Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Mr. Ruston:

Your letter of March 5, 1948, received requesting an official opinion on the following questions:

"1. May the board of public health and hospitals in the City of Indianapolis under Chapter 200, Acts of 1945, make transfers of items contained in the budget for such board by a resolution of such board without conforming to Section 1, Chapter 150, Acts of 1935, as such act pertains to the approval of emergency appropriations.

"2. May the board of public health and hospitals in the City of Indianapolis under the provisions of Chapter 323, Acts of 1947, transfer by resolution of such board items of the budget adopted for such board without following the provisions of Chapter 275, Acts of 1947, as that chapter pertains to the approval of emergency appropriations."

Chapter 200 of the Acts of 1945 is Section 48-8401, et seq. Burns' 1945 Supp. As pointed out in your letter the pertinent provisions of the 1945 law affecting your first question are Section 6 (e) and Section 17. The pertinent provisions of Chapter 323, Acts of 1947, involved in your second question are Section 2 (e), which amends Sections 6 (e) of the 1945 law; Section 7, which amends Section 17 of the 1945 law; and Section 13 which is a new section.

Section 6 (e) of Chapter 200 of the Acts of 1945, same being Section 48-8406 Burns' 1945 Supp. reads as follows:

"(e) To review budgets recommended by the directors independently or collectively, and upon approval thereof, to certify the budget together with a
rate of tax levy to the mayor for presentation to the common council."

Section 2 (e) of Chapter 323 of the Acts of 1947 is identical with the provisions of Section 6 (e) of the 1945 law, above quoted.

Section 17 of Chapter 200 of the Acts of 1945, same being Section 48-8417 Burns' 1945 Supp., provides as follows:

"The board shall submit to the mayor for consideration by the common council an annual budget requesting appropriations for operating and capital expenditures of the department of public health and hospitals, and shall calculate the tax levy necessary to provide funds for the operating and capital expenditures necessary to carry on the work of the department. The budget shall be prepared and submitted at the same time and in the same manner as are the budgets of the other departments of the city, and shall be subject to the same review, approval and right of appeal as exists in the case of other departments of the city."

Section 7 of Chapter 323 of the Acts of 1947 which amends the last quoted section of the statute, is in part as follows:

"** For the purpose of providing for the payment of all general expenses of said Board of Public Health and Hospitals, including salaries of officers and employees, and for the purpose of providing for the operation, maintenance and repair of hospitals, clinics, health centers and dispensaries, and for the purpose of providing funds for the payment of all the expenses necessary for the maintenance and operation of the Division of Public Health, and for the payment of all other expenses of whatsoever nature which are necessary or incidental to the efficient operation of the Division of Hospitals and Division of Public Health and the Division of Personnel, and for all other expenses necessarily incurred by the Board in carrying out the purposes for which it is herein created, or the performance of any duty imposed, pursuant to the provision of this act, a tax in an amount sufficient to provide the necessary funds for the efficient operation
of the Department of Health and Hospitals, which shall be in addition to other taxes of said City, and of said town and governmental unit or units, shall be levied annually by the Common Council of said City, by the Board of Trustees of said town, and by the Governing Body of any Governmental Unit, which may, under the provisions of this Act, become a part of said Public Health and Hospitals District, respectively, for health and hospital purposes, and the County Auditor shall enter said taxes upon the tax duplicates, and the County Treasurer shall collect and enforce such taxes, in the same manner as State and County taxes are entered, collected and enforced. Any such County Treasurer shall, between the first and tenth days of each month, notify the Board of Public Health and Hospitals of the amount of such taxes collected for health and hospital purposes during the preceding month, and upon the date of notification above referred to, the County Treasurer shall credit their account, known as the Public Health and Hospital Fund, for such amount of taxes for health and hospital purposes as may have been collected at that time, and such fund shall be used and expended for no other purpose than as stated in this Section. The Board of Public Health and Hospitals shall have full, complete and exclusive authority to expend for and on behalf of said City, such unincorporated town, and such other governmental units as may become a part of the Public Health and Hospital District as herein provided, all sums of money thus realized; provided, that warrants for such expenditures shall be drawn by the Controller of such city upon vouchers of such Board of Public Health and Hospitals.” (Our emphasis.)

