

## SPECIAL MEETING

Thursday, August 26, 1926.

The Common Council of the City of Indianapolis met in the Council Chamber, Thursday, August 26, 1926, at 7:30 p. m., in special session, President Boynton J. Moore in the chair, pursuant to the following call:

August 25, 1926.

*To the Members of the Common Council, Indianapolis, Indiana:*

Gentlemen—You are hereby notified that there will be a special meeting of the Common Council held in the Council Chamber on Thursday, August 26, 1926, at 7:30 p. m., the purpose of such meeting being to receive communications from the Mayor or City Controller of said City and for the consideration of General Ordinance No. 64 and Appropriation Ordinance No. 3, including the re-publication of the 1927 Budget and tax levies.

Respectfully,  
BOYNTON J. MOORE,  
President.

I, William A. Boyce, Jr., Clerk of the Common Council of the City of Indianapolis, Indiana, do hereby certify that I have served the above and foregoing notice to each and every member of the Common Council prior to the time of meeting, pursuant to the rules.

WILLIAM A. BOYCE, Jr.  
City Clerk.

Which was read.

The Clerk called the roll.

Present: Hon. Boynton J. Moore, President and five members, viz.: Austin H. Todd, Otis E. Bartholomew, Millard W. Ferguson, Walter R. Dorsett and O. Ray Albertson.

Absent: Claude E. Negley, Edward B. Raub and Robert E. Springsteen.

## INTRODUCTION OF APPROPRIATION ORDINANCES

By Mr. Bartholomew:

## APPROPRIATION ORDINANCE NO. 4, 1926.

AN ORDINANCE, Appropriating the sum of Twenty Thousand One Hundred and Seventy-five Dollars (\$20,175.00) to Gasoline Tax Fund No. 12, Temporary Salary and Wages, and the sum of Sixty Thousand Three Hundred and Fifty Dollars

(\$60,350.00) to Gasoline Tax Fund No. 43, Street and Alley Material, both of which fund numbers being hereby created in the Department of the City Civil Engineer in the Department of Public Works of Indianapolis, out of the gasoline tax money for the purposes of repairing certain streets hereinafter specified and fixing a time when the same shall take effect.

*Be it Ordained by the Common Council of the City of Indianapolis, Indiana:*

Section 1. That the sum of Twenty Thousand One Hundred and Seventy-five Dollars (\$20,175.00) is hereby appropriated to Gasoline Tax Fund No. 12, Temporary Salary and Wages, and the sum of Sixty Thousand and Three Hundred and Fifty Dollars (\$60,350.00) is hereby appropriated to Gasoline Tax Fund No. 43, Street and Alley Material, both of which fund numbers being hereby created in the Department of the City Civil Engineer in the Department of Public Works of the City of Indianapolis, out of the gasoline tax money, to be used by said Department in repairing the streets and avenues as set forth in this ordinance.

Section 2. That the Department of the City Civil Engineer immediately upon taking effect of this ordinance shall proceed from the above appropriated monies and as closely to said Engineers estimates as practicable, to make needed repairs on the following named streets and avenues in the City of Indianapolis:

South Meridian Street.  
Maryland Street.  
Georgia Street.  
Louisiana Street.  
McCrea Street.  
South Street.  
Merrill Street.  
Russell Avenue.  
McCarty Street.  
Ray Street.  
Morris Street.  
Bluff Avenue.  
Raymond Street.  
Harding Street.  
Kentucky Avenue.  
Belmont Avenue.  
East Washington Street.  
Oliver Avenue.  
Division Street.  
West Street.  
Senate Avenue.  
North Illinois Street.  
North Pennsylvania Street.  
Delaware Street.  
Madison Avenue.  
Union Street.  
Minnesota Street.  
South East Street.  
Prospect Street.  
Buchanan Street.  
Noble Street.

