

OFFICIAL OPINION NO. 85

October 8, 1953.

Hon. Frank T. Millis,
State Auditor,
Room 238, State House,
Indianapolis, Indiana.

Dear Mr. Millis:

Your request for an Official Opinion has been received and reads as follows:

“We respectfully request your official opinion in the following instance:

“Chapter 230, Section 5 of the Acts of 1947 appropriated \$284,604.00 to the Wolf Lake Park Commission from the General Fund of the State of Indiana. The appropriation to be used for purchase and development of Wolf Lake properties for the state.’

“The 1953 legislature transferred possession to Wolf Lake properties to the City of Hammond.

“There remains an unencumbered balance in the Wolf Lake appropriation of \$6,100.55.

“By the 1953 Act, does the City of Hammond acquire rights to this \$6,100.55 balance along with the possession to properties, or should it revert to the state General Fund?”

Chapter 230, Section 5, Acts of 1947, the same being Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-845 provides as follows:

“The balance now in the Indiana Wolf Lake Park fund as established by chapter 287 of the Acts of the 79th General Assembly (1937) (§§ 60-821—60-824) shall hereby immediately revert to the general fund of this state and there is hereby appropriated from the general fund in the state treasury from funds not otherwise appropriated, the sum of \$284,604.00 to the use of the commission and to the purpose of this act (§§ 60-841—64-848). Such appropriation shall not revert or lapse at the close of any fiscal year or other-

wise but shall be continuously available until expended for the purposes for which it is appropriated."

Article 10, Section 3 of the Indiana Constitution provides:

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

The term "appropriation" has a different legal connotation from that of the term "fund." The term "appropriation" means an act of the Legislature setting apart a certain sum of "fund" of money for a particular purpose so that the public officers are authorized to direct and expend the money so set apart and no more for the specified purpose only.

1946 O. A. G., page 177, No. 53;

1945 O. A. G., page 499, No. 116.

The Supreme Court said in the case of Joseph Ristine, Auditor of State v. The State of Indiana *ex rel.* The Board of Commissioners of the Sinking Fund (1863), 20 Ind. 328, 338:

"Appropriation, as applicable to the general fund in the treasury, may, perhaps, be defined to be an authority from the Legislature given at the proper time, and in legal form, to the proper officers to apply sums of money out of that which may be in the treasury, in a given year, to specified objects or demands against the State.

"An appropriation of the money to a specified object would be an authority to the proper officers to pay the money, because the Auditor is authorized to draw his warrant upon an appropriation, and the Treasurer is authorized to pay such warrant if he has appropriated money in the treasury." (Our emphasis.)

It is my opinion, therefore, that since Section 60-845, *supra*, operates as a valid appropriation of public funds for the specified purpose mentioned, the question then is whether the \$6,100.55 unexpended balance is transferred to the City of Hammond by Chapter 274 of the Acts of 1953, the same being Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Section 60-846a. Section 1 of said Act provides:

"The possession of all real estate acquired and held in connection with Wolf Lake Memorial Park and of all personal property used in the operation and maintenance thereof by the Trustee of North Township, Lake County, is hereby transferred to the city of Hammond. The common council of the city of Hammond shall administer the operation of Wolf Lake Memorial Park in the same manner as other city parks located in said city." (Our emphasis.)

The above section should be considered in connection with Section 6 of said Chapter 230, Acts 1947. Said section provided for the delivery of the possession of all real estate held by the Wolf Lake Purchasing Commission and all personal property used in the operation and maintenance thereof to the trustee of the township in which the real estate and park was situated to be operated under the law concerning township parks but the title to said property remained in the state and such possession could be withdrawn at any time by the General Assembly. All that said Chapter 274 of the Acts of 1953 did was to withdraw the possession of the township and give that possession to the City of Hammond to be operated by it as other city parks are operated. The title still remains in the State.

The township was never vested with any part of the 1947 appropriation, it is neither real nor personal property, and transferring the township possession of the real and personal property gave no right to the City of Hammond to the unexpended balance in the appropriation. The title to said real and personal property remains in the State.

Therefore, it is my opinion that the City of Hammond acquired no rights to this \$6,100.55 balance remaining in the said appropriation.

The other phase of your question relates to whether said balance reverts to the General Fund. Funds once appropriated do not revert to the General Fund except where the statute provides for such reversion. The statute providing for reversion of state level appropriations is Section 21, of Chapter 279, Acts 1947, the same being Section 60-1821, Burns' Indiana Statutes Annotated (1951 Repl.). Said section is as follows:

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“(a) Except as specifically provided for in appropriation acts, every appropriation or part thereof remaining 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.”

Under the above section and under Section 5, Chapter 230, Acts 1947 as quoted, *supra*, the 1947 appropriation would not revert at the end of a fiscal year but would remain continuously available until expended for the purpose for which it was appropriated or until that purpose shall have been accomplished or abandoned.

If the purpose was accomplished and possession of the real and personal property turned over to the township trustee under the provisions of Section 6 of Chapter 230, Acts 1947, *supra*, that possession was transferred from the township to the City of Hammond under said Act of 1953 but this transfer did not include the \$6,100.55 balance in said appropriation and it would revert to the General Fund. If the purpose was accomplished and possession of the real and personal property turned over directly to the City of Hammond under said Acts of 1953 then the said remaining balance in the appropriation reverts to the General Fund. If the purpose has not yet been accomplished or abandoned, the remaining balance will remain in the appropriation until such time or until the Legislature

makes other provision relating thereto. This is a question of fact upon which I am not advised.

OFFICIAL OPINION NO. 86

October 8, 1953.

Mr. R. A. Marmaduke, Chief Examiner,
Indiana State Personnel Bureau,
311 W. Washington St.,
Indianapolis 4, Indiana.

Dear Sir:

This is in reply to your letter of September 11, 1953 in which you inquire as to the following:

“Chapter 153 of the Acts of 1945 in paragraph (G) provides that when a certification is made from an employment list and the appointing officer passes over the name of a veteran eligible and selects a non-veteran, reasons for such action, which are acceptable to the Personnel Board, must be given in writing.

“The usual reason given by the appointing officer is that he prefers to retain the non-veteran who has been trained and who has been on the job for perhaps several months by virtue of a duration appointment.

“The Personnel Board would like to have an official opinion as to whether it may accept a positive reason for the selection of a non-veteran who has a lower rank on the employment list than the veteran eligible, or whether the only acceptable reason for passing over a veteran would be reasons which indicate that the veteran would not be a desirable employee.”

Sub-section (G) of Section 19 of Chapter 139 of the Acts of the General Assembly of 1941, as amended, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 60-1319 provides:

“G. When in accordance with state personnel laws and rules, a nominating or appointing officer shall request certification of eligibles for appointment pur-