lic works and safety or common council and boards of trustees. All moneys remaining in the city or town treasury to the credit of said special fund at the end of the calendar year, shall remain in said fund and shall not revert to the general funds of said city or town. Nothing herein contained shall prohibit the common council of any city or the board of trustees of any town from transferring, by ordinance, at the end of any calendar year, any balance in said special fund to the general funds of said city or town.

"The purchase or lease of any real estate or other facilities for off-street parking from the parking meter funds of any city of the fifth class, prior to the effective date of this amendatory act, is hereby legalized, and all said prior purchases or leases thereof made prior to the effective date of this amendatory act are hereby ratified, confirmed, legalized and declared valid."

From the above law, it is apparent that the expenditures are limited as set forth in the first paragraph thereof, and, in answer to your second question, an appropriation is necessary but the same is not subject to review by the State Board of Tax Commissioners.

OFFICIAL OPINION NO. 64
November 18, 1964

Hon. Richard C. Bodine
State Representative
208 First National Bank Building
Mishawaka, Indiana

Dear Representative Bodine:

This is in response to your letter of October 20, 1964, wherein you request an Official Opinion. Your specific question is stated as follows:

"** There is a series of Statutes concerning unsafe building structures which commence with Burns Annotated Statute 48-6144 et seq., which provides for
a lien on behalf of the City for costs incurred by the City in the demolition of unsafe buildings. At 48-6149 it is provided, in the second paragraph:

'the cost incurred by the City * * * shall remain primarily a charge and a lien against the real estate involved.'

No procedure is set forth in this section as to the method to be used by the City in obtaining the lien.

"We would appreciate your advising us, by official opinion, the exact method to be followed, if such a method exists, and, if there is not, we would like your opinion as to whether proper Statutes could be drafted for the placing of such liens."

Your question requires an examination of all the statutory provisions relating to the razing of structures or portions of structures condemned by the commissioner of buildings, or any other person or agency performing similar duties, when such structures or portions thereof, are found to be unsafe for human occupancy or hazardous to the public in any way.

In general, the statutes which you cite are enabling statutes which form the framework of procedures to be followed in the performance of the duties of commissioners of buildings, boards of public safety and those employed by them, in the eradication of dangerous structures. The Acts of 1935, Ch. 196, as amended, and found in Burns' (1963 Repl.), Sections 48-6144 and 48-6145, provide that the commissioner of buildings shall report his findings to the board of public safety, notify the owner of such building of its condition, post notices and advise the owner of such building to raze the structure or perform any required repair work on it. If the owner refuses to carry out the orders of the building commissioner or board of public safety the commissioner or board may proceed to have the structure razed.

The Acts of 1935, Ch. 196, Sec. 3, as found in Burns' (1963 Repl.), Section 48-6146, reads in part as follows:

"* * * The board shall have power to affirm, modify or rescind the order of such commissioner. If such
order is affirmed by the board, it shall be the duty of
the commissioner of buildings to proceed forthwith to
cause such building or structure, or part thereof, that
is in such unsafe condition as to endanger life and
property to be wrecked and torn down. Such work
shall be done by a building wrecker, duly qualified as
such under the laws of the state of Indiana and the
ordinances of such city. It shall be the duty of such
commissioner of buildings to give notice by posting a
copy thereof in his office for at least ten [10] days, that
at a time and place stated in such notice he will receive,
accept and open sealed bids for the wrecking of such
building or a structure upon the terms stated in such
notice. Upon the day named, all bids shall be pub-
licly opened and considered, and such commissioner
may award the contract for the wrecking of such build-
ing to the lowest and best bidder. The contract, when
executed, shall contain such provisions as are deemed
proper by such commissioner, and it shall also contain
a clause that such contract is executed by such com-
missioner as the agent of the owner of such building,
and that such city will in no way be obligated to pay
the cost of the wrecking of such building. The owner of
such building shall be served with a copy of the above
notice to bidders at least seven [7] days prior to the
date fixed in such notice for the reception of such bids.

The entire cost of wrecking such building shall be paid
by the owner thereof and the contractor shall be en-
titled to have a mechanic's lien upon the real estate
upon which such building is located for the full amount
of the cost of wrecking such building in a sum how-
ever not in excess of the sum set forth in his contract
by complying with all of the provisions of chapter 116
of the Acts of the General Assembly of the state of
Indiana passed at the regular session of 1909, and all
acts amendatory thereof or supplemental thereto, and
may foreclose such lien in the manner provided in
such act.” (Our emphasis)

The statute quoted, supra, thus provides for the method to
be employed in the demolition of condemned buildings where
the owners of such structures have failed or refused to follow the orders of the commissioner of buildings or the board of public safety in voluntarily removing or razing such structures. Clearly, the wrecker contractor is given a mechanic's lien to secure payment for his work. The above cited statute also specifically states that the contractor may foreclose such lien as provided in the mechanic's lien statutes found in Burns' (1952 Repl.), Sections 43-701 through 43-709.