Shelby Street.  
Churchman Avenue.  
Fletcher Avenue.  
English Avenue.  
Southeastern Avenue.  
Rural Street.  
Sherman Drive.  
Emerson Avenue.  
Audubon Road.  
Arlington Avenue.  
East Michigan Street.  
New York Street.  
East Tenth Street.  
Olney Street.  
Tuxedo Street.  
LaSalle Street.  
Eastern Avenue.  
Keystone Avenue.  
Cornell Avenue.  
Bellefontaine Street.  
Ashland Avenue.  
College Avenue.  
Park Avenue.  
Broadway.  
Ruckle Street.  
Central Avenue.  
New Jersey Street.  
Alabama Street.  
Talbot Avenue.  
Market Street.  
Ohio Street.  
Vermont Street.  
North Street.  
Walnut Street.  
St. Clair Street.  
Pratt Street.  
St. Joseph Street.  
Eleventh Street.  
Twelfth Street.  
Thirteenth Street.  
Sixteenth Street.  
Massachusetts Avenue.  
Roosevelt Avenue.  
25th Street.  
22nd Street.  
23rd Street.  
West 30th Street.  
Gale Street.  
Hillside Avenue.  
Martindale Avenue.  
Columbia Avenue.  
Washington Blvd.  
32nd Street.  
34th Street.  
36th Street.

40th Street.  
 42nd Street.  
 63rd Street.  
 Ft. Wayne Avenue.  
 Pine Street.  
 Highland Street.  
 State Street.  
 Kenwood Avenue.  
 Boulevard Place.  
 Northwestern Avenue.  
 Clifton Street.  
 Congress Avenue.  
 20th Street.  
 26th Street.  
 Highland Place  
 Indiana Avenue.  
 Blake Street.  
 King Avenue.  
 Washington Avenue.  
 21st Street.

Section 3. Any enactment, ordinance or resolution contrary to the provisions of this ordinance is hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after its passage.

OTIS E. BARTHOLOMEW.

Councilman.

Which was read a first time and referred to a Special Committee consisting of Mr. Ferguson, Chairman; Messrs. Albertson, Dorsett, Todd and Bartholomew.

By Mr. Bartholomew:

#### APPROPRIATION ORDINANCE NO. 5, 1926.

AN ORDINANCE, appropriating the sum of Eleven Thousand Three Hundred and Forty-five (\$11,345.00) Dollars to Gasoline Tax Fund No. 12, Temporary Salary and Wages, the sum of Ten Thousand and Forty-Two (\$10,042.16) Dollars and Sixteen Cents to Gasoline Tax Fund No. 452, Materials, Parts of Structures and the sum of Thirty-Five Hundred (\$3500.00) Dollars to Gasoline Tax Fund No. 251, Services Contractual, all in the Department of the Street Commissioner in the Department of Public Works of the City of Indianapolis, out of the Gasoline Tax money, for the purposes of repairing certain bridges hereinafter specified, creating such Fund numbers, and fixing a time when the same shall take effect.

*Be it Ordained by the Common Council of the City of Indianapolis, Indiana:*

Section 1. That there is hereby appropriated the sum of Eleven Thousand Three Hundred and Forty-five (\$11,345.00) to Gasoline Tax Fund No. 12, Temporary Salary and Wages, the sum of Ten Thousand and Forty-two (\$10,042.16) Dollars and Sixteen

Cents to Gasoline Tax Fund No. 251, Services Contractual, all in the Department of the Street Commissioner, in the Department of Public Works of the City of Indianapolis, out of the Gasoline Tax Money, for the purposes of repairing bridges as set forth in this ordinance, said fund numbers mentioned in this section being hereby created and established.

