benefits. Upon this basis, I must conclude that the Legislature also apparently meant that the term "total gross income from all sources" as used in the Acts of 1965, ch. 228, § 1, Burns 64-224, supra, should include Social Security benefits received by such blind persons.

OFFICIAL OPINION NO. 71

December 30, 1965

Mr. Richard L. Worley
State Examiner
Indiana State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. Worley:

This is in response to your recent letter requesting an Official Opinion pertaining to the interpretation of Chapter 411 of the Acts of 1965, which reads:

"... All cities of the first, second, third and fourth classes having regularly organized and paid police and fire departments shall provide for use by the active members of such police and fire departments of all uniforms, clothing, arms and equipment necessary to the performance of their respective duties: Provided, That after one (1) year of regular service in said departments, any such member thereof may be required by such city to furnish and maintain all of his uniform, clothing, arms and equipment upon the payment to such member by such city an annual cash allowance of not less than one hundred and twenty-five dollars ($125) : Provided further, That a city of first, second, third and fourth class may credit such a uniform allowance to each individual officer as against his purchases during any calendar year and provide for the payment of any cash balance remaining at the end of the calendar year."

The specific questions stated in your letter are as follows:

"(1) Will Chapter 411 of the Acts of 1965 authorize a city of the first, second, third or fourth class to
maintain a store room for the purpose of stocking clothing and equipment for issuance to policemen?

“(2) If your answer to the first question is in the affirmative, may such issues be charged against the policeman's annual allowance and any remaining balance paid at the end of the calendar year?”

In response to your first question, numerous decisions of the Supreme Court of Indiana have held that municipal corporations can exercise only (1) powers granted in express words; (2) those necessarily or fairly implied, or incidental to the powers expressly granted; and (3) those essential to the declared objects and purposes of the corporation. Whether expressed or implied, the power must flow from a legislative grant. Where they are treated as implied, or essential to the declared objects and purposes of the corporation, it is assumed that the Legislature intended the powers to be exercised because of their incidental or essential character. Unless it can be assumed that the Legislature intended to grant the power, it must be concluded that the power is non-existent.

Freigy v. Gargaro Co., Inc., 223 Ind. 342, 60 N.E.2d 288 (1945);
Southern Railway Co. v. Harpe, 223 Ind. 124, 58 N.E.2d 346 (1945);
City of South Bend v. Chicago, etc. R. Co., 179 Ind. 457, 101 N.E. 628 (1913).

Acts 1965, ch. 411, Burns IND. STAT. ANN., § 48-6153, does not contain language which would give cities expressed power to maintain a storeroom for the purpose of stocking clothing and equipment for issuance to policemen. Therefore, if any such power exists, it must be implied.

Before the power to maintain a storeroom may be implied from this Act, such power must meet the test of whether the Legislature intended to grant such power. The test of whether the Legislature intended to grant a particular power depends upon the incidental or essential character of the power.

Maintaining a storeroom for the purpose of stocking clothing and equipment for issuance to policemen is not essential to the compliance of Acts 1965, ch. 411, Burns IND. STAT.
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ANN., § 48-6153. Clothing and equipment can be purchased from a variety of private retail stores or wholesale outlets without the necessity of municipal corporations entering into the business of selling clothing and equipment. Further, the establishment of a clothing store would require administrative and supervisory expense. This would certainly have to be justified to the tax levying authorities.

Therefore, it is my opinion that this Act does not authorize cities of the first, second, third or fourth class to maintain a storeroom for the purpose of stocking clothing and equipment for issuance to policemen.

Since my answer to your first question is in the negative, your second question is moot. Implicit in this question, however, is the suggestion that the operation of such a clothing store might cause the "uniform allowance" to be applied to its intended purpose, that is the purchase of new uniforms and equipment. This is of course a laudable purpose since the continued good appearance of officers of the law not only raises the esprit de corps of the Department for which he works, but by bringing respect of the citizenry in general it enhances law enforcement. This is however, a matter of inter-departmental discipline, and does not relate to the operation of a clothing store. If there is a tendency by the officers in a given department to treat their "uniform allowance" as merely a supplement to their salary and thus avoid the intendment of the Legislature, this would merely reflect a breakdown in discipline. The remedy of course is obvious. The departmental superior officer charged with inspection of the appearance of his subordinates should cause the "uniform allowance" to be withheld until a noncomplying officer can demonstrate his willingness to put the allowance to its proper use, that is the purchase of new uniforms and equipment.