

## OPINION 5

*this act to be performed by the county surveyor, and whose salary shall be fixed upon the same basis as is otherwise provided in this act. \* \* \**

The act which you refer to as creating the cumulative bridge fund is Chapter 299 of the Acts of 1951 and the only provision made for the utilization of the funds provided by that act is the last paragraph of Section 31 which reads as follows:

“No expenditures shall be made from said fund except after an appropriation therefor has been made in the manner provided by law for making other appropriations.”

On the basis of the statutes quoted herein, it is my opinion that it is clearly the legislature's intent that if a County Highway Supervisor is appointed that he, together with the board of county commissioners, would determine the necessity for expenditures and authorize especially expenditures of all funds in the building, repair, or maintenance of county bridges pursuant to an appropriation by the county council of the funds to be so expended.

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### OFFICIAL OPINION NO. 5

January 5, 1953.

Mr. Frank T. Millis,  
Auditor of State,  
State House,  
Indianapolis, Indiana.

Dear Mr. Millis:

I have your request for an official opinion which is as follows:

“Burns' Indiana Statutes 64-1505 *et seq.* provides that the various County Auditors shall furnish to the State Auditor a list of persons who are due money from the State of Indiana for salaries or services and who are delinquent in the payment of taxes to that county. The State Auditor is then required to withhold the amount of such delinquent taxes from the warrant of such person and pay such sum over to the County

Treasurer. The statute further provides that it shall be the duty of the various county auditors to furnish such lists on or before the first day of June and the first day of December of each year.

“If a county auditor should furnish such a list as referred to above after the first day of December, would it still be my duty as State Auditor to withhold the amount of delinquent taxes from a person due money from the state treasury for personal services rendered?”

The applicable sections of the statute pertinent to this situation are as follows:

“It shall be the duty of the Auditor of each county on or before the first day of June and the first day of December of each year to furnish to the State Auditor, \* \* \* a list of all persons believed by such County Auditor to have, or who may reasonably be expected to have, money due them for salaries or wages from \* \* \* the State Auditor \* \* \* and who are delinquent in the payment of any state, county, city, town or township taxes as shown by the tax duplicates in the office of the County Auditor, and any such list shall also show the amount of delinquent taxes due and owing by each of said persons, as shown by said tax duplicates.” Burns’ Ind. Statutes 64-1505a.

“It shall be the duty of the Auditor of State, \* \* \* to deduct from any money due from the State Treasury, \* \* \* to any person whose name is found on such delinquent tax list an amount equal to the amount of such delinquent taxes as shown by said lists and shall pay the same to the County Treasurer of the county entitled thereto in satisfaction of such delinquent taxes: \* \* \*.” Burns’ Ind. Statutes 64-1506a.

“Any officer who shall fail to perform the duties imposed by the two preceding sections of this act shall be guilty of a misdemeanor and, on conviction thereof, shall be fined in any sum not less than ten (\$10.00) nor more than One Hundred (\$100.00) Dollars.” Burns’ Ind. Statutes 64-1507.

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It is apparent from the above sections of the statutes that the legislature intended to provide a procedure whereby the counties and state could collect delinquent taxes from persons who were employed by the State. Since a major portion of the counties' revenue and a portion of the State's revenue is derived from personal and real property tax, the legislature no doubt intended that the State's employees, officers and agents should be a shining example to point to as persons who were current in the payment of their taxes. To make sure that they were current and the county would not have to resort to public sale of such person's personal and real property, the above procedure of withholding from salaries or wages was established.

Personal and real property taxes were due and payable in two equal instalments on or before the first Monday in May and the first Monday in November of each year. Burns' Indiana Statutes 64-1508. It should be noted that the various county auditors are to furnish their delinquent list of state employees to the state auditor on or before the first day of June and the first day of December of each year. For some county auditors it would be almost impossible for them to check and compile a delinquency list by these dates because of the volume and pressure of other statutory duties about that time of the year.

Said rule of construction as specifically applied to the time for performance of official duties is found in 59 *Corpus Juris*, "Statutes," Section 634, pp. 1078 and 1079, and is as follows:

"A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others, and made with a view to the proper orderly, and prompt conduct of business, is usually directory, unless the phraseology of the statute, or the nature of the act to be performed and the consequences of doing or failing to do it at such time, is such that the designation of time must be considered a limitation on the power of the officer. So a statute requiring a public body, merely for the orderly transaction of business, to fix a time for the performance of certain acts which may as effectually be done at any other time is usually regarded as directory."

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In *Risley, Auditor v. Rumble* (1924), 81 Ind. App. 573, 144 N. E. 568, with respect to interpretation of tax laws, the court said:

“There is a general rule founded on sound reason and principle which requires that when construing a tax law all those provisions which are intended to secure methodical procedure shall be regarded as merely directory, and that only those provisions which are necessary to the protection of the citizen shall be regarded as mandatory.”

Since the intent of the statute concerning persons who are due money from the State is apparent, then time is not of the essence as to the list of such persons compiled by the county auditor and sent to the state auditor. The Supreme Court of Indiana has held that the legislative intent when ascertained will control the strict letter of the statute or the literal import of particular terms or phrases, where to adhere to the strict letter or literal import of terms would lead to injustice or absurdity or would contradict such intention. *Woodring et al. v. McCaslin et al.* (1914), 182 Ind. 134, 104 N. E. 759. See also the discussion in 1945 O. A. G. at page 498.

In view of the above, it is my opinion that it is your duty to comply with the provisions of Burns' Indiana Statutes 64-1506a, even though you have received the county auditor's list after the first day of December.

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OFFICIAL OPINION NO. 6

January 9, 1953.

Mr. Walter Koch, Chairman,  
Indiana State Toll Bridge Commission,  
International Steel Company,  
Evansville, Indiana.

Dear Mr. Koch:

On November 22, 1952, Mr. Joseph B. Minor, the attorney for your Commission, requested an official opinion of this office respecting the validity of certain bids which it has received on the Indiana-Kentucky Memorial Bridge at Lawrenceburg.