Section 2. That the Department of the Street Commissioner immediately upon taking effect of this ordinance shall proceed from the above appropriated moneys and as closely to said engineer's estimates as practicable, to make needed repairs on the following named bridges in the City of Indianapolis:

West 10th St. River Bridge.  
 Harding St. River Bridge.  
 Raymond St. River Bridge.  
 Fall Creek and 21st St. Bridge.  
 Canal and 25th St. Bridge.  
 Cottage Ave. and Pleasant Run Bridge.  
 South Meridian St. and Pleasant Run Bridge.  
 W. Michigan St. Eagle Creek Bridge.  
 Pleasant Run and Beecher St. Bridge.  
 Pleasant Run and Barth Avenue Bridge.  
 Pleasant Run and Shelby St. Bridge.  
 Pleasant Run and Minnesota St. Bridge.  
 Pleasant Run and Spruce Bridge.  
 Pleasant Run and Prospect St. Bridge.  
 Pleasant Run and Ritter Ave. Bridge.  
 New York St. River Bridge.  
 Kentucky Avenue and Missouri St. Bridge.

Section 3. Any enactment, ordinance or resolution contrary to the provisions of this ordinance is hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after its passage.

OTIS E. BARTHOLOMEW.

Councilman.

Which was read a first time and referred to the Committee on Finance.

#### INTRODUCTION OF MISCELLANEOUS BUSINESS

Mr. Dorsett presented the following written motion:

Indianapolis, Ind., August 26, 1926.

*Mr. President:*

I move that General Ordinance No. 64, 1926, be further amended as follows:

By changing the tax levy for the City General Fund from \$.565 to \$.56 on each \$100.00 of taxable property.

By changing the tax levy for the Park General Fund from \$.08 to \$.07 on each \$100.00 of taxable property.

By changing the tax levy for the Sanitation Maintenance Fund from \$.06 to \$.065 on each \$100.00 of taxable property.



Making a total combined City Tax Levy of \$1.04 upon each \$100.00 of taxable property, as follows:

City General Fund -----	\$ .56
City Sinking Fund -----	.05
Police Pension Fund -----	.01
Firemen Pension Fund -----	.01
School Health Fund -----	.015
Park General Fund -----	.07
Park District Bonds -----	.055
Recreation Fund -----	.015
Track Elevation -----	.02
Tuberculosis Fund -----	.005
Sanitary Bond Fund -----	.035
Sanitation Maintenance Fund -----	.065
Board of Health Fund -----	.09
Flood Prevention Fund -----	.015
Street Resurfacing -----	.02
Thoroughfare Plan Fund -----	.005

\$1.04

WALTER R. DORSETT,  
Councilman.

The above motion was seconded by Mr. Bartholomew.

Mr. Albertson raised a point of order and objected to the consideration of the Budget and Tax Levies for 1927 by a Special Committee instead of the Finance Committee.

Mr Dorsett's motion was passed by the following vote:

Ayes, 5, viz: Messrs. Bartholomew, Dorsett, Ferguson, Todd and President Moore.

Noes, 1, viz: Mr. Albertson.

Mr. Bartholomew presented the following written motion:

Indianapolis, Ind., August 26, 1926.

*Mr. President:*

I move that the Clerk be instructed to have printed in the proceedings of this meeting the complete official opinion given by the Supreme Court of the State of Indiana on July 26, 1926, in the matter of determining the legal right of the Common Council to increase the sanitation levy above the rate recommended by the Mayor and City Comptroller.

OTIS E. BARTHOLOMEW,  
Councilman.

The above motion was seconded by Dr. Todd and

passed by the following vote:

Ayes, 5, viz.: Messrs. Bartholomew, Dorsett, Ferguson, Todd and President Moore.

Noes, 1, viz.: Mr. Albertson.

Mr. Ferguson presented the following written motion:

Indianapolis, Ind., August 26, 1926.

*Mr. President:*

I move that this Council hereby approve and confirm the action of our clerk in publishing the proposed city tax levies and proposed 1927 budget in two papers of opposite political faith under date of August 23, 1926, and wherein notice was given of the intention of this Common Council to hold a public hearing on said tax levies and budget on the 3rd day of September, 1926, at 9:00 a. m.

M. W. FERGUSON,

Councilman.

The above motion was seconded by Mr. Bartholomew and passed unanimously by the Council.