Section 13 of Chapter 323 of the Acts of 1947 is as follows:

“The provisions of this Act shall be deemed exclusive with respect to the actions herein authorized and proceedings herein prescribed, except as herein otherwise provided, and no proceedings, actions or notices shall be required for the doing, or as a condition precedent for the doing, of any of the things herein authorized or prescribed except such as are provided by this act,
any provision of the general laws to the contrary notwithstanding."

From the foregoing, it is clear the 1945 law under Section 6 (e) and the 1947 law under Section 2 (e) merely provides a means of certification of the budget for the purpose of a tax levy to the mayor for presentation to the common council.

Section 17 of the 1945 law, same being 48-8417 Burns’ 1945 Supp., supra, merely elaborates as to the manner of presentation of the budget to the mayor for his presentation to the council and specifically provides that the same “shall be prepared and submitted at the same time and in the same manner as are the budgets of other departments of the city, and shall be subject to the same review, approval and right of appeal as exists in the case of other departments of the city.”

Section 7 of Chapter 323 of the Acts of 1947 by its amendment of Section 17 of the 1945 law provides a more detailed statement as to the purposes for which the budget is submitted, making provision for the payment of general expenses of said Board of Public Health and Hospitals, including the designated expenses therein detailed, and then provides “The Board of Public Health and Hospitals shall have full, complete and exclusive authority to expend for and on behalf of said city, such unincorporated town, and such other governmental units as may become a part of the Public Health and Hospitals District as herein provided, all sums of money thus realized; provided, that warrants for such expenditures shall be drawn by the Controller of such city upon vouchers of said Board of Public Health and Hospitals.”

The last quoted provision of the 1947 law is merely an “expenditure” provision, giving exclusive right to expend money for those items for which provision is made in the budget and cannot be construed as authorizing an appropriation of other funds for the payment of deficiencies which may arise as to any item provided for in the budget.

It is clear that none of the above provisions of said statutes legislate or attempt to make provision as to transfer of funds from one item of the budget adopted to another item of said budget, or from one division or department of said board created under said statute to another division or department thereof. It is, therefore, clear the emergency provisions of
the general statutes must be complied with for such transfers of funds.

Chapter 275 of the Acts of 1947, amends Section 1 of Chapter 150, Acts of 1933, same being Section 64-1331 Burns' 1943 Repl., is commonly known as the Budget Act, and provides in part as follows:

"** When such state board of tax commissioners in its order shall order a reduction in the levy it shall indicate the item or items in the budget affected by such reduction, and the budget as set out by the municipal officers in the published statement or as modified on hearing by the state board shall limit the expenditure for the year, except in cases of casualty or accident or extraordinary emergency. In the event the proper legal officers of any municipal corporation shall contemplate to meet the emergency and determine the expenditure of more money for the current year than was set out in detail in the published budget or in the budget as modified as a result of a hearing before the state board of tax commissioners, said officers shall give (10) days notice by publication in the same manner as provided for publication of the budget and proposed tax levy of such additional amount proposed to be expended, fixing a date when the same shall be considered and determined upon, and taxpayers shall have a right to be heard thereon. No such proposed additional amount shall be appropriated or expended unless and until such appropriation and expenditure shall have been approved by the state board of tax commissioner, as hereinafter provided.

**" "** Any such additional appropriations so made in excess of the original budget shall be limited to revenues available, or to be made available, which are in addition to and in excess of, those revenues anticipated in the original budget and a showing of such excess revenues must be made before any such additional appropriations may be approved, and any such additional appropriations so made which are additional items to, or are for the purpose of increasing any items of the original budget, but not in excess of the
total original budget, shall be made from and be limited to any unappropriated funds made available by reason of unexpended appropriations being declared to be available for reappropriation by officers of the municipal corporation for the purposes other than for which originally made and when any such additional appropriation shall have been approved, the original appropriation or appropriations shall be reduced a like amount in order that the total original budget shall not be increased. The decision of the state board of tax commissioners upon the expenditure of such additional amount of money, or any part thereof as may have been determined upon, shall be final and conclusive. Any officer or officers of any municipal corporation having authority by law to make appropriations for the expenditure of public money, who shall appropriate any money for any item set forth in the published budget, or for any item as modified on the order of the state board of tax commissioners, in excess of the amount estimated to be expended in such budget, or in excess of any additional expenditure without having first given notice to the taxpayers and allowing taxpayers the right to appeal to the state board of tax commissioners, or without certifying their determination to make additional appropriations to the state board of tax commissioners, as herein provided, shall be guilty of malfeasance in office and shall be liable to such municipal corporation in the amount of such excess so appropriated, together with the costs of said action and reasonable attorney fees with a penalty of twenty-five per cent of such amount, recoverable in any action (or suit) instituted in the name of the State of Indiana upon the relation of any taxpayer or taxpayers in such municipal corporation."

In view of the authorities hereinafter quoted, construing Section 1, Chapter 150 of the Acts of 1935, it is deemed necessary to quote said act prior to its amendment, in 1947.

The case of Johnson, City Comptroller v. Lenz (1935), 209 Ind. 627, construed an attempt to make an emergency appropriation under Chapter 129 of the Acts of 1905 (Section 48-
1506, Burns’ 1933), which provided in part: (See page 630 of the court’s opinion.)

"'* * * If at any time after the passage of such ordinance an emergency should arise for further appropriations for the use of any department, on the representation of such department, as hereinbefore provided, or for other purposes during the year, such additional appropriations may be made on the recommendation of the controller, by a two-thirds vote of the council.' The last sentence, which follows the quotation, was added by amendment in 1933."

On pages 630 to 632 of the opinion the court in that case said:

"Appellants contend that under this statute it is not necessary to give a notice to the taxpayers when an appropriation is made for the purposes not contained in the budget, for the reason that the provision of the statute quoted authorizes such appropriation in an emergency, upon recommendation of the comptroller, upon two-thirds’ vote of the council. But the same statute authorizes the fixing of a rate of taxation, and the making of appropriation by items for the use of various executive departments, and other city purposes, by a majority vote of the council, without saying anything about a notice to taxpayers. This statute must be read in connection with the statute first quoted from. The act of 1905 provided for the procedure within the city government by which budget estimates were formed and submitted to the council and enacted into law, and the manner in which emergency appropriations should originate and be enacted into law. The latter or Budget Statute supplemented the former by requiring that in the case of the original budget and rate-fixing ordinance, and in the case of an emergency appropriation ordinance, there must be notice to the public and an opportunity for taxpayers to appeal to the state tax board. There is nothing inconsistent in the two statutes. They are to be read together, and they operate together, the latter supplementing the former. The purpose of the Budget Stat-
ute to procure a hearing for the taxpayers in which they will be advised of the purposes for which funds are to be expended, and the limit of the amount to be expended for each purpose, is expressed in clear and unambiguous language. The provision that the budget as originally adopted, or as modified, shall limit the expenditures for the year clearly means that it shall limit the purpose for which expenditures may be made, as well as the amount of the expenditures; and the provision that, if the officers shall in an emergency contemplate the expenditure of more money ‘than was set out in detail in the published budget or in the budget as modified,’ they shall be required to give ten days’ notice to the taxpayers, cannot be construed otherwise than consistently with the plain intent and purpose of the entire act, that taxpayers shall have an opportunity to be heard, and to appeal, upon the question of the purposes for which money is to be spent and the amount of the expenditure. Since the notice required by statute was not given, the appropriation ordinance is void.” (Our emphasis.)

From the foregoing authority it is clear that the provisions of Section 13 of the 1947 law does not obviate the necessity of following the requirements of the Budget Law as to the transfer of funds from one item of the budget to another. Any other construction of Section 13 of the Acts of 1947, would be in conflict with said decision.

As to the requirements of municipal corporations following the requirements of the budget act as to emergency appropriations attention is directed to the case of Hamer v. City of Huntington (1939), 215 Ind. 594, 601 and 602, where the court said:

