of the state; and it is insisted that by so doing they become resident citizens of the state within the meaning of the removal act. This position is supported by the decisions in Scott v. Cattle Co., 41 Fed. Rep. 225; Zambrino v. Railway Co., 38 Fed. Rep. 449; but the weight of authority, and, as it seems to me, sound reason, are the other way. There is, I think, no well-considered exception to the rule that the residence and citizenship of a corporation must be in the jurisdiction of its creation. It may send its agents into other states to do business, and may consent to be sued there in the state courts by means of process served upon its agents; but even if so intended, it could not thereby effect a change of residence or citizenship * * *"

From the above, I conclude that a foreign corporation admitted to do business in Indiana, if a contractor, is included in the phrase "non-resident contractor."

In answer to your question, it is my opinion that the State Highway Commission is considered a withholding agent for taxes to be withheld under the Gross Income Tax Law and that as such withholding agent it is required to withhold such taxes from nonresident contractors which term includes foreign corporations admitted to do business in Indiana.

OFFICIAL OPINION NO. 55

September 16, 1964

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. McDonald:

This is in response to your request for an Official Opinion on the following questions:

"Some question has arisen as to whether or not there is a conflict between the statutes (Burns' 60-1805 Sec-
tion 7) under which the Department of Administration operates and the printing law (Burns’ 63-1638 et seq.) in regard to the purchasing of printing for State Government pursuant to a general printing contract awarded annually.

“We would, therefore, appreciate your official opinion on the following:

1. Does the Department of Administration have authority to purchase printing for State Government, except in emergency, other than by the award of an annual contract as provided in Sections 1638 to 1655 Burns’ Revised Statutes?

2. It would be helpful if you could give us—for the purpose of this opinion—a definition of the two words Emergency and Printing.”

The two statutes in question, though they may appear to be inconsistent or in conflict, must be so construed as to give force and effect to each, if possible.

See:
New York Central Railroad Co. v. Public Service Commission of Ind. et al. (1958), 237 Ind. 544, 147 N. E. (2d) 547.

The Acts of 1941, Ch. 124, Secs. 1-19, as found in Burns’ (1961 Repl.), Sections 63-1638 to 63-1655, established the board of public printing and the office of director of printing purchases with the power and duty to purchase printing materials for state agencies. By the Acts of 1947, Ch. 279, Sec. 25, as found in Burns’ (1961 Repl.), Section 60-1825, the board of public printing and the office of director of printing purchases were abolished, and their powers and duties were transferred to the director of public works and supply.

Thereafter, the Acts of 1961, Ch. 269, Sec. 9, as found in Burns’ (1961 Repl.), Section 60-109, abolished the office of director of public works and supply and transferred all its powers and duties to the Department of Administration. Accordingly, the power and duty to enter into contracts for
printing for state agencies is now in the Department of Administration.

The present grant of power to make printing purchases is found in Burns' (1961 Repl.), Section 60-1805, as follows:

"Subject to other applicable provisions of this act and to other laws not inconsistent herewith, the director of public works and supply [department of administration] shall have the following powers and duties respecting all agencies of the state except as herein otherwise provided:

* * *

"(7) To enter into contracts and issue orders for printing as provided by chapter 124, Acts of 1941, as amended, and to appoint a deputy or assistants who shall have the qualifications and who shall be assigned to the duties assigned to the director and deputy director of printing as set forth in said act, and to maintain and operate all central duplicating and mailing services now or hereafter established and operated by the state and serving more than one [1] agency."

Accordingly, it appears that the Department of Administration must advertise and award all printing contracts pursuant to the provisions of Acts of 1941, Ch. 124, as found in Burns' (1961 Repl.), Sections 63-1638 through 63-1655.

Burns' 63-1645, supra, provides in part:

"The board of public printing [department of administration] shall, prior to March 15, 1945, and annually or biennially thereafter between March 1 and March 15, give notice by publication by advertising twice in not less than three [3], nor more than five [5] daily newspapers of general circulation, published in different sections of the state of Indiana, that bids will be received on the dates specified in such notice, for such public printing, lithographing, binding, stationery, electrotypes, engraving, printing materials and other office supplies required by the various departments, boards and commissions during the ensuing year or more, pursuant to specifications prepared
by the board under the classifications and divisions thereof hereinbefore described * * * In the event that, if at any time during any year emergency printing, lithographing, binding, stationery, electrotypes, engraving, printing materials and other office supplies shall be required by any department of the state, or any state educational institution and such additional requirements are approved by the board, the director of the board shall give notice by advertising twice in not less than three [3] nor more than five [5] daily newspapers of general circulation, published in different sections of the state of Indiana, that bids will be received."

and Burns’ 63-1647, supra, reads, in part, as follows:

“Contracts hereunder shall be awarded on or before May 1, 1945, to become effective July 1, 1945, and on the same dates annually or biennially thereafter * * *"

"* * * When a contractor is awarded a division of a class as provided for under this act, said contractor shall receive from all departments of the state any and all articles of printing, binding, or supplies, whether it be regular needs or emergency work, to which said contractor is entitled."

