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1923, Chapter 142, Section 25-45-602, Burns Indiana Statutes, 1933, 1940 Replacement.”

“** * * Should the adjutant-general fail or refuse to properly and efficiently perform the duties of his office or be guilty of misconduct or conduct prejudicial to good order and military discipline. ** * * Acts of 1923, Chapter 142, Section 25-45-604, Burns Indiana Statutes, 1933, 1940 Replacement.”

From the above citations, it may be presumed that the adjutant-general is a military officer, and if such be true his office is excepted from the Financial Reorganization Act of 1947 (supra).

Further, we have interpreted the words “operation of the office” as used in your question to mean the place from which you transact state business and if this construction is proper we do not believe the Legislature intended to divorce your trust from the provisions of the Financial Reorganization Act of 1947 (supra) in so far as it has to do with public matters and the spending of public funds. The act is very definite and specific in excepting military officers and armory boards but includes every officer, board, commission, department, division, bureau, committee, employee and other instrumentalities of the state and although we are without precedent we are of the opinion that wherein your office is concerned with public matters and the spending of public funds that the same should be done according to the provisions of the Financial Reorganization Act of 1947 (supra).

JAW:mfl

OFFICIAL OPINION NO. 21

May 3, 1949.

Mr. Lytle J. Freehafer,
Director of the Budget,
State of Indiana,
Indianapolis, Indiana.

Dear Mr. Freehafer:

Your letter of April 18, 1949 has been received and reads as follows:

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"I should like to have your opinion as to whether the appropriation made in Chapter 234 of the Acts of 1947, known as the Post War Contingency Appropriation, will terminate on June 30, 1949 or whether it comes within the scope of Section 21a, Chapter 279, Acts of 1947, and will not lapse until the purposes for which the appropriation was made have been accomplished."

The preamble to Chapter 234 of the Acts of 1947 reads as follows:

"PREAMBLE-WHEREAS, because of the recent world War it has been an impossibility to adequately care for the buildings in use by the state government, and

"WHEREAS, the needs for new buildings at present facilities have not been provided for by appropriations from the General Fund of the state, and

"WHEREAS, funds are not available in the General Fund of the state for the establishment of the new institutions created by the 84th General Assembly, and

"WHEREAS, it is necessary to provide additional facilities at the state universities and colleges for the large enrollments caused by the delay in the education of our veterans, and

"WHEREAS, the 84th General Assembly made provisions for postwar construction by Chapter 357 of the Acts of 1945, which Act will provide approximately twenty-six million dollars ($26,000,000.00) for a construction and reconstruction program by June 30, 1949, therefore,"

Section I of said Act provides:

"That there is hereby appropriated from the Postwar Construction Fund created by Section 13 of Chapter 357 of the Acts of 1945 the sum of twenty-five million, seven hundred thirty-three thousand, nine hundred eight dollars ($25,733,908.00) which appropriation shall
be known as the Postwar Construction Contingency Appropriation to be used by the State Universities and Colleges which are supported in whole or in part by State funds, the State penal and benevolent institutions, and any State agency for the purpose of construction, reconstruction, rehabilitation and repair of State properties, including equipment for such properties and for the purchase of land.”

Section II of the above Act, provides that the allocation of such appropriation shall be made by the Budget Committee, with the approval of the Governor to the Board of Trustees of said institutions. Section III of said Act specifically sets out certain projects which the Budget Committee, with the approval of the Governor, shall consider in making such allocations, such allocation to be made as soon as “funds are available”.

Chapter 279 of the Acts of 1947, Section 21 (a), provides as follows:

“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.”

In determining the legislative intent, courts will look to the general purpose and scope of a statute.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567;  

It is likewise true that in ascertaining the legislative intent as to a statute, the courts may take into consideration other
Acts in pari materia, whether passed before or after the Act in question.

Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 498.

When the above statutes are construed with the rule announced in the foregoing authorities, it is clear the General Assembly, at the time of making said appropriation of $25,733,908.00, from the Postwar Construction Fund created by Section 13 of Chapter 357 of the Acts of 1945, intended to appropriate for Postwar construction and building purposes practically all of the funds that their estimate showed would be available by June 30, 1949. This is clearly shown by the language used by the legislature in the Preamble of Chapter 234 of the Acts of 1947. We now know that their estimate was correct as indicated by information furnished by your department. I am further advised by your department that approximately $3,500,000.00 of such fund will be available to carry over into the next biennium, to be later allocated for such projects contemplated by said appropriation, which appropriations include purchase of real estate, construction of buildings and permanent improvements, are as contemplated by the provisions of Section 21(a), Chapter 279 of the Acts of 1947.

The last referred to Section of said Acts makes an exception of such types of appropriations against their lapsing and reverting to the general fund. However, it contains the provision "unless such appropriation has remained during an entire fiscal biennium without any expenditure therefrom or encumbrance thereon." When this qualification and exception is construed with the evident intent of the legislation in making the appropriation under Chapter 234 of the Acts of 1947, and said Acts are construed in pari materia with each other, in my opinion, the legislature in enacting said statutes, did not intend the appropriations provided for in Chapter 234 of the Acts of 1947 to lapse on June 30, 1949, for it is very evident that they did not expect to have such an amount of money for expenditure until that date.

The foregoing conclusion is somewhat strengthened when we consider that in the 1949 legislature, by House Enrolled
Act 381, an appropriation of $13,506,800.00 was made, subject to like conditions, to various state institutions. I understand this latter appropriation is in an amount of approximately equivalent to what receipts are estimated will be paid in to said Postwar Construction Fund in the coming biennium. Such matter of appropriation indicates the legislative intent to continue to make incoming monies in such fund available for such Postwar Construction projects, as was contemplated at the time Chapter 357 of the Acts of 1945 was enacted.

It is to be further noted that under House Enrolled Act No. 380 of the 1949 General Assembly, an appropriation of $11,820,000 was made for construction purposes for many of the State institutions referred to in Chapter 234 of the Acts of 1947. However, this latter appropriation is from the general fund, evidently for the reason that there would not be sufficient money in the Postwar Construction fund to take care of this appropriation made by House Enrolled Act 380, supra, when full effect was given by the Budget Committee and the Governor to the authorized appropriations made by Chapter 234 of the Acts of 1947 and House Enrolled Act 381 of the 1949 General Assembly from said Postwar Construction fund.

I am, therefore, of opinion the appropriation made in Chapter 234 of the Acts of 1947 from the Postwar Construction fund will not lapse on June 30, 1949, but is continued and available for allocation by the Budget Committee with the approval of the Governor, after said date.

TLW:aa

OFFICIAL OPINION NO. 22
May 5, 1949.

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

Dear Sir:

Your letter of April 19, 1949, requests an official opinion construing House Enrolled Act No. 115 of the Acts of 1949. You particularly state: