

In answer to your specific question, I would say that Section 10-4740 controls and applies to a sale or transfer of the ownership of a pistol by an individual, who is not a retail dealer, to another or other individuals; and that Sections 10-4740, 10-4741 and 10-4742 regulate and control the conditions under which a retail dealer may lawfully effect the sale or transfer of a pistol.

OFFICIAL OPINION NO. 32

June 8, 1947.

Mr. Maurice Wolfe, Secretary,
State Board of Tax Commissioners,
301 State House,
Indianapolis 4, Indiana.

Dear Sir:

I am in receipt of your recent request for an official opinion as follows:

"We are requesting an official opinion with reference to Chapter 57 of the 1945 Acts as amended by the 1947 Session of the General Assembly. Said amendment being Chapter 248 of the Acts of the 1947 Session on the following set of facts.

"Prior to the enactment of the amendment and, acting under and, fully complying with the provisions of Chapter 57 of the 1945 Acts a school city with the approval of this Board proceeded to levy and collect tax at the rate of \$1.00 per \$100.00 on all taxable real and personal property.

"Since the amendment (Chapter 248 of the 1947 Session) limits the levy to 75c per \$100.00 of taxable real and personal property the following questions have arisen:

"Does the amendment entirely eliminate Section 3 of the 1945 Acts and rescind the levy made under the old act, or can the school city continue to levy and collect at the rate and for the period of time provided for in the original proceedings?

"If the amendment is merely substituted for Section 3 of the original act what procedure is necessary on the part of the school city to levy the 75c rate as provided for in the amendment? Would it be necessary that a new resolution be adopted and referred to this Board for approval or could the tax rate be automatically reduced to conform to the limit provided for in the amendment?"

"The original act provided that the levy and collection could continue for an indeterminate period, but not more than five (5) years after the close of World War II.

"The amendment provides that the taxes may be levied and collected for any period not exceeding twelve (12) years.

"If, a fund was approved under the original act, for the time provided for in said act, and the levy was in excess of the 75c rate as provided for in the amendment, would the reduction of the levy to conform to the amendment, automatically increase the time the levy and collection could be made for any period not exceeding twelve (12) years?"

"Can the funds so raised be deposited under the provisions of Chapter 9 of the 1945 Acts?"

"Can the funds so raised be used for the purchase of ground upon which to erect the building?"

"Does the power to revise the Cumulative Building Fund Levy, as granted in the 1947 amendment, include the power to increase the amount of such levy?"

Chapter 248 of the Acts of 1947 General Assembly amends section 3 of Chapter 57, p. 126, Acts of 1945 (Sec. 28-1110, Burns' 1945 Supp.). The amendment section is as follows:

"That section 3 of the above entitled act be amended to read as follows: Sec. 3. To provide for the said cumulative building or sinking fund, the township trustee, and advisory board, school board, board of school trustees or school commissioners of any school corporation shall have the power to levy a tax

of not to exceed seventy-five cents on each one hundred dollars on all taxable personal and real property within such school township, school town or school city. Such tax rate, after having been approved by the state board of tax commissioners as provided in section 2 of this act, may be levied annually beginning with the first annual tax levy thereafter and continuing for any period not exceeding twelve years and shall be advertised as other tax levies, annually: Provided, however, That if the township trustee, school board, board of school trustees or school commissioners of any school corporation deem it advisable to do so, after such levy has been approved, they may reduce or rescind such annual levy, or ten more taxpayers, in any such taxing district, who will be affected by such tax, may file with the county auditor of the county in which such taxing district is located, not later than August 1, of any year, a petition for reduction or revision of said levy setting forth their objections to such levy. Such petition shall be certified to the state board of tax commissioners, and the same procedure for notice and hearing shall be followed as set out in section 2 of this act. After such hearing the state board of tax commissioners may reduce or rescind such levy and such action shall be final and conclusive. Such tax, when collected, shall be held in a special fund to be known as the 'building fund,' and shall not be expended for any purpose other than the purpose for which it was levied.

"No expenditures shall be made from said fund except after an appropriation therefor has been made in the matter provided by law for making other appropriations."