The Acts of 1947, Ch. 279, Sec. 11, as found in Burns’ (1961 Repl.), Section 60-1811, does not require the Department of Administration to advertise and award contracts annually or biennially for construction and repairs and purchases of supplies, materials and services, but, with respect to contracts for printing, subsection (g) thereof, provides:

"* * * Notwithstanding anything herein to the contrary, all contracts for printing, as provided in chapter 124 of the Acts of 1941 as amended under classes 1, 2 and 4, shall be advertised and contracts awarded as provided in chapter 124 of the Acts of 1941 as amended * * *"

All contracts for printing must, therefore, be advertised and awarded annually or biennially as provided in Burns’ 63-1645 and 63-1647, supra.
Thus, there is no conflict or inconsistency between Burns' 60-1805, supra, and Burns' 63-1638 et seq., supra, in regard to advertising and awarding contracts for printing annually or biennially, since the former statute expressly incorporates by reference the provisions of the latter statute with respect to such procedure.

Therefore, it is my opinion, in answer to your first question, that the Department of Administration does not have authority to order or purchase printing for state government other than by the award of an annual or biennial contract pursuant to the provisions of Burns' 63-1638, supra. This of course is subject to the emergency type situation contemplated by your first question and the request for a definition of this term in your second question.

It should be noted that annual advertising may be dispensed with in the event that "emergency" printing needs arise "at any time during any year," pursuant to Burns' 63-1645, supra. However, Burns' 63-1647, supra, requires that such "emergency work" if not awarded pursuant to advertising, be performed by the contractor, who has been "awarded a division of a class," which includes such emergency work.

The term "emergency" is not defined in Burns' 63-1638 et seq., supra. 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201, provides that words are to be taken in their plain, ordinary, and usual meaning unless otherwise defined by the statute itself.

In May v. Sansberry et al. (1949), 119 Ind. App. 523, 527, 86 N. E. (2d) 88, the usual meaning of the word "emergency" was held to be, as follows:

"'Emergency' is defined in Webster's International Dictionary as: 'An unforeseen combination of circumstances which calls for immediate action.'"

To the same effect, see State ex rel. Kautz v. Board of Commissioners of Howard County (1933), 204 Ind. 484, 491, 184 N. E. 780.

It appears, therefore, that annual advertising for printing contracts is not required where an unforeseen combination of
circumstances which calls for immediate printing needs by one or more agencies of the state occurs.

Your request for an Official Opinion also asks for a definition of the term "printing."

The word "printing" is not defined in Burns' 63-1638 et seq., supra. It was held to mean the following in In re Sonora Daily (1951), 108 C. A. 2d 53, 238 P. 2d 111, 112, 113:

"It has been held that a typewritten notice is 'printed' under a statute requiring the posting of printed notices. State v. City of Oakland, 69 Kan. 784, 77 P. 694, 696. On the other hand it has been held that mimeographing is not 'printing' within the meaning of an appropriation bill appropriating a sum for the printing of session laws. Wiggins v. Kerby, 44 Ariz. 418, 38 P. 2d, 315, 319. Suffice it to say at this point that the word 'print' may be used to describe a large number of distinctive mechanical processes. Perhaps the most suitable definition of the general sense of the verb is that found in Webster's dictionary, 'to strike off an impression or impressions of, from type or from stereotype, electrotype, or engraved plates, or the like.'" (Our emphasis)

See also Daly v. Berry (1920), 45 N. D. 287, 178 N. W. 104; Arthur v. Moller (1878), 97 U. S. 365; and 72 C. J. S., Printing, pages 845, 846.

Thus, the word "printing," as found in Burns' 60-1805, supra, and Burns' 63-1638 et seq., supra, describes a large number of mechanical processes, including but not limited to impressions upon paper from type, stereotype, electrotype, engraved plates or the like.

The above and foregoing discussion will perhaps give some insight to what the courts have said relative to the two terms "emergency" and "printing" which you have requested that I define in this Opinion. Certainly, these definitions are not all inclusive but they will, I believe, serve as a foundation or guide by which these matters can be determined in the future.

Therefore, in answer to your second question, it is my opinion that whether or not an "emergency" exists in any
given case, and whether or not the article or item purchased is in fact "printing," both of which terms are used in the statute, will have to be determined on the merits of each particular case. However, the definitions expressed herein can be used as a basis for determining these matters as they arise.

In summary, therefore, I am of the opinion that there is no conflict between Burns' 60-1805, *supra*, and Burns' 63-1638 *et seq.*, *supra*, with respect to the purchasing of printing for agencies of the state. Such purchases must be advertised and the contracts awarded annually or biennially, as provided in Burns’ 63-1638 *et seq.*, *supra*, except in the case of "emergency" printing needs. "Emergency" printing needs may be advertised for specially at any time, but if not so advertised, then they must be given to the contractor already awarded the division of the Class in which they fall.

OFFICIAL OPINION NO. 56

September 24, 1964

Hon. Taylor I. Morris, Jr.
State Representative
528 South 11th Street
New Castle, Indiana

Dear Representative Morris:

This is in response to your letter of August 5, 1964, wherein you request an Official Opinion pertaining to the employment of city firemen on additional work, under the city engineer in laying curbs, gutters and sewers in parts of the city of New Castle.

Your specific questions are stated as follows:

"I would appreciate an official opinion from you as to whether or not there is a statutory or regulatory prohibition against a city engineer of a city of this class in the State of Indiana doing this, or, is there any prohibition against city firemen of a city of this class receiving compensation from the city in addition