on delinquent contributions and penalties so collected and costs of administration; and

2. Expenditures from the fund are not permitted when they would effect a substitution or reduction in federal funds available for the financing of the Employment Security Act.

OFFICIAL OPINION NO. 59

December 4, 1963

Mr. B. B. McDonald, State Examiner
State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

You have requested an Official Opinion of this office concerning the following two specific questions:

> "1. Does the hospital board of trustees have authority to assign current accounts receivable to a firm for collection?
>
> "2. If your answer to the first question is in the affirmative, does the deposit of daily collections in the firm's bank account awaiting monthly turnover to the hospital treasurer conflict with the Public Depository Law, Chapter 3, Acts of 1937?"

Your covering letter makes specific reference to a county hospital operating pursuant to the Acts of 1917, Ch. 144, Sec. 1, as amended, as found in Burns' (1950 Repl.), Section 22-3215.

With regard to the duties imposed by the statute, the Acts of 1917, Ch. 144, Sec. 3, as amended, as found in Burns' (1963 Supp.), Section 22-3218, provides, in part, as follows:

> "* * * The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital

as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this act and the ordinance of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditure of all moneys collected to the credit of the hospital fund, and for the purchase of site or sites, the purchase or construction of any hospital building or buildings, and the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, leased or set apart for that purpose: Provided, That all moneys received for such hospital shall be deposited in the treasury of the county to the credit of the hospital fund, and paid only upon warrants drawn by the auditor of said county upon the properly authenticated vouchers of the hospital board: Provided, further, If such hospital shall have been constructed under and by virtue of the provisions of an act entitled: 'An act concerning the creation of building authorities in the various counties of the state and the financing, acquiring, construction, equipping, operating and leasing of land or buildings by such authorities for public and governmental purposes, and declaring an emergency,' approved March 4, 1953, being Chapter 54 of the Acts of 1953, authority for which construction under said act is hereby expressly granted, or under said act as amended, then and in that event the powers, authorities, duties and control of the board of hospital trustees shall not extend to or include those powers, authorities, duties and control vested by said act in the building authority created by virtue thereof. Said board of hospital trustees shall have power to appoint a suitable superintendent who shall appoint and discharge all necessary employees and such board shall fix the compensation of all hospital employees, and shall in general carry out the spirit and intent of this act in establishing and maintaining a county public hospital with equal rights to all and special privileges to none * * *."

The Acts of 1917, Ch. 144, Sec. 10, as found in Burns' (1950 Repl.), Section 22-3229, reads as follows:

> "Every hospital established under this act shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits; but every such inhabitant or person who is not an indigent shall pay to such board of hospital trustees, or such officer as it shall designate, for such county public hospital, a reasonable compensation for occupancy, nursing, care, medicine or attendants, according to the rules and regulations prescribed by said board, such hospital always being subject to such reasonable rules and regulations as said board may adopt in order to render the use of said hospital of the greatest benefit to the greatest number; and said board may exclude from the use of such hospital any and all inhabitants and persons who shall wilfully violate such rules and regulations. And said board may extend the privileges and use of such hospital to persons residing outside of such county, upon such terms and conditions as said board may, from time to time, by its rules and regulations prescribe."

In arriving at the conclusions hereinafter to be set forth, this office has deemed it advisable also to refer to county hospitals established pursuant to the Acts of 1903, Ch. 86, Sec. 1, as amended, as found in Burns' (1950 Repl.), Section 22-3201:

> "Whenever it shall appear to the board of county commissioners of any county in the state of Indiana, by petition or otherwise, that there is a demand for a hospital within such county, and that the interests of the county and its citizens will be best subserved by the establishment and maintenance of such hospital, such board shall be empowered to provide such hospital by purchasing suitable grounds therefor, and constructing suitable buildings thereon and otherwise improving the same for hospital purposes, and to fully equip and furnish such hospital, and to receive and accept donations in property or money therefor, and to do all and singular the things necessary to acquire, establish, construct, equip and maintain such hospital * * *."

