Income Tax Act, as last amended by Acts 1967, ch. 222, § 1, the same being Burns § 64-2613, provides in part:

“If any tax, penalties, or interest, or any proportion thereof, imposed by this act and demanded by the department be not paid within thirty (30) days after the same is found to be due and within the ten (10) days after the demand provided for in section 12(a) of this act, the department shall issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person owing said tax, found within his county, for the payment of the amount thereof, *with damages to the amount of ten per cent (10%) of the tax*, in addition to the penalties imposed for failure to make a return, and in addition to the penalties imposed under section 11 of this act, and interest, and costs of executing the warrant. . . .”
(Emphasis added.)

A corresponding provision in the Adjusted Gross Income Tax Act is found in Acts 1963 (Spec. Sess.) ch. 32, § 603(a), the same being Burns § 64-3237, which provides in part:

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“If any tax, penalties, or interest, or any portion thereof, imposed by this act and demanded by the Department be not paid within thirty (30) days after the same is found to be due and within ten (10) days after the demand provided for in section 602 of this act, the Department shall issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person owing said tax, found within this county, for the payment of the amount thereof, with interest at the rate of six per cent per annum from the date of the demand to the date of sale, and costs of executing the warrant. . . .”

In regard to alias warrants, the same section of the Adjusted Gross Income Tax Act provides:

“The warrant provided for herein shall be the sheriff’s instrument of execution on the judgment and, in case the execution and levy is not made within the sixty days provided, the Department may issue an alias warrant in the same amounts which shall be served and executed either by the sheriff or by the Department. . . .”

There is no provision for any additional damages upon the issuance of either an original warrant or an alias warrant.

It is, therefore, my opinion that a warrant for the collection of any tax imposed by the Adjusted Gross Income Tax Act of 1963 should include only the tax due and statutory penalties and interest, and the costs of executing the warrant. No additional damages should be included in either an original warrant or an alias warrant, nor should any additional damages be collected either by the sheriff or by the Department of Revenue.