It has been held that courts will look to the general purpose and scope of a statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567;
State, *ex rel.* Bailey v. Webb (1939), 609, 612.

From the foregoing I am of the opinion the State Seed Commissioner has authority to adopt rules and regulations authorizing the legal exchange of the above referred to obsolete tags, where such exchange does not involve any additional expense to the state.

TLW:ar

OFFICIAL OPINION NO. 77

August 11, 1949.

Mr. Noble W. Hollar, Chairman,
State Board of Tax Commissioners,
State House, Room 301,
Indianapolis 4, Indiana.

Dear Sir:

Your request of July 12, 1949, for an official opinion is as follows:

> "In connection with requests for approval for additional appropriations, a question has arisen as to the proper construction to be placed upon certain provisions contained in Chapter 36, being House Enrolled Act No. 292. Your official opinion is requested in connection therewith.
>
> "Said Chapter provides for the establishing of a fund to be known as the General Ditch Improvement Fund, of not to exceed $100,000, which shall be used as a fund to pay for the construction of ditches and their maintenance.
>
> "The Act further provides that, 'such funds shall consist of all funds in any ditch fund not otherwise

appropriated at the time this Act takes effect, or any taxes then or *thereafter levied* or *collected* for ditch purposes.

"The State Board of Tax Commissioners have before them a request for approval of an additional appropriation in the amount of $10,000 from the County General Fund to the General Ditch Improvement Fund.

"1. Can this appropriation be legally allowed from the County General Fund?

"2. If the General Fund budget for 1949 contained an appropriation for the repair or construction of ditches, could this appropriation be reduced and the amount of the reduction reappropriated to the General Ditch Improvement Fund?

"3. Chapter 36 Acts 1949 does not have the following provision. 'If the County Commissioners deem it inadvisable to establish said fund, all payments from and reversions to such fund shall be paid from and shall revert to the County General Fund.' (Acts 1945, Sec. 23, Chapter 221.) Since the effective date of Chapter 36, Acts 1949, is there any provision for an appropriation in the County General Fund for the maintenance or construction of ditches in lieu of the General Ditch Improvement Fund?"

1. The basic question involved is whether or not an appropriation may be made from the General Fund of the County for a purpose not specifically provided for or authorized by the General Assembly.

The significance of "appropriation" reaches for back in English history. The principle was adopted by the United States Government to the extent that it was incorporated in the Federal Constitution and perhaps in every State Constitution. One of the most illuminating cases upon the subject is that of Ristine, Auditor v. The State of Indiana, *ex rel.*, etc. (1863), 20 Ind. 328. The significance of the principle of "appropriation" as a function of government in the English system is set forth at some length in the above entitled case. The following is quoted from that opinion:

"Says *Mr. Hallam* in his Constitutional History, p. 555: 'This great and fundamental principle, as it has long been justly considered, that the money voted by Parliament is appropriated, and can only be applied, to certain specified heads of expenditure, was introduced, as I have before mentioned, in the reign of *Charles the Second,* and generally, though not in every instance, adopted by his Parliament. The unworthy House of Commons that sat in 1685, not content with a needless augmentation of the revenue, took credit with the King for not having appropriated their supplies; but, from the revolution, it has been the invariable usage. The lords of the treasury, by a clause annually repeated in the appropriation act of every session, are forbidden, under severe penal ties, to order by their warrant any moneys in the exchequer, so appropriated, from being issued for any other service, and the officers of the exchequer to obey any such warrant. This has given the House of Commons so effectual a control over the executive power, or, more truly speaking, has rendered it so much a participator in that power, that no administration can possibly subsist without its concurrence. It is to this transferrence of the executive government (for the phrase is hardly too strong), from the Crown to the two Houses of Parliament, and especially the Commons, that we owe the proud attitude which *England* has maintained since the revolution, so extraordinarily dissimilar, in the eyes of *Europe,* to her condition under the Stuarts.'

"The system established was, that all the money in the treasury was to be specifically appropriated and specifically applied. This new and important principle, as English historians call it, thus practically established in that country, is adopted in this State as a part of our fundamental law. 'No money shall be drawn from the treasury, but in pursuance of appropriations made by law.' And the abuse to be corrected by the establishment of the principle, was the exercise of official discretion in paying out the public money. The purpose to be accomplished, was the giving to the legislative power alone the right, and imposing

upon it the duty, of designating, periodically, the particular demands against the State, or other objects, to which the moneys in the treasury shall be, from time to time, applied, and the amount to each. Opinions Att'y Gen., Vol. II, p. 670. And it is a great and important principle not to be lightly violated. If it is doubtful whether the legislative power has exercised its function in this particular, the officers of State should not take the money from the treasury. See The People v. Schoonmaker, 3 Kernan, N. Y. R. 238. It may be laid down as a maxim in constitutional government, that officers, as a general rule, should not assume to exercise doubtful powers. Such assumption is the first step in usurpation, in setting at naught, in fact, the Constitution. That step should not be taken; for if it is, there is danger that it will be followed by others in the same direction, till the constitutional prohibition is entirely trodden under foot. There is no necessity that the State officers should assume doubtful powers. There is no necessity that the Court, in this case, should attempt to bend the constitutional rule in order to create a justification to those officers in the assumption of such powers. The Constitution has provided against this necessity by authorizing the Executive of the State to call the Legislature together to supply deficiencies in legislation. There is, hence, no necessity that the officers of State should exercise questionable authority, and disrespect for the restraints of the Constitution be thus encouraged, or the credit of the State be dishonored. The question then is, is there an appropriation by law of the money to pay the *July* interest on the State debt? If there is, the proper State officers can pay it. If there is not, they can not legally do so. * * *."