“The appellees contend that the ordinance passed by the common council of the City of Huntington on December 8, 1936, authorizing the Board of Public Works and Safety of said city to purchase the fire equipment and providing that the necessary expense be raised by taxes to be levied or bonds to be issued constituted a sufficient appropriation to make the contract valid. With this contention we can not agree.
At the time said contract was entered into by said city additional appropriations were governed by § 200, ch. 59 of the Acts of 1919 as finally amended by ch. 150 of the Acts of 1935, p. 532 (§ 64-1331, 1938 Supplement of Burns' 1933, § 15735, 1935 of Baldwin's 1934) which act provides certain steps which shall be taken by a municipality in making additional appropriations. The act provides that officers of the city contemplating making an additional appropriation to meet an emergency shall give ten days' notice by publication of the purpose of such additional amount proposed to be expended and the time when the same shall be considered and determined upon, and the taxpayers shall have a right to be heard thereon. It further provides that upon the conclusion of such hearing if such officers shall finally determine to appropriate and expend such additional amount they shall file a certified copy of such determination with the county auditor of the county in which such municipal corporation is located which determination shall immediately be certified by the county auditor, together with the necessary information to present the questions involved, to the State Board of Tax Commissioners which board shall fix a time and place for the hearing of such matter, give certain notice thereof and shall then determine the necessity of such additional appropriation. Similar provisions of other statutes of this state relating to additional appropriations have been held by this court to be mandatory."

From the foregoing, it is clear that under the 1945 law the provisions of Section 1, Chapter 150 of the Acts 1935, as to transfer of funds from one item of the budget into another must be made by following the provisions of said statute as to emergency appropriations.

Under the reasoning of said authorities it is equally clear that any transfer of funds from one item of the budget to another item of the budget by said Board under the 1947 law was required to be made pursuant to the provisions of Chapter 275 of the Acts of 1947, by following its provisions as to the making of emergency appropriations.
It is to be noted that both Chapter 323 of the Acts of 1947 and Chapter 275 of the Acts of 1947, became effective on the same date of approval of March 13, 1947.

This gives rise to an additional rule of construction as applicable to the 1947 statute above referred to as shown by the following rules of statutory construction.

When two Acts are passed at the same session of the General Assembly, both relating to the same subject-matter, and both approved by the Governor on the same day and take effect at the same time, both will be given effect if it is possible to reconcile them on a reasonable basis.

City of New Albany v. Lemon (1926), 198 Ind. 127, 149 N. E. 350, 152 N. E. 723.

Repeals by implication are not favored and it is especially true of Acts passed at the same session of the General Assembly that if they can by any rule of statutory construction be construed in harmony, such construction will be adopted.

State, ex rel. v. International Harvester Co. (1940), 216 Ind. 463, 467.

The rule stated in the above case is:

"* * * There is no inference that one act was intended to destroy another if they are on the same subject-matter and enacted at the same meeting of the Legislature, but on the contrary, they should be construed, if possible, to give full effect to each. The purpose of all rules of statutory construction is to ascertain the legislative intent. * * *"

Supporting the above propositions also see:


I am, therefore, of the opinion your questions should be answered as follows:

1. The Board of Public Health and Hospitals in the city of Indianapolis under Chapter 200 of the Acts of 1945, could not by resolution of such Board make transfers of items contained in its budget without conforming to Section 1, Chapter...
150, of the Acts of 1935, as such act pertains to the making of emergency appropriations.

2. The Board of Public Health and Hospitals in the city of Indianapolis under the provisions of Chapter 323 of the Acts of 1947, may not transfer by resolution of said board items of the budget adopted for such Board without following the provisions of Chapter 275, Acts of 1947, as that chapter pertains to the making of emergency appropriations.

OFFICIAL OPINION NO. 35

April 9, 1948.

Trustees of Indiana University,
Bloomington, Indiana,
Att: Mr. J. A. Franklin, Treasurer,

Gentlemen:

Reference is made to your letter of March 22, 1948, as follows:

"In connection with the negotiation of the new contract for the training of veteran students under Public Laws 16 and 346 as amended, the Veterans' Administration has raised the following question:

"'Can Indiana University charge to or collect on the account of a veteran student, who is a resident of the state, the fees, including tuition fees, established by the institution, under the laws of the state or powers delegated by such laws, for students who are non-residents of the state?"

"The question raised by the Veterans' Administration has two aspects to it, the first is whether there is any limitation on the power of the Trustees of Indiana University to prescribe the price of tuition in such University as provided for in Section 28-5302 Burns' Indiana Statutes 1933 and secondly, whether there is any limitation on the power of The Trustees of Indiana University to contract for educational and professional services which contract might provide for payment to Indiana University of an amount meas-