OFFICIAL OPINION NO. 45

June 1, 1948.

Governor Ralph F. Gates,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Governor Gates:

You have requested an opinion as to whether the various amounts, which it is proposed to be distributed from the Cigarette Tax Account to the local subdivisions of government for the purposes of repair and maintenance of highways and bridges, can be spent by said units and political subdivisions without the necessity of such units of government making an appropriation thereof. You have asked the same question relative to the funds from said Cigarette Tax Account which it is proposed be distributed to local units of government for certain specified school purposes.

In the case of Williams, et al. v. Willett (1936), 102 Ind. App. 193, the court had before it the question of whether the funds distributed to the county by the State from the Gasoline Tax Fund could be expended by the Board of Commissioners of the county for highway purposes without an appropriation by the county council. At the time involved in this case the statute provided for the distribution of said Gasoline Tax Fund and that said funds so distributed might be used by the Board of Commissioners of the county for the construction, maintenance or repair of any county highways or bridges on such highways. The court held that the Legislature itself had provided that the money so allotted should constitute a special road fund and had provided the purposes for which same would be used, that there was, therefore, a special legislative appropriation of those funds for specific purposes, and there was none other required by the county.

However, by Chapter 110 of the Acts of 1935, the law was changed. In said act certain exceptions were provided where money could be expended without appropriation and it was then provided in part as follows:

"In all other instances, including all payments from any general or special fund to be used by any county or by the board of commissioners of any county in
the construction, maintenance or repairs of any highways or bridges therein, or for any purpose other than as above stated no warrant shall be drawn upon, or money paid out of the county treasury, unless an appropriation by the county council therefor has been made, for the calendar year in which the payment is made, and which appropriation remains unexhausted: Provided, however, That nothing contained in this act shall be so construed as to apply to any funds received from the state or the federal government for poor relief, unemployment relief, old age pension or other funds which may at any time be made available under 'The Economic Security Act,' or under any other federal act providing for civil and public works projects."

It was recognized in the opinion of the Appellate Court, above referred to, that this act changed the policy of the law as announced in the opinion.

I also call your attention to Section 48-1411 of Burns', which is as follows:

"No order or warrant for any purpose shall be drawn against the funds of any city, in the hands of the treasurer or other officer, unless an appropriation has been made by ordinance for such purpose and such appropriation is not exhausted, or unless such order or warrant shall be for a salary fixed by statute or ordinance, or in payment of a judgment which such city is compelled to pay, or for interest due on city bonds."

Other statutes require appropriations in townships and in towns prior to the expenditure of any money from their treasuries.

Section 64-1331, Burns' 1943 Replacement (Pocket Supp.);
Section 65-111, Burns' 1943 Replacement;
Section 65-318, Burns' 1943 Replacement.

The funds received by the respective political subdivisions of government on distribution by the State Auditor will go into the respective treasuries of said respective political sub-
Under the direction of the Governor these funds distributed for school purposes will go into the special school fund.

I am, therefore, of the opinion that the respective local units of government will be required to appropriate the money which they receive prior to its expenditure. However, I am further of the opinion that the receipt of such additional funds by the respective political subdivisions of government creates a situation which makes applicable the statutory provisions authorizing an emergency appropriation. (See Moore v. City of Kokomo (1944), 223 Ind. 298.)

OFFICIAL OPINION NO. 46

June 28, 1948.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
State House, Room 304,
Indianapolis, Indiana.

Dear Sir:

I have your letter of recent date in which you quote a part of Section 1, Chapter 176, Acts 1947, same being Section 2-1417, Burns' 1933 Supplement which reads as follows:

"The term 'trial' shall mean and include the impaneling of the jury, the actual trial, argument on demurrer, a trial on the issues joined on a plea in abatement, and argument or ruling on any motion for new trial."

This section further provides in part that "the regular judge or judge pro tempore of the court in which any cause on a change of venue is pending shall be allowed the sum of ten dollars per day or any part thereof for his services in the trial of such cause: * * *"

You state that some confusion exists as to what actions would entitle the judge of the court to which a case has been venued from another county to the $10.00 allowance.