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3. In answer to your third question, I am of the opinion the \$497,000.00 although evidently to assist in paying the additional annuity payments required by Section 3, Chapter 130, of the Acts of 1949, is not restricted in its use to such payments as the Legislature has changed the language of the Act and worded it so that it is to pay for the benefits provided for in the retirement act.

4. In answer to your question number 4, I am of the opinion the \$497,000.00 is a general grant to the retirement fund, primarily intended to assist in the payments of the annuities provided for in Section 3, of said Act and that the same may be paid into the retirement fund in one lump sum without requiring a specific showing of the cost of the annuities established by Section 3, of Chapter 130 of the Acts of 1949.

TLW:man

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## OFFICIAL OPINION NO. 107

November 8, 1949.

Mr. R. S. Robertson,  
Executive Secretary,  
Flood Control and Water Resources Commission,  
522 Board of Trade Building,  
Indianapolis 4, Indiana.

Dear Sirs:

I have your letter of September 29 requesting an opinion from this office, which reads as follows:

"This letter is written as a request for an interpretation of Section 18 of the 'Flood Control Act', Enrolled Act No. 174, Senate, Chapter 318, 84th General Assembly, as regards the establishment of floodways.

"By way of explanation I should like to point out that numerous cases of floodway encroachment are being brought to our attention.

"The Commission realizes that there are instances where there is need for regulation, but is hesitant about proceeding until an opinion is received stating whether, or not, *this section can be enforced in a manner similar to a zoning ordinance whereby the burden is put upon the individual to get the approval of the Commission before any structure, deposit, etc., may be placed in the floodway*; or whether the Commission would be required to secure title to the land, or secure easement, etc., before such a floodway as is described in Section 18 might be established?"

Your letter requests an interpretation of Section 18 of the "Flood Control Act" (Burns Section 27-1101 *et seq.*), but it is quite apparent from your questions that Section 17 must also be given consideration. Section 17 defines certain "unlawful acts" and gives the Commission certain powers in respect to the same.

It is made unlawful to erect or maintain any structure in or on a floodway which will adversely affect the efficiency of or unduly restrict the capacity of the floodway. This paragraph then determines the test which must be applied in order to determine whether or not any such structure is unlawfully in or on a floodway. If it is determined that the erection or maintenance of any structure is unlawful then the Commission is given authority to commence, maintain and prosecute an action to enjoin or abate the same. Later in the paragraph the Commission is also given the authority to remove or eliminate any such unlawful structure by an act in condemnation. Thus, in either of these two types of action the Court will ultimately determine in deciding the case whether or not the structure does or will adversely affect the efficiency of or unduly restrict the capacity of the floodway.

This paragraph also provides a procedure whereby any person who desires to erect, use or maintain a structure in or on a floodway may file an application with your Commission and then after a hearing the Commission will determine whether or not the proposed structure would be lawful and the Commission would then either permit or prohibit the same. In regard to the Commission's powers under Section

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17 of this Act see Official Opinion No. 6, 1948, rendered to your Commission under date of January 23, 1948.

In a specific answer to your question then, it is my opinion that the Act does not contemplate and does not give the Commission power to require any individual to make an application or secure the approval of the Commission before placing a structure in the floodway, and if this permission is not sought under the voluntary procedure the Board must decide whether or not to pursue the remedies which are given to it.

Your next question asks "whether the Commission would be required to secure title to the land, or secure easements, etc., before such a floodway as is described in Section 18 might be established." In this connection I call your attention to Section 15 of the Act which relates generally to the jurisdiction of your Commission. The first sentence of this Section states, "The Commission shall have jurisdiction over the public and private waters in the State and the lands adjacent thereto necessary for flood control purposes." This broad authority is given to the Commission in order for them to create and develop a State-wide system for effective flood control. As a part of the over-all flood control planning the Commission is given the authority in Section 18 to establish a "Commission Floodway" which floodway may be altered, changed, revoked or terminated as the flood control plans may reasonably require. In this Section no particular bodies of water are designated but in construing these two sections of the Act together and the Act as a whole it must certainly include all of the private and public waters in the State. It is my opinion that the Legislature had no intention of authorizing or requiring your Commission to secure title or easements to all of the land adjacent to all the public and private waters of the State in order to set up Commission Floodways in the development of a general plan of flood control. This would not seem to be necessary at all in order to carry out the purposes of establishing a floodway nor in my opinion is it necessary to have a title or easement to the land in the floodway in order to exercise the powers of the Commission as set forth in Section 17. The Commission in Section 15 is given the power to construct flood control works and to further obtain the same through cooperation with the corps

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of engineers of the United States Army or any federal agency, or by cooperation with the cities and towns of the State. The Commission is also given the right of eminent domain, in Section 14, whenever it is necessary in its opinion to purchase lands or easements to carry out its purposes. It is my opinion that the purposes for which the Commission is given the right to purchase land or to exercise its right of eminent domain should be limited to those instances wherein it is necessary to have a permanent type of control over the land and particularly where flood control works are to be constructed. I do not believe that this right was intended to be extended to Section 18 where the floodway may be changed or altered or terminated merely upon notice of the Commission.

In conclusion, the Commission may stop unlawful practices either through injunctive relief or by condemnation and it needs to obtain title only to such land as it proposed to use permanently in its flood control projects.

HVB:vb

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OFFICIAL OPINION No. 108

November 9, 1949.

Mr. Fred W. Hoffmark  
Securities Commissioner  
Office of the Secretary of State  
State House  
Indianapolis, Indiana

Dear Sir:

I have your letter of August 18, 1949, which reads in part as follows:

"Your official opinion is hereby requested in reference to the following:

"Must a person (as defined in Section 3 (b) of the Indiana Securities Law) having no place of business in the State of Indiana and who does not confine its sales or offers to sell securities exclusively to dealers, and is engaged either for all or part of its time directly or indirectly as principal or agent in the business of