OPINION 3

Ch. 107, Sec. 6, subsection (b), concerning the power of the mayor to fix salaries of city employees subject to the approval of the common council, apply to certain recreation personnel employed by the city depending, as hereinbefore noted, upon the provisions and the time of passage of the Act under which the board or department employing such personnel was created.

OFFICIAL OPINION NO. 3

January 7, 1960

Mr. T. M. Hindman
State Examiner
Indiana State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Hindman:

I am in receipt of your letter requesting my Official Opinion pertaining to a county's liability in respect to payment of interest on cemetery funds deposited with the county pursuant to Acts of 1915, Ch. 142, Sec. 1, as last amended by Acts of 1959, Ch. 112, Sec. 1, as found in Burns' (1959 Supp.), Section 21-214. Your letter reads as follows:

"By the provisions of Section 1, Chapter 112, Acts of 1959, which governs the deposit of cemetery funds with a county, the county commissioners are not authorized nor required to expend for the purposes specified in that act more than the interest 'earned from the loan or investment of such funds.' This wording was substituted for the former wording found in Section 1, Chapter 142, Acts of 1915, as amended (Burns' 21-214) which limited expenditures to not more than the interest 'accruing from such funds.'

"In connection with the wording contained in Chapter 112, Acts of 1959, your official opinion is requested on the following question:

"What will be the county's future liability for payment of interest on those funds deposited
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with the county prior to the effective date of Chapter 112?"

The deposits received prior to the 1959 amendment to Burns' 21-214, supra, would be controlled by the provisions of the statute then existing, which was Burns' (1950 Repl.), Section 21-214, and which reads as follows:

"The county commissioners of any county in this state shall be required and authorized to receive from any person or persons a deposit or legacy of money to be held in trust, in perpetuity, or for such period as the donor or testator shall designate in writing, the interest of which shall be used for the purpose of keeping in good condition any abandoned cemetery or any public or incorporated cemetery, or any lot or lots, monuments, mausoleums, vaults or other burial structures in any cemetery of the state. The county commissioners shall not be authorized or required to expend for such purpose any more than the interest accruing from such funds. No such trust shall be accepted by the county commissioners, the initial amount of which shall be less than one hundred dollars [$100]. All such moneys so received by the county commissioners shall be loaned by the county auditor in like manner as the common school fund is loaned and at the same rate of interest. The loans shall be made in the name of the trust to which it belongs; but the county auditor may combine the money belonging to two [2] or more trusts into one [1] loan, by taking a separate note for each fund, all secured by one [1] mortgage. The appraisers shall be the same used by the auditor to make the school fund loan."

Section 3 of the Acts of 1915, Ch. 142, supra, as amended, as found in Burns' (1950 Repl.), Section 21-216, provides that the county is liable for the preservation of the principal and the payment of the interest of such cemetery funds "in the same manner and to the same extent as it is liable with respect to the principal and interest" for the common school fund.

It was held in 1940 O. A. G., page 158, that a county is liable for interest upon cemetery funds held in trust pursuant
to Burns' 21-214, supra, in the same manner as it is liable for interest upon the common school fund held in trust by it, and such county is liable for interest whether the fund is fully loaned or is in part or wholly idle. Thus, where a county loaned cemetery funds in trust, and the interest is delinquent on such loan, the county must pay from its general fund such delinquent interest at the rate of four per cent, pursuant to the statute governing the loan of common school funds, which is Acts of 1943, Ch. 251, Sec. 1, as amended, as found in Burns' (1948 Repl.), Section 28-201.

Your question concerns the county's liability for the payment of interest on these cemetery funds deposited pursuant to the above quoted section of the 1915 Act and Burns' 21-216, supra. It was held in McClarnon et al. v. Stage, Executor et al. (1938), 215 Ind. 157, 19 N. E. (2d) 252, that the act in question provides a method of creating a trust, in perpetuity, or as long as the donor shall designate in writing, the interest of which shall be used for the purpose of keeping in good condition any graves, lots, etc.

The Indiana Constitution, Art. 1, Sec. 24, provides as follows:

“No ex post facto law, or law impairing the obligation of contracts, shall ever be passed.”

In the early case of The State of Indiana and Others v. Springfield Township in Franklin County (1854), 6 Ind. 83, the Court held that a grant of land in trust by the federal government, which grant was accepted by the State of Indiana, to congressional townships in this state for the use of the schools therein, could not be impaired by an act of the Legislature. The Court added that the inhabitants of the township were the beneficiaries of the trust and stated “It is a contract executed which even sovereign power can not revoke.”

The Massachusetts Supreme Court has held that where a town was authorized by law to accept a hospital as a gift, subject to certain conditions concerning the future management of such hospital, a statute providing a scheme of management different from that established as a condition to the gift was unconstitutional as impairing the obligations of contracts, the Court saying:
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"* * * a completed gift for a public charity duly accepted constituted a contract between the donor and the donee even though the latter was a town, the sanctity of which was under the protection of Art. I, § 10, of the Constitution of the United States, as interpreted by the Supreme Court of the nation * * *."  

Adams et al. v. Plunkett et al. (1931), 274 Mass. 453, 175 N. E. 60.

By the terms of Acts of 1915, Ch. 142, supra, the county commissioners of any county were required to receive a deposit or legacy of money to be held in trust, in perpetuity, or as long as designated by the donor or testator, and therefore, in answer to your question, it is my opinion that the county must continue to comply with the requirements of the act with regard to interest that existed at the time of the creation of the trust fund.

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OFFICIAL OPINION NO. 4
January 18, 1960

Hon. Edwin Steers, Sr.
Member, State Election Board
108 E. Washington Street
Indianapolis 4, Indiana

Dear Mr. Steers:

In reply to your recent letter concerning the term to be served by an appointee to the office of Clerk of the Circuit Court, I respectfully submit the following observations. The specific term which you have mentioned is that of the Hon. Edwin McClure, Clerk of the Circuit Court of Marion County, appointed by the Governor of Indiana to fill the vacancy in that office caused by the death of the Hon. Harry Gasper on April 7, 1959. The specific questions asked by the appointee, Mr. McClure, which you have referred to this office for consideration, are as follows:

"* * * whether I shall serve for Mr. Gasper's un-expired term which term expires December 31st, 1962