Prior to such amendment, such section read as follows:

"To provide for the said cumulative building or sinking fund, the school corporations, officers thereof, boards of school trustees, school commissioners, and the township trustees shall have the power to levy annually, until five years after the close of the present war, a tax on all taxable property within

the civil cities, towns, and townships. As such tax is collected, it shall be deposited in a qualified public depository or depositories, and shall be held in a special fund to be known as the 'building fund'. Said fund shall not be used for any other purpose than the purpose for which it was raised."

It will be noted that under the 1945 Act, the school authorities, after the adoption and confirmation of the cumulative building fund, were authorized to "* * * levy annually, until five (5) years after the close of the present war, a tax * * *". In other words, the authority granted would have to be exercised annually thereafter and within the time limited. The amendment continued this authority, but limited it as to amount and modified the time limit.

Mayne v. Board, (1889), 123 Ind. 132, 134 would appear to be particularly applicable to the situation before us. The court there said:

"When jurisdiction over a subject-matter or special proceeding depends upon an act of the Legislature, if the act be repealed before the proceeding is terminated, the jurisdiction falls to the ground of necessity.

"Where, however, the new legislation does not impair, or take away, the previously existing right, nor deny a remedy for its enforcement, but merely modifies the proceedings while providing a substantially similar remedy, the jurisdiction continues under the forms directed by the later act, in so far as the two acts are different.

"Accordingly, where, after proceedings had been instituted for the laying out of a road, the statute in force at the time requiring six viewers to be appointed, an act was passed repealing the former law and substituting three viewers for six, but not otherwise substantially changing the law, it was held that the proceeding might be perfected under the new law.

"It may be conceded, where one or more sections of a statute are amended in the mode prescribed by the constitution, that the amended section cease to exist, and the sections as amended are, in effect, in-

corporated into the original act; but where the law is a substantial re-enactment of the old, merely changing modes of procedure, but not changing the tribunal or the basis of the right, and when it takes effect simultaneously with the repeal of the old, it must be presumed, even without an express saving clause, that the Legislature intended that proceedings instituted under the old law should be carried to completion under the new." (Citations omitted). ✓

When interpreted in the light of this case, the 1947 amendment requires that future proceedings, including taxes levied annually after its adoption, conform to the limitations of the 1947 amendment.

Chapter 9 of the Acts of 1945, p. 14, Sections 61-677 to 61-680, Burns' (1945 Supp.), concerns the investment of certain funds in securities issued by the United States. The pertinent provisions of Sec. 1 of that act are:

"* * * the governing body of each * * * school city, school town and any other political subdivision of the state may by an ordinance or resolution authorize the proper legal officers to invest and reinvest *any money* which shall include money raised by bonds issued for a future specific purpose, sinking funds, depreciation reserve funds, and gift, bequest or endorsement, which are under the control of any department, board, commission or utility of the state or of any unit of government within the state,
* * *

This authority extends by its terms to "any money" and, even if that phrase is limited by the doctrine of *ejusdem generis*, the cumulative building fund, like the funds specifically named, is a reserve fund, the use of which is not immediately required and falls within the same general class as the funds named and within the legislative purpose. It is, therefore, within the class of funds which the law authorizes to be invested in federal securities, under the conditions imposed by that act.

The Cumulative Building Fund Act authorizes the named school authorities to provide a cumulative building or sink-

ing fund “* * * for the erection of new school buildings and the remodeling of old school buildings.” (Acts 1945, Chap. 57, Sec. 1, p. 126; Sec. 28-1108, Burns’ 1945 Supp.)

“* * * and shall not be expended for any purpose other than the purpose for which it was raised.” (Acts 1947, Ch. 256; Sec. 28-1110, Burns’).

However, it has been many times held that a power granted to a political subdivision to erect a building necessarily implies the power to acquire the land upon which to situate the building.

Shiedley v. Lynch (1888), 95 Mo. 487, 8 S. W. 434;
 Supervisors v. Garrol (1871), 60 Va. (20 Grat.) 484, 505;
 DeWitt v. San Francisco (1852), 2 Cal. 289;
 Territory, *ex rel.* v. Baxter (1905), 16 Okla. 359, 83 Pac. 709;
 Seaford v. Eastern Shore P. S. Co. (1942), 41 Del. 438, 24 Atl. (2d) 436, 443.

The 1947 amendment to the Cumulative Building Fund Act, *supra*, gives the school authorities or the State Tax Board power to “*reduce or rescind*” the annual levy. In the case of the State Tax Board such action is predicated upon a petition of ten (