Acts of 1903, Ch. 86, Sec. 5, as amended, as found in Burns' (1950 Repl.), Section 22-3205, provides as follows:

> "The governing board of such hospital shall from its own membership elect a president, vice-president, secretary, and treasurer to be the officers of such hospital. Such treasurer shall be the custodian of the funds of such hospital and he shall furnish bond in such amount as may be determined by the governing board and such bond shall be approved by the board. Said board shall adopt by-laws, rules and regulations governing the manner of conducting such hospital and the business thereof: Provided, however, That the same shall not be in conflict with any of the provisions of this act."

Acts of 1903, Ch. 86, Sec. 7, as amended, as found in Burns' (1950 Repl.), Section 22-3207, provides as follows:

> "Patients may be received and accepted at said hospital for treatment and care for pay, in addition to the indigent ones heretofore provided for in this act, and all suitable provision and accommodation may be provided for such pay patients, including all necessary supplies, competent nurses and such other service, supplies and accommodations as are necessary to first-class hospital service, and such governing board is authorized to charge and collect from such pay patients such fees and charges as are customary in other first-class hospitals, such charges to be graded in amount according to the room, nursing and other supplies and service rendered and furnished such pay patients: Provided, That patients may be received at said hospital from counties where there is no county hospital on such terms as the governing board may establish. And all sums collected from such pay patients shall go into the funds and the treasury of said hospital, to be used and expended for additional construction and the equipment, betterment, maintenance and operation of such hospital, to the end that such hospital shall be and become as nearly as possible self-sustaining."

From reading of the above acts of the Indiana statutes, it becomes rather obvious that the Legislature, in dealing with county hospitals, whether the same be organized under the Acts of 1903 or 1917, has left a broad discretion in the manner

in which the hospital is to be operated. Thus, under Burns' 22-3218, *supra*;

> "* * * The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital *as may be deemed expedient for the economic and equitable conduct thereof* * * *." (Our emphasis)

As to hospitals organized under the Acts of 1903, the statute provides that the board of trustees shall adopt bylaws, rules and regulations governing the manner of conduct of such hospital and the business thereof.

With regard to the specific question relating to the assignment of current accounts receivable, there would seem to be no specific statutory authority on the point except that portion of Burns' 22-3229, *supra*, which says that the board shall collect or such officer as it shall designate shall collect from the patients.

Further, in regard to the specific question we are construing the word "assign" therein to be used in a general sense as denoting merely a physical transfer thereof to the custody of the collection agency for the purpose of taking action thereon and not in the sense of an assignment resulting from a sale thereof to the collection agency and a transfer of title thereto.

In the case of Reed v. The Town of Orleans (1890), 1 Ind. App. 25, 27 N. E. 109, the question arose concerning compensation for services as a broker, said services having been performed by Mr. Reed for The Town of Orleans in negotiating the sale of municipal bonds. In sustaining the right of the broker to recover compensation, our court states on page 27:

> "* * * Municipal corporations have the right to employ such methods and agencies in transactions of a purely business character as are approved by the experience and judgment of good business men, unless restricted by legislation * * *."

In the case of Rockebrandt v. The City of Madison (1893), 9 Ind. App. 227, 36 N. E. 444, our court states on pages 228 and 229, as follows:

"A municipal corporation is a creature of the statute, a body politic, specially chartered by the State or organized under general legislation authority, and while it may, unless restricted by its charter or legislative enactment, make all contracts necessary to enable it to carry out the powers conferred upon it, yet, if the mode of proceeding is prescribed, or the powers generally limited, such mode must be strictly pursued, and such contracts must be within the limit.

"As said by the court, in *City of Indianapolis* v. *Indianapolis Gas, etc., Co.*, 66 Ind. 396: 'A municipal corporation, not having either body, limbs, feet or hands, but being merely a legal entity, can not execute its own acts, nor administer its own affairs. To do this it must employ persons, other corporations, or agencies of some kind, and to employ them and to agree to pay them is to make a contract; and if it could not make such contracts, and was not bound thereby, it could not carry on the purposes or attain the objects for which it was established.'

"Under the act of March 3, 1883 (R. S. 1894, section 4301), the common council of any city of this State, incorporated either under the general act for the incorporation of cities, or under a special charter, has power to light its streets, alleys and other public places with electric lights, and may either contract with other corporations, or with individuals, for such lighting, or may operate their own plants. *Rushville Gas Co.* v. *City of Rushville,* 121 Ind. 206; *City of Crawfordsville* v. *Braden,* 130 Ind. 149.

"The corporation possessing the power, as it does, either to contract with other corporations or individuals, for the lighting of its streets, or to own and operate a plant of its own for that purpose, has the power, also, to purchase all the materials and employ all the labor necessary for carrying it on. The right to purchase such materials and employ the required labor is a matter exclusively within the sphere of its general discretionary powers, and is not subject to judicial intervention or control except in cases of fraud

> or when it is shown that such power or discretion is being grossly abused to the detriment or oppression of the public rights or interests. Upon this principle, a contract made by a city, which does not show on its face, that it is oppressive, will not be overthrown by the courts, unless fraud is shown in its making or object."

In the case of the City of Logansport v. Dykeman *et al.* (1888), 116 Ind. 15, 17 N. E. 587, our court states on pages 18 through 20 as follows:

> "It is a mistake to suppose, however, that in the transaction of mere matters of business, such as the purchase of goods necessary for the welfare of the corporation, or the employment of persons or agencies to perform service for, or to protect the interests of, the municipality, a formal ordinance, bylaw or resolution must be adopted, and the yeas and nays taken and entered of record. Cities are authorized, upon conditions prescribed, to issue bonds, to incur liabilities, to purchase and own property, and to employ various agencies in conducting the business affairs which concern the municipality. *City of Indianapolis* v. *Indianapolis Gas-Light, etc., Co.*, 66 Ind. 396; *Leeds* v. *City of Richmond,* 102 Ind. 372.
>
> "As a consequence, they have the incidental power to compromise and adjust disputed claims, and to employ agents or attorneys to accomplish that end. The statute does not prescribe the method by which contracts of that character are to be made, nor that such contracts must be in writing. The method of adopting, and the form of such contracts, are, therefore, matters within the discretion of the council. Of course the proper and business-like way would require that the employment should appear upon the record of the proceedings of the common council, but the record is not necessarily the contract, although it may afford the most satisfactory evidence of the fact that a contract was made. Where, however, a common council, properly convened, enters into a contract with an attorney,

or where an attorney is employed through the agency of a committee or other authorized person, and has performed services of which the municipality has accepted the benefit, it will be too late, when he asks to be compensated for his services according to the agreement, to object that the contract was not in writing, or that the vote of the council does not appear upon the record of its proceedings. In respect to such contracts, a municipal corporation may be bound by the acts of its properly authorized agents, substantially as a natural person. *Bank of Columbia* v. *Patterson,* 7 Cranch, 299; *Township of Norway* v. *Township of Clear Lake,* 11 Iowa 506.

"Cases involving contracts for street improvements, and those in which certain precedent steps are required to be taken before a common council can acquire jurisdiction to contract at all, or where the statute requires that the contract be made in a certain form, or in pursuance of a certain mode, bear no analogy to the present case. In such cases the common council exercise a special statutory power in relation to the contract, and where a mode of procedure is prescribed, and the conditions and form of the contract are matters of statutory regulation, both the mode of procedure and form of the contract must be substantially observed. *City of Logansport* v. *Humphrey,* 84 Ind. 467; *Driftwood, etc., Turnpike Co.* v. *Board, etc.,* 72 Ind. 226.

"On the other hand, where the contract is one which the corporation has the incidental power to make, independently of any statute, in order that it may execute powers expressly conferred, and carry out the purposes of its being, the rule that such contracts are not void merely because there is no written evidence of them, or because of the absence of some mere formality, is now too firmly settled to be shaken. *Ross* v. *City of Madison,* 1 Ind. 281 (48 Am. Dec. 361); *School Town of Princeton* v. *Gebhart,* 61 Ind. 187; *State, ex rel.,* v. *Hauser,* 63 Ind. 155 (182); *McCabe* v. *Board, etc.,* 46 Ind. 380; *Leeds* v. *City of Richmond, supra; City of Terre Haute* v. *Terre Haute Waterworks Co.,* 94 Ind.

305; *White* v. *State,* 69 Ind. 273; *City of Logansport* v. *Crockett,* 64 Ind. 319; *Langdon* v. *Town of Castleton,* 30 Vt. 285; 1 Dillon Munic. Corp., sections 479, 463.

