OPINION 58

OFFICIAL OPINION NO. 58

December 5, 1958

Mr. William H. Hardwick
Director of the Budget
302 State House
Indianapolis, Indiana

Dear Mr. Hardwick:

This will acknowledge receipt of your letter dated November 19, 1958, wherein you request an Official Opinion with respect to a two million dollar appropriation made to the Board of Public Harbors and Terminals.

For the sake of brevity I have paraphrased your question as follows:

Acts of 1947, Ch. 279, Sec. 21, as found in Burns’ (1951 Repl.), Section 60-1821, requires that all unexpended and unencumbered appropriations (except appropriations for purchase of real estate or for construction or other permanent improvement) remaining at the close of any fiscal year shall lapse and be returned to the general fund. This section also provides that even in the case of appropriations for purchase of real estate or for construction or other permanent improvement, such appropriations shall lapse and be returned to the general fund if there has been no expenditure therefrom or encumbrance thereon throughout an entire fiscal biennium.

In Acts of 1957, Ch. 286, Sec. 6, the Legislature appropriated two million dollars for the Indiana Board of Public Harbors and Terminals to be used to purchase real estate for harbor and terminal area. This last act declares that the appropriation shall not revert to the general fund until the project is completed or abandoned. Since the project is neither completed nor abandoned, will the appropriation lapse and revert to the general fund on June 30, 1959?

The provision requiring unused and unencumbered appropriations from the general fund to lapse and return to the general fund is Acts of 1947, Ch. 279, Sec. 21, as found in Burns’ (1951 Repl.), Section 60-1821, which reads as follows:

“(a) Except as specifically provided for in appropriation acts, every appropriation or part thereof re-
mainng unexpended and unencumbered at the close of any fiscal year shall lapse and be returned to the general revenue fund; provided, that an appropriation for purchase of real estate or for construction or other permanent improvement shall not lapse until the purposes for which the appropriation was made shall have been accomplished or abandoned, unless such appropriation has remained during an entire fiscal biennium without any expenditure therefrom or encumbrance thereon. (b) Except as otherwise expressly provided by law, the provisions of this section shall apply to every appropriation of a stated sum for a specified purpose or purposes heretofore or hereafter made from the general revenue fund, but shall not, unless expressly so provided by law, apply to any fund or balance of a fund derived wholly or partly from special taxes, fees, earnings, fines, federal grants, or other sources which are by law appropriated for special purposes by standing, continuing, rotary or revolving appropriations.” (Our emphasis)

The provision for the return of unused and unencumbered appropriations at the end of the fiscal year would not be operative in this particular instance because the appropriation in question is specifically designated for the purchase of real estate and would therefore (except for specific provisions in the subsequent statute of appropriation) come within that part of the above statute which says “** * * * that an appropriation for purchase of real estate * * * shall not lapse until the purposes for which the appropriation was made shall have been accomplished or abandoned, unless such appropriation has remained during an entire fiscal biennium without any expenditure therefrom or encumbrance thereon.”

The two million dollar appropriation in question, made for the Indiana Board of Public Harbors and Terminals, is stated and conditioned in Acts of 1957, Ch. 286, Sec. 6, pp. 732 and 733, which reads in part as follows:

“There is hereby appropriated to the Indiana Board of Public Harbors and Terminals, from the moneys not otherwise appropriated in the General Fund, the sum of two million dollars ($2,000,000) for the purpose of
enabling said Board to purchase * * * real estate on Lake Michigan: * * *

"* * * The moneys herein appropriated shall not revert to the General Fund, until the aforementioned project is either completed or abandoned." (Our emphasis)

This 1957 Act is the latest legislative expression with respect to the special use and disbursement of the harbor fund appropriation, and it clearly provides that the appropriation shall stand until such time as the project is either completed or abandoned. It is a specific legislative enactment which would bring the 1957 Act within the emphasized exceptions of Burns’ 60-1821, supra.

Although there seems to be no real conflict between the provisions of the two acts it may be well to point out that where there is a possible conflict between legislative enactments, the courts have applied a rule of construction which holds that of the two acts, the one containing the special provision and which is later in point of time will control. State ex rel. Davenport et al. v. International Harvester Co. (1940), 216 Ind. 463, 25 N. E. (2d) 242; Brumfield, Trustee v. State ex rel. Wallace (1934), 206 Ind. 647, 190 N. E. 863. In terms of the question now being answered, it is obvious that the 1957 Act is later in point of time and also contains the special provision against reversion to the general fund, so that as to the appropriation in issue, the 1957 Act controls.

It is therefore my opinion that the two million dollar appropriation to the Indiana Board of Public Harbors and Terminals will not lapse or revert to the general fund under any of the provisions of Burns’ 60-1821, supra, but will remain a standing appropriation until the harbor project is completed or abandoned in accordance with the Acts of 1957, Ch. 286, Sec. 6.