The statutes to which you refer provide no other way for the demolition of condemned structures than by using private wreckers for such work. The Acts of 1935, Ch. 196, as amended and more particularly Sec. 7 thereof, as added in 1945, and found in Burns' (1963 Repl.), Section 48-6149a provides for a "Building Demolition, Repair and Contingent Fund" to promote the more effective operation of the act. This section, supra, also provides, in part, as it pertains to your question:

"* * * No payments shall be made from such fund to any contractor, or other person, for the amount due for any such work when done under a contract, unless his right of collection thereof from the person or property so obligated to pay the same has been secured, either by obtaining the personal obligation aforesaid, or by filing the notice and obtaining the statutory lien, under the statute relating to mechanic's liens which is incorporated into section 3 of the above entitled act, and such contractor, or other person, shall produce all available records and other evidence obtainable or possessed by him which may be required to prove any action by the city to recover the amount due on such debt and to foreclose such lien. For any such payments so made from said fund to any contractor, or other person, the city shall be subrogated to all rights and liens thereof, and the board of public safety shall cause such fund to be reimbursed by any appropriate action or actions that may be required for the collection of such debt from the owners of said property, or from any others who are obligated therefor, and by the foreclosure of any such liens, including attorney's fees therein. Any moneys so collected or otherwise recov-
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...erred by the city therein, shall be deemed appropriated directly to such fund and shall be so credited and used for its further purposes, without any ordinance for such reappropriation.” (Our emphasis)

It was, I believe, clearly the intention of the Legislature to let the city be subrogated to the rights of the private, wrecking contractor in respect to mechanic’s liens for work done by such private contractor. The character of the lien does not change when the city is subrogated to the rights of the contractor, and the city may proceed to foreclose such lien, all as provided in the mechanic’s lien statutes. Burns’ 43-701 through 43-709, supra. The judgment on foreclosure, when satisfied, would require the proceeds to go back into the “Building Demolition, Repair and Contingent Fund.”

The city has a right of subrogation given to it by the statute.

Acts 1935, Ch. 196, Sec. 7, as added by Acts 1945, Ch. 194, Sec. 5, and found in Burns’ (1963 Repl.), Section 48-6149a, supra.

In Smith v. Newbaur (1895), 144 Ind. 95, 45 N. E. 40, it appeared the plaintiffs furnished materials used in the construction of a building. Subsequently, the building was destroyed by fire, and the plaintiffs asserted a lien on the land on which the building had stood. It was held that although the building was destroyed the lien continued to attach to the realty.

The city acts as a successor in interest to the wrecking contractor who has filed his lien, and the city is subrogated to all the rights with respect to such lien that the contractor had when the city pays the contractor what is due him.

This Opinion, thus far, has had bearing on and has applied to the lien covering actual demolition costs incurred by the successfully bidding wrecking contractor. I am aware that the city incurs additional expenses incidental to its effort to eradicate nuisances, such as the costs of notifying the owner of the affected property, costs of hearings and costs of printing and publishing of orders. These additional costs cannot be included in the mechanic’s lien on the affected property be-
cause they are not costs actually incurred by the wrecker contractor.

The statutory provisions giving rise to your question are silent, for all practical purposes, about how a city should collect these additional costs from the property owner. Obviously, such costs can not be merged into the mechanic's lien the city takes as subrogee of the contractor doing the demolition work. There is no statutory provision for a city to have a separate, second lien against a property to cover the incidental costs incurred by the city.

Therefore, in answer to your question, the statutes you have cited provide the procedure a city should follow in obtaining a mechanic's lien as subrogee of the wrecking contractor who is required to file such a lien covering the amount of the actual wrecking costs. The incidental costs incurred by the city in the proceedings against the property owner cannot be merged into the contractor's mechanic's lien. The statutes do not provide a way for the city to collect the incidental costs to which I have referred. New statutes could be drafted to provide a way for the city to bill these costs to the landowner on his tax duplicate. The costs might then be considered a tax lien, if the statutes so provided.

OFFICIAL OPINION NO. 65
November 19, 1964

Hon. Earl F. Landgrebe
State Senator
P. O. Box 270
Valparaiso, Indiana

Dear Senator Landgrebe:

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

"Can an applicant to the Valparaiso City Police Force qualify as a member of the Police Force and the Police Pension Fund under Burns' 48-6409, who is otherwise qualified, by waiving any rights to benefits on