Hon. William E. Wilson  
State Superintendent of Public Instruction  
227 State House  
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter of November 27, 1963, has been received and reads as follows:

"The School City of Gary has requested me to secure an official opinion from your office to the following questions:

1. Does the Civil City and/or the Building Commissioner have the authority to charge the School City—which is an area of the state—a building permit fee, charge, tax, call it what you may, for the construction and/or remodeling of each project?

2. Does the Civil City and/or the Building Commissioner have the authority to charge the School City for each building permit based upon a cost of new construction or at a rate of $2.00 per $1,000 less $5.00?

3. Can the Civil City and/or the Building Commissioner refuse to issue a building permit to the School City when application is made, if the School City refuses to pay more than a nominal fee for issuance of same?

4. Attached is a list of building permit fees or charges paid over a period of years by the School City. Are these fees nominal or not?

5. What would be a nominal fee in rounded dollars?

6. Does the same line of reasoning as stated in answers to the above questions apply to such other permits issued by the Civil City to the School City such as permits to cut curbs, sidewalk permits, etc.?"
Under the provisions of Acts 1905, Ch. 129, Sec. 53, as found in Burns' (1963 Repl.), Section 48-1407, clause twenty-four, general authority is given a city to define fire limits and the character of buildings which are to be erected within such limits; to prohibit the erection of buildings in such city without a license first obtained therefor. This seems to be the original general authority of the city to make such regulations and I am advised that the first ordinance of the City of Gary pursuant thereto was adopted in 1926 and had been amended from time to time is now set forth in the Municipal Code of Gary, Indiana, of 1960. I am further advised that under Section 5-111 of this code, a charge for permits is authorized and for buildings of the type involved here will be a sum equal to one-half per cent of the cost of construction in excess of $5,000.00 with a minimum fee of $5.00. I am further advised that under Section 5-101 of said municipal code, it adopts by reference all the rules and regulations of the Administrative Building Council of Indiana relative to all building construction work but excludes therefrom "public buildings."

I am further advised that in 1957 the City of Gary adopted ordinance number 3376, which is a part of said 1960 Municipal Code with reference to the issuance and charge of permits under the section of the ordinance heretofore referred to. That this ordinance is a planning zone ordinance pursuant to the provisions of Acts 1947, Ch. 174, Sec. 54, as found in Burns' (1951 Repl.), Section 53-754.

After the enactment of the 1905 statute giving authority to cities to regulate buildings, the Legislature supplemented this in 1929 by Ch. 209, Sec. 1, as found in Burns' (1963 Repl.), Section 48-1408, to provide that if said city did not have a building ordinance then the city should carry out the requirements of the rules and regulations of the Administrative Building Council of Indiana, as enacted under Acts 1923, Ch. 64, of the General Assembly. This last referred to statute was repealed and superseded by Acts 1945, Ch. 54, Sec. 19, being the present statute concerning the Administrative Building Council and is found in Burns' (1950 Repl.), and (1963 Supp.), Sections 20-416 to 20-434.

Under Acts 1945, Ch. 54, Sec. 6, as found in Burns' (1950 Repl.), Section 20-421, the powers and duties of the Admin-
istrative Building Council to fix reasonable standards, rules and regulations, and enforce the same, is provided. Said section of said statute further provides:

"Said standards, rules, regulations and classifications when adopted and promulgated pursuant to law shall supersede any standards, rules, regulation or classification of any other board, department, division, commissioner or officer in conflict therewith, provided, however this act shall not prohibit any other board, department, division, commissioner or officer from adopting standards, rules, regulations and classifications which supplement or add to such standards, rules, regulations and classifications within the jurisdiction of said particular board, department, division, commissioner or officer."

Under Section 10 of said last referred to act as found in Burns' (1950 Repl.), Section 20-425, it is further provided:

"The administration of these rules and regulations shall be enforced in cooperation with local officials as defined in the statutes including building inspectors of every city; if there be no building inspector, then of the mayor, township trustee of every township, the board of trustees of every town and the board of commissioners of every county, who are required by law to enforce all orders, rules and regulations of the administrative committee which are germane to their respective duties. With the rules and regulations issued by the administrative committee as a basis, city ordinances may go more into detail if desired, or may contain more stringent requirements, provided the same do not conflict with any rule or order of the administrative committee."