THE STATE OF INDIANA,

IN THE SUPREME COURT, MAY TERM, 1926.

On the 26th day of July, 1926, being the 56th Judicial day of said May Term, 1926.

No. 25123

Hon. David A. Myers, Chief Justice.

Hon. Willard B. Gemmill,

Hon. Julius C. Travis,

Hon. Benjamin M. Willoughby,

Hon. Louis B. Ewbank,

Associate Judges.

IN THE CASE OF

State Board of Tax Commissioners  
of the State of Indiana, etc.

-vs-

State of Indiana, ex rel.  
City of Indianapolis, etc., et al

APPEALED FROM THE  
MARION SUPERIOR  
COURT

Come the parties by their attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

Gemmill, J.

The appellee brought this suit to mandate the State Board of Tax Commissioners of the State of Indiana and its members to perform the official act of certifying to the auditor of Marion County its affirmance of a tax levy of \$.065 on each \$100.00 of taxables in the Sanitary District of Indianapolis for the use of said District and the Board of Sanitary Commissioners thereof, or to pass on the merits raised by remonstrances to said levy and determine a proper levy

for said district for the year, 1925. Appellants filed a demurrer to the complaint, which was overruled. They refused to plead further and elected to stand on the court's ruling on the demurrer. Judgment was then entered by the court against the appellants. By the judgment, the state board of tax commissioners and its members were ordered to perform the official duty imposed upon them by law and to pass upon the merits of the rate and levy of \$.065 on each \$100.00 of taxables within the limits of the Sanitary District of Indianapolis, established and levied, as the rate of taxation for taxes for 1925, payable in 1926, for sanitary maintenance and general expense fund, and either to affirm or decrease said rate and levy after passing upon the merits thereof.

The complaint, in which said sanitary district of Indianapolis and said board of sanitary commissioners are referred to as relator, alleges that the relator exists and for several years last past has existed under and by virtue of an act of the General Assembly of Indiana, approved March 9, 1917, and acts amendatory thereof and supplemental thereto; that at the proper and legal time in the year 1925, the relator prepared in the proper and approved form, its budget itemizing the expenses which relator estimated it would be required to make in order to perform in the year 1926, the duties imposed by law upon it; that after relator had prepared said budget, the mayor and city controller of the city of Indianapolis attempted to reduce the total sum named by relator of \$501,735 to \$423,500 and further attempted to reduce said sum of \$23,500 by \$75,000, which they estimated was the amount of revenue from its operations which relator would receive during 1926; that the mayor and controller purported to "allow" relator, in order to produce said fund a levy of \$.055 on each \$100.00 of taxables in relator's said sanitary district; that a notice to taxpayers of tax levy for sanitation purposes was duly published over the names of the mayor, the city controller and the president of the common council, in which it was stated that the proposed rate of taxation for sanitation maintenance purpose was \$.055 on each \$100.00 of taxable property in the city of Indianapolis, and that a public hearing would be held in the council chamber of the city hall in the city of Indianapolis on the 7th day of September, 1925, on the proposed budget for the succeeding year and the rate of taxation to be established for said department; that after the publication of said notice and after said public hearing had been held, the common council of the city of Indianapolis, on September 7, 1925, duly and regularly adopted its levy ordinance and that said ordinance fixed and established \$.065 on each \$100.00 of taxables in that part of relator's said sanitary district within the limits of said city, as the rate of taxation established and levied for taxes for 1925, payable in 1926, for relator's said sanitary maintenance and general expense fund; that thereafter the mayor vetoed that part of said levy ordinance fixing said rate at \$.065, and thereafter said common council duly and regularly adopted and passed over the mayor's said veto that part of said levy ordinance vetoed by him; that thereupon the common council reported said levy and rate of \$.065 to the county auditor of Marion county and the latter reported same to the state board of tax commissioners; that thereafter two petitions, each signed by ten or more qualified taxpayers were filed with said county auditor and by him certified to the state board of tax commissioners objecting to said levy and rate of \$.065