"A broad distinction exists, and must be kept in view, between those cases in which a municipality, or some one through its authority, seeks to avail itself of the contract or proceedings of a common council in order to impose a burden upon the property of another, or to affect the rights of others, and those in which the neglect or omission of the common council, or other officer of a city, to observe some mere matter of form, is interposed in order to deprive a person of compensation for services rendered for the municipality, in respect to a matter in which no formality whatever is required. 1 Dillon Munic. Corp., section 449.

"In respect to contracts which are within the ordinary corporate powers of a city, and in relation to which no statutory requirements are laid down, or mode of procedure prescribed, a municipal corporation will be bound by its contracts, and will be affected by the principles of ratification, in the same manner as an individual."

There appears to be no Indiana cases specifically dealing with the manner of the financial operation of county hospitals and, while the foregoing cases relate to municipal corporations or cities, they are deemed analogous.

In view of the foregoing, it is my opinion that the hospital board of trustees has authority, within the foregoing expressed rules concerning experience and judgment of good business practices, to assign current accounts receivable to a firm for collection.

In answer to your second question relating to the Public Depository Law, Ch. 3, Acts of 1937, the pertinent portions of said act are the following:

Acts 1937, Ch. 3, Sec. 1, as amended, as found in Burns' (1961 Repl.), Section 61-622:

"(b) The term 'local officer,' or the plural thereof, means any person or persons elected or appointed to any office in any municipal corporation in the state of Indiana and includes all boards, commissions, departments, institutions and other bodies established by law to function as a part of the government of any such municipal corporation, but the term shall not include any state officer.

* * *

"(e) The term 'public funds' means and includes all funds coming into the possession of the treasurer of state, treasurer of the board of trustees of any state benevolent, penal or educational institution, and all funds coming into the possession of any state officer by virtue of such office, and all funds coming into the possession of any local officer by virtue of such office, but shall not mean nor include funds coming into the possession of any public officer which are not impressed with a public interest nor designed for a public use: Provided, That the term 'public funds' shall mean and include all fees and funds of whatever kind or character received by judges or clerks of city courts or justices of the peace courts by virtue of their offices."

Acts of 1937, Ch. 3, Sec. 3, as found in Burns' (1961 Repl.), Section 61-624:

"(a) All public funds paid into the treasury of the state, or the treasuries of the respective counties, cities, towns, school cities, school towns and municipal corporations shall be deposited daily in one [1]or more depositories in the name of the state or municipal corporation by the officer having control thereof. All public funds collected by state officers, other than the treasurer of state, who have offices in the state capitol buildings shall be deposited with the treasurer of state not later than the day following the receipt thereof. Such deposits shall not relieve any state officer from the duty of maintaining a cash-book as required by section two hereof. The treasurer of state shall deposit all public funds collected by him as hereinbefore in this section

provided. All other state officers who collect public funds of the state shall deposit such funds daily in the depository or depositories designated by the department of treasury. All state officers shall make monthly settlements with the auditor of state for all public funds deposited in the state treasury or in any public depository.

"(b) All local officers, except the township trustee, who collect public funds of their respective municipal corporations shall deposit such funds daily in the depository or depositories selected by the several boards of finance which have jurisdiction of such funds. The public funds collected by the township trustee shall be deposited in the depository designated therefor on or before the first and fifteenth days of each month. On or before the fifth day of each month all local officers shall file with the secretary of the proper board of finance a verified statement which shall reconcile, as of the last day of the preceding month, the balance of public funds as disclosed by his records with the statement of the balance made by the respective depositories used by such officer."

This office has held that the funds received by the treasurer of a county hospital were public funds within the meaning of the Depository Act.

See: 1947 O. A. G., page 344, No. 69.

It is therefore my opinion, that the deposit of daily collections in the firm's bank account awaiting monthly turnover to the hospital treasurer would conflict with the Depository Act; however, as a practical matter a bank account can be maintained in compliance with the Depository Act, and the monthly reporting feature, since the hospital treasurer is a local officer, would be in compliance with the Depository Act.

In conclusion, it is my opinion that the hospital board of trustees has authority to assign current accounts receivable to a firm for collection and that the Public Depository Law, Ch. 3, Acts 1937, must be complied with.