Acts 1945, Ch. 54, Sec. 6a, as added by Acts 1957, Ch. 159, Sec. 1, as found in Burns' (1963 Supp.), Section 20-421a, provides:

"Plans and specifications of all public buildings, tenement houses, and all other buildings except: private residences and outbuildings in connection therewith,
including barns and private garages, buildings used for agricultural purposes, and temporary buildings or additions used for construction purposes only, shall be filed with and be approved by the director of the administrative building council before construction is commenced. Such plans and specifications shall be accompanied by an estimate of the cost of construction.

"Such plans and specifications shall be accompanied by an examination fee of 20 cents for each $1,000.00 of estimated construction cost, but such fee shall not be less than $2.00. Provided, however, that no such examination fee shall be charged for buildings being constructed by the state of Indiana, its agencies, or institutions, or by any municipality or political subdivision of the state or any school corporation holding company, or for any building being built by money collected by taxation."

From the foregoing, it is apparent general authority to regulate buildings by the civil city was given in the 1905 statute defining authorities of municipalities. It also authorized the requirement of a building license or permit. No provision is made for a charge for such permit but a reasonable or nominal charge might be inferred.

Subsequent thereto the original statute regarding the Administrative Building Council of Indiana, and its authority to make rules and regulations as to such buildings, was enacted and later superseded by other statutes as above outlined. In both the original and later statutes concerning such Administrative Building Council, it was required that the proper official of a city having to do with construction of buildings must review the rules and regulations of said Administrative Building Council. This it would seem to do as an agent of said state agency and in connection therewith and would seem to have no greater power than such state agency.

Under the last referred to amendment of the Administrative Building Council statute, by the addition of Section 6a of the Acts of 1957, Ch. 159, Sec. 1, it is required that plans and specifications of all public buildings shall be filed with and
approved by the Director of the Administrative Building Council before the construction is commenced; and an examination fee is provided for, however, it is specified that such examination fee for buildings to be constructed both "by the State of Indiana, its agencies, or institutions," shall not be charged. This would seem to be the last expression of the Legislature and would require that all school buildings, being in the nature of public buildings, must have their plans and specifications approved by the director of the state agency and for which no examination cost could be made, as the schools are instrumentalities of the state. This would, in my opinion, restrict the Building Council of the City of Gary to inspections consistent with the Administrative Building Council's rules and regulations, made as an agent for said state agency unless the city has an ordinance making requirements in excess thereof. If a building permit could be charged to the city under the original 1905 Act, it would, in my opinion, be a nominal one, since the approval of the plans and specifications are now devolved upon a state agency with a waiver of fees therefor.

In an Official Opinion found in 1953 O. A. G., page 304, No. 60, it was held that where the state penal code regarding the fixing of penalties for traffic violations were duplicated by ordinances of a city which invaded the same field, that the ordinances were invalid to the extent of such conflict since the state had already preempted the field.

Assuming the foregoing facts are true, I am of the opinion your questions should be answered as follows:

1. Neither the civil city nor the building commissioner of the city has authority to charge the school city a building permit fee for the construction and/or remodeling of school buildings.

2. Neither the civil city nor the building commissioner of such city has the authority to charge the school city for each building permit a fee based upon the cost of new construction.

3. Neither the civil city nor building commissioner of such city may refuse to issue a building permit to the school city, on application, even though the school city refuses to pay more than a nominal fee for the issuance of such permit.
4. The list of building permit fees or charges attached to your letter are not nominal fees, as one is for $601.00 and the other is for $605.00, each for a single project.

5. In answer to your fifth question, I am of the opinion that a nominal fee for a building project would not be more than $10.00 for each project.

6. I am of the opinion the above answers would also be applicable to permits issued by the civil city for such matters as permits to cut curbs, sidewalk permits and the like. This is for the reason that the building site of a school building is considered to be a part of the school building project and under the laws applicable to providing plans for school buildings, there is the additional requirement of the approval of the building site facilities.

OFFICIAL OPINION NO. 4

January 13, 1964

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

Dear Mr. McDonald:

Your letter of November 1, 1963, has been received and reads as follow:

"In making advances from the Veterans Memorial School Construction Fund the statute (Burns’ 28-182) provides for the collection of a principal payment semi-annually together with one per cent on the unpaid balance. Such collection to be made by reducing the amount of each semi-annual distribution of state tuition support to any school which has received an advancement. The amount of such semi-annual principal payments are fixed by prior agreement between the school corporation and the Commission on General Education of the Indiana State Board of Education."