for the reason that said levy and rate "is more than government economically administered warrants;" that notice was given as to hearing on said remonstrances and same was duly held on October 6, 1925; that thereafter the state board of tax commissioners issued an order in the matter of said petitions in which it was stated that an order in the matter of said petitions in which it was stated that the Board found that \$.055 was the rate of levy published for the sanitary district of the city of Indianapolis and that said rate should stand without change, and it was ordered that the tax levy for said department of sanitation for said city for the year 1925, be and remain at \$.055 to be levied upon each \$100.00 of taxable property in the taxing unit affected by said levy; that said order was by said state board certified to the auditor of Marion County; and that the state board has failed to perform the duty imposed upon it by law, viz: to pass upon said levy of \$.065 on the merits; and that said levy so made and established by the common council was and is in all respects legal and valid.

It is claimed by the appellants that the department of public sanitation of Indianapolis is a department of the city government; that the levy of taxes for that department can only be made by the city officers after the formation and publication by them of a budget, showing in detail the money proposed to be expended during the succeeding year, the valuation of all taxable property within the jurisdiction, the rate of taxation proposed to be established and only after a public hearing at which taxpayers may be heard; that no rate of taxation can be levied by city officials in excess of that stated in the notice as the proposed rate; and that the state board of tax commissioners did pass on the merits of the question raised by the remonstrances and such action of the Board is final.

The department of public sanitation of cities of the first class was established by the general assembly in 1917. This department was created in addition to the executive departments of cities of that class Acts 1917, p. 573; Burns' 1926, Sec. 10577. In said act it was provided that a sanitary district was to consist of all the territory included within the corporate limits of any city of the first class and all the territory of any incorporated town lying within the boundaries of said city. The sanitary district under consideration consists of all the territory within the corporate limits of the City of Indianapolis and all the territory of the incorporated town of Woodruff Place. The sanitary district Act of 1917, in Sec. 21, sated how revenue for its support should be raised and provided that a tax of \$.02 on each \$100.00 of taxable property should be levied annually by the common council of said city and by the board of trustees of said town, respectively, for general expenses, operation, maintenance and repairs. Said section was amended by the legislature of 1921 and a tax of not exceeding \$.04 on each \$100.00 of taxable property was provided for. Acts 1921, p. 315. And the amended section was amended in 1923, same now stating that a tax of not exceeding \$.08 on each \$100.00 of taxable property in such city of the first class and in such incorporated town located within the boundaries thereof shall be levied annually by the common council of said city and by the board of trustees of said town respectively, for sanitary purposes. Acts 1923, p. 386; Burns' 1926, Sec. 10597. In Sec. 24 of said sanitation department act, it is said: "No appropriation in any form shall be necessary, but all funds arising under the provis-

ions hereof shall be deemed appropriated to the respective purposes herein named." Burns' 1926. Sec. 10600.

In the Act of 1905 concerning municipal corporations, (Acts 1905, p. 219), in Sec. 200 thereof, as amended in 1911, it is provided that the common council shall levy a tax upon the property and polls shown in certificate issued to it, as may be deemed necessary by such council to supply the needs of such city during the ensuing year for city purposes for which taxes may be properly levied. Burns' 1926, Sec. 10956.

It is insisted by appellants and denied by appellee that chapter 84 of said Act of 1905, concerning municipal corporations, (Burns' 1914, Sec. 8686, Burns' 1926, Sec. 10306), applies to the department of public sanitation of the city of Indianapolis. This section contains the following specific provisions:—It shall be the duty of each executive department before the commencement of each fiscal year to submit to the joint meeting of the heads of the departments, an estimate of the amount of money required for their respective departments for the ensuing fiscal year. After such meeting, reports and consultations, the city controller shall proceed to revise such estimates and shall then prepare a report to the mayor of the various estimated amounts required in such controller's opinion for each executive department together with an estimate of the necessary per cent. of taxes to be levied. The mayor shall, at the next meeting of the common council, present such report with such recommendations as he may see fit. It shall be the duty of the committee of finance of the common council thereupon to prepare an ordinance fixing the rate of taxation for ensuing year, and also an ordinance making appropriations by items for the use of the various executive departments. As it is not required to appropriate funds for the use of the department of public sanitation, an appropriation ordinance for it is not necessary.

The budget law, as enacted in 1921, same being Sec. 200 of the Tax Law (Burns' 1926, Sec. 14239), provides that the several tax levies shall be established by the proper legal officers of any municipal corporation after the formation and publication by them of a budget showing in detail the money proposed to be expended during the succeeding year, the valuation of all taxable property within the jurisdiction and the rate of taxation it is proposed to establish, and after a public hearing within the jurisdiction at which any taxpayer shall have a right to be heard thereon.

When the department of public sanitation was added to the existing executive departments of the city of Indianapolis in 1917, that department came under all the general taxing laws for departments of cities of the first class, except where the act under which it was created provided otherwise. When established, its tax rate for general purposes and maintenance was a fixed amount. Later the Legislature twice changed and increased the rate so as not to exceed a certain number of cents for each \$100.00 of taxable property. After the act was first amended in that particular, the tax rate for that department could only be determined by the proper officers in the same manner that tax rates were fixed for other executive departments. There is no merit to the contention that the Sanitary District is a separate entity—a distinct municipality.

In 1925 the sanitary district of Indianapolis prepared in the

proper and approved form, its budget for a sanitary maintenance and general expense fund, itemizing the expenses which it would be required to make in order to perform its duties, in the year 1926. The "Notice to Taxpayers of Tax Levies" was duly given. The part of same pertaining to the department of public sanitation was as follows:

"The proposed budget, the valuation of all taxable property within the city of Indianapolis, Ind., and the sanitation district of the city of Indianapolis, Ind., and the proposed rate of taxation for such purposes are as follows:

FOR SANITATION PURPOSES

Administration	\$ 24,100.00
Ash and garbage collection	274,255.60
Sewage disposal plant	175,000.00
Night soil plant and incinerator	10,380.00
Improvement, maintenance of lands and roads	3,000.00
Garbage reduction plant	15,000.00
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Total as asked for by sanitation board	\$501,735.00
Total as allowed by Mayor*	\$423,500.00

\*In explanation to total allowed by Mayor:

The levy of \$.055 for the sanitation department as allowed by the mayor, figured on an approximate valuation of \$652,000,000.00, (\$652,000,000.00) would bring the department of sanitation approximately	\$358,500.00
Estimate of revenue received by sanitation department	75,000.00
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Department would receive for 1926 -----\$423,500.00

The proposed rate of taxation for the sanitation maintenance purpose is five mills (\$.055) on each \$100 of taxable property in the city of Indianapolis and sanitation district of Indianapolis, Ind.

Also desire to state that a tax levy of four cents (\$.04) is allowed the sanitation department for sanitation bond fund for sinking fund purposes to take care of the principal and interest falling due on sanitation district bonds during the year 1926 of \$238,070."

In same, the following statements will be noted: "Total as allowed by mayor" and "The levy of \$.055 for the sanitation department as allowed by the mayor." The mayor has not authority to "allow" anything in this matter, but by Sec. 84 of the Act of 1905, concerning municipal corporations, sometimes called the City Charter Act. a duty was placed upon him, stated as follows: "The mayor shall, at the next meeting of the common council present such report (the controller's), with such recommendations as he may see fit." By "allowed" as used in the published notice was doubtless meant "recommended." It is not provided that the recommendation of the mayor as to the rate of taxation had to be accepted either by the finance committee of the common council, whose duty it is to prepare an ordinance fixing the rate, or by the common council, which has the duty and responsibility of finally acting upon the ordinance. If the mayor's recommendation had to be followed, then the common council in passing the ordinance and establishing the rate would have no power in regard thereto except to follow a recommendation with which its members might not agree. After an or-



