2. It would not be possible to exempt household furnishings and equipment from the personal property tax rolls specifically by statute, without constitutional amendment.

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OFFICIAL OPINION NO. 19

March 12, 1954

Mr. Doxie Moore, Director
Indiana Department of Conservation
311 West Washington Street
Indianapolis, Indiana

Dear Mr. Moore:

This is in reply to your letter requesting an Official Opinion, which reads as follows:

"The Federal Government has a tax on fishing and hunting equipment. This money is returned to the States on the basis of (1) area, and (2) the number of hunting and fishing licenses sold. (50 Stat. 917.)

"Under the Indiana law many war veterans are issued a free hunting and fishing permit. (Burns—11-1424.)

"These are not counted as licenses sold by the Federal Government.

"It has been suggested that the Indiana Department of Conservation give to each veteran applying for a free permit, such a permit and the sum of two dollars ($2.00). The two dollars ($2.00) to be given on the condition that such veteran buy a hunting and fishing license with the money.

"The plan proposed would take two dollars ($2.00) from Department Funds then put it back for the license sold. The actual cash in the Department would be the same, but it would allow the Department to show a license sold so as to increase the return from the Federal Funds.

"My questions are:
“1. Can the Department institute such a procedure under existing law?

“2. Can the Governor, from his Contingency fund, pay the two dollars ($2.00) under the plan outlined above?

“3. Can such money be taken from any state fund, and used for this purpose?”

The Indiana Constitution, Art. 10, Sec. 3 provides:

“No money shall be drawn from the Treasury, but in pursuance of appropriations made by law.”

The Acts of 1897, Ch. 115, Sec. 1, as amended, as found in Burns' Indiana Statutes (1951 Repl., 1953 Supp.), Section 61-205, provides, in part, as follows:

“The disbursement of moneys for any purpose by the departments of the state government shall be by vouchers specifically itemizing in every particular the different purposes for which the treasury warrant is authorized. These vouchers shall not be approved by any officer or officers authorized to approve the same, unless so itemized, giving minutiae of detail, and when vouchers are presented to the auditor of state for warrants, they shall be accompanied by said itemized accounts and statements.”

The Acts of 1899, Ch. 137, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl.), Section 61-209, provides:

“Where an appropriation is made to any officer or department of state government for a specific employment or purpose, itemized vouchers showing the proper expenditure of the appropriation for the purpose named shall be made to the auditor of state before a warrant covering the amount due can be drawn on the treasurer of state.”

The Attorney General in 1945, in the construction of the word “appropriation,” stated that it was his opinion that an appropriation can be expended only in pursuance to the reasons as designated by the Legislature. (1945 O. A. G., page
The power of the Legislature with respect to public funds raised by general taxation is supreme and no one may create an obligation on behalf of the state either legal or moral unless there has first been a specific appropriation of funds to meet the obligation. Before the State Treasurer has the power or may be required to pay out money from the treasury, there must be not only a specific appropriation made by law, but a proper warrant or order from the State Auditor or other proper officer.

A fund authorized by statute, providing for emergency expenses in excess of the amount appropriated by the Legislature is known as a Contingency Fund and the purpose thereof is the authorizing of expenditures for emergencies. The use of the Governor's Contingency Fund was very aptly discussed in 1945 O. A. G., page 241, No. 53. I do not believe that an expenditure of this type could be classified as an emergency in order to validate the use of the Governor's Contingency Fund.

The 1945 O. A. G., page 499, No. 116, stressed the need for a specific appropriation for a particular purpose prior to the expenditure of any funds.

Since the Acts of 1937, Ch. 21, Sec. 33, as amended, as found in Burns' Indiana Statutes (1942 Repl., 1953 Supp.), Section 11-1424, provides for the issuance of such licenses without charge, it is my further opinion this would not be construed to be a bona fide sale under the federal tax on fishing and hunting equipment.

It is therefore my opinion:

1. The Department of Conservation may not institute a procedure such as that set out in your letter, supra, under existing law.

2. The Governor may not pay the two dollars ($2.00) under the plan outlined in your letter from the Contingency Fund.

3. Money may not be taken from any other state fund and used for the purpose outlined in your letter unless it is specifically appropriated therefor.