"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."

The question then is, whether or not an appropriation can be made for the purpose stated in your letter.

The County Council has the power to make appropriations of county funds *for the purposes fixed by the General Assembly.* See Burns' Indiana Statutes, Section 26-515.

The General Assembly has provided that an ordinance be adopted by the County Council each year designating the amounts of public funds that may be expended for various governmental functions. Burns' Indiana Statutes, Section 26-520 reads in part as follows:

> "* * * At the regular annual meeting of the council on the first Tuesday after the first Monday in September, the auditor shall present all of said estimates thereto, and may make such recommendation to the council with reference to the estimate as may to him seem proper. And it shall be his duty, before such meeting of the council, to prepare an ordinance in proper form, to be adopted by the council, fixing the rate of taxation for the taxes to be collected in the ensuing calendar year, and also an ordinance making an appropriation by items for such calendar year for the various purposes for which all of the above estimates are required. The council at said meeting shall act upon such ordinances, and, by adopting the same or amended or substituted ordinance, fix the tax rate within the limit prescribed by law, and make the appropriations. Each ordinance shall be read upon at least two (2) separate days before its final adoption. The council shall have full power to require any estimate not sufficiently itemized to be so itemized by the person who prepared the same, and to appropriate for any purpose a sum not greater than that estimated in the item therefor. By a three-fourths vote of the council, and not otherwise, an appropriation may be

made for an item not contained in any estimate, or for a greater amount than that named in any item of an estimate."

The General Assembly further provided for additional appropriations in an emergency "for any purpose for which the council is authorized to appropriate by this Act." Burns' Indiana Statutes, Section 26-521 reads as follows:

"If at any time after the adjournment of the regular annual meeting in September, an emergency should arise for further appropriation(s), for any purpose for which the council is authorized to appropriate by this act, such further appropriations may be made at a special meeting of the council, on estimates prepared and presented as hereinabove provided, by an ordinance passed by at least a two-thirds (2/3) vote of all the members of the council and not otherwise: Provided, however, That in cases where such additional appropriations are made of funds obtained or to be obtained by the issuance and sale of bonds, then such further appropriations may be made upon a finding by the county council that an emergency or necessity exists therefor. Each ordinance shall be read upon at least two (2) separate days before its final adoption, except in cases where the aggregate amount of appropriation requested and presented at any such special meeting shall not exceed fiften thousand dollars ($15,000), it shall not be necessary to read such ordinance on two (2) separate days, but may be passed on in one (1) day: Provided, That nothing in this act shall be deemed to alter, repeal or amend chapter 150 of the Acts of 1935."

But is there any authorization by the General Assembly to appropriate money in the general fund of the county to establish a General Ditch Improvement Fund? Prior to Chapter 36 of the Acts of 1949, funds were set up in the county budgets for the repair and improvement of public ditches. Funds were withdrawn from the county general fund to meet these budgeted items. This authority for the appropriation of funds was found in the provisions of Section

23, Chapter 221, Acts of 1945 (Burns' Statutes, Section 27-131) that, "If the board of county commissioners shall deem it inadvisable to establish such fund, all payments from and reversions to such fund shall be paid from and shall revert to the county general fund." There appears to be no other authority from the General Assembly except in a few limited situations to take money from the general fund of the county and appropriate it to the general ditch fund. Chapter 36 of the Acts of 1949 deleted the foregoing provision of the 1945 Act.

The 1949 Act declares and limits the funds that go to constitute the General Ditch Improvement Fund as follows:

> "* * * Such fund shall consist of all funds in any ditch fund not otherwise appropriated at the time this act takes effect, or any taxes then or thereafter levied or collected for ditch purposes, the proceeds of all bonds issued and sold for the construction of specifically named ditches and from the collection of all special payments and benefits to property as provided in this act for the construction, repair or enlargement of ditches and such other funds as by law are or may hereafter be provided to be paid therein."

It is noted that your Board is confronted with a request for approval of an *additional* appropriation from the general fund to the ditch fund.

The Legislature by the 1949 Act, in effect stated to the counties, that they may or may not provide for a General Ditch Improvement Fund, and that if they elect to provide for such fund, it shall be limited to and consist of (1) "All funds in any ditch fund not otherwise appropriated at the time this Act takes effect (February 28, 1949) ; (2) Any taxes then or thereafter levied or collected for ditch purposes, (which such taxes never have been levied against the entire county for the benefit of a few landowners benefiting from the ditch) ; (3) The proceeds of all bonds issued and sold for the construction of specially named ditches; (4) From the collection of all special payments and benefits to property; (5) And such other funds as by law are or may thereafter be provided to be paid therein."

There appears to be no provision by the Legislature authorizing or making such an appropriation. (See Daily v. Board of Commissioners (1905), 165 Ind. 99-109.)

Therefore, in my opinion the answer to your question number one (1) should be in the negative.

Since question number one (1) is answered in the negative, it follows that question number two (2) must be answered in the negative. Likewise, it follows that your question number three (3) must be answered in the negative.

WOL:vb

OFFICIAL OPINION NO. 78

August 22, 1949.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House, Room 304,
Indianapolis, Indiana.

Dear Sir:

Your request of August 2, 1949, for an official opinion is as follows:

> "We have received numerous questions concerning the fee to be charged by County Recorders when recording various kinds of plats.
>
> "Chapter 174, Acts 1949 (H. B. 26) which amends an Act of 1895, and fixes fees to be charged by County Recorders for recording various instruments, provides, with reference to plats, the following:
>
> " 'For recording town plat, the first one hundred lots or under, three dollars. For each additional lot, five cents.'
>
> "The above provision is the same as in former acts and is the only specific provision we can find covering fees for recording plats.