dinance levying a tax has been passed by the common council, the mayor can disapprove same, and it does not become law and operative unless passed over his veto by the common council by a two-thirds vote. Acts 1905, p. 236, Sec. 80, Burns' 1926, Sec. 10295. If the mayor's recommendation had to be adopted by the common council, then it would not have been necessary for the legislature to have given him the power to disapprove ordinances levying taxes. In establishing a tax rate for a city and its departments, it is the duty of the mayor to make his recommendation in regard to same before the ordinance is enacted, and after that is done he has the power to disapprove same, but final action in passing the ordinance rests with the common council.

The budget law provides, among other things, that the notice published shall show in detail the money proposed to be expended during the succeeding year. In the notice published as to tax levy for the public sanitation department, the total amount which the mayor desired to recommend is stated, but the different items are not set out, so taxpayers could not have learned from the notice how the money to be raised by taxation was to be used if the Mayor's recommendation has been accepted. This notice, in accordance with the statute, provided that at a certain place and time, a public hearing would be held on the proposed budget and on the proposed rate of taxation for the succeeding year. And at the public hearing, ANY taxpayer had a right to be heard on these subjects. This statutory right to be heard, given ANY taxpayer, is not restricted to taxpayers in favor of the proposed rate, as published, or of a lower rate, but would include those, if any, desiring a higher rate. The rate proposed, recommended by the mayor, was offered to taxpayers for consideration and discussion, and was presented to the common council for acceptance if it desired to adopt same after the recommendation and public hearing. The common council is not required to follow suggestions of taxpayers made at the public hearing. In fact, these suggestions might be so different that it would be impossible to reconcile and follow same. After the common council has passed an ordinance fixing the tax levy, taxpayers who feel aggrieved have an opportunity to be heard by appealing to the state board of tax commissioners as was done in regard to the tax levy under consideration by two groups of taxpayers. Rule 9 of the state board of tax commissioners for the year 1925, gives the following reasons for objections, on appeal: That the amount to be collected on the levies adopted by the tax levying officers is more than government economically administered warrants or that any item in such levy will raise more money than the public needs require. The remonstrators objected for the first of said causes.


The state board, after the hearing on the petitions filed by taxpayers, issued an order thereon, part of which is as follows: "And after hearing the evidence and arguments and being fully advised in the premises this Board finds that \$0.55 was the rate of levy published for that department and that said rate shall stand without change. It is therefore ordered that the tax levy for the Department of Sanitation of the City of Indianapolis for the year 1925 be and remain at \$.055 to be levied upon each one hundred dollars of taxable property in the taxing unit effected by said tax levy."

It is alleged in the complaint that the state board of tax Commissioners has failed to perform the duty imposed upon it by law

in that it has failed and refused after hearing on said petitions to pass upon said rate and levy of \$.065 on the merits. The reply brief of appellants states: "The demurrer admits that the board did not consider a \$.065 rate, but the obvious reason is that it had no power to consider any rate in excess of \$.055." The proposed rate, named in the published notice, was never adopted by the common council, and it had the authority to establish the rate provided for in the ordinance which it passed. The only rate which it fixed was that of \$.065. The objection to this rate that it is more than government economically administered warrants, has not been acted upon by the state board as shown by its said admission in its reply brief. It cannot be agreed that all the allegations of the complaint are true, yet it states facts sufficient to constitute a cause of action against the appellants. The court did not err in overruling the demurrer.

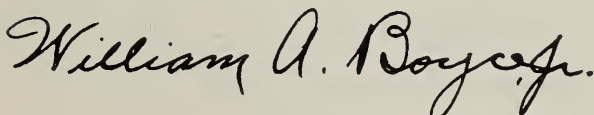
The judgment is affirmed.

On motion of Dr. Todd, seconded by Mr. Bartholomew, the Common Council of the City of Indianapolis adjourned at 7:55 o'clock p. m.



President.

Attest:



City Clerk.



