The foregoing citation answers your second question. Until a specific appropriation is made, no portion of the General Fund may be used, whether it be "earmarked," so-called, or not. Once any monies received by the Commission have become a part of the General Fund, they remain part and parcel thereof, until such time as appropriated by the Legislature, in whatever manner it may see fit.

OFFICIAL OPINION NO. 33
August 27, 1957

Mr. Paul L. Meyers
Chairman
State Board of Correction
210 State House
Indianapolis, Indiana

Dear Mr. Meyers:

This is in answer to your request for an Official Opinion as to the legality of charging an inmate or his family, ten dollars per diem for the payment of a guard to accompany said inmate on an emergency trip under executive order in the event of critical illness or death of an immediate member of the inmate's family.

I see no objection to the collection of the per diem payment from the inmate or his family if said sum is paid to the state as reimbursement for expenses incurred. The service rendered the inmate in this type of situation is one which is discretionary with the Governor and is of benefit only to the inmate and his family. There is no legal restriction upon the exercise of that discretion by the Governor which would prevent the requirement of reimbursement of expenses to the state as a condition of such an emergency trip by an inmate.

Following the receipt of your letter, a conference in your office concerning the same disclosed the further question as to whether or not the ten dollars per diem could be paid to the individual guard performing the services or whether it was to remain in the state fund.

I call your attention to the Acts of 1953, Ch. 266, Sec. 7, as found in Burns' (1956 Repl.), Section 13-1507, which provides,
in substance, that the "State Personnel Act" shall govern as to prison employees. In that latter Act, Acts of 1941, Ch. 139, Sec. 12, as found in Burns' (1951 Repl.), Section 60-1312, provides for the establishment of a specific pay plan for all employees holding positions for which compensation is not fixed by law. Section 32 of the same Act, as found in Burns' (1951 Repl.), Section 60-1332, prohibits the payment of any sum in violation of the established pay plan or the rules pertaining thereto.

Unless payment of the ten dollars per diem to the guard performing the services is specifically provided for in the established pay plan, any payment of such per diem to the guard would be in violation of Section 60-1332, supra.

Our conclusion, therefore, is that the ten dollars per diem charge may be made against the inmate or a member of his family, but that said charge may not be paid to the individual guard performing the services unless expressly included in the established pay plan.

OFFICIAL OPINION NO. 34

September 4, 1957

The Honorable Willis K. Batchelet
State Senator
113 East Broad Street
Angola, Indiana

Dear Senator Batchelet:

This is in reply to your letter of August 14, 1957, in which you request an Official Opinion relative to the Acts of 1957, Ch. 322, being Burns' (1957 Supp.), Sections 5-128 to 5-137, 5-205a and 5-1721 to 5-1722. Specifically, you state in your letter, in part:

"It would be appreciated if you could give an opinion as to the meaning of Section 5 of this Act and as to its application to the rest of the Act."

Inasmuch as your letter deals entirely with Justices of the Peace in townships of less than twenty thousand, and with the effect of Sec. 5 upon the fee system and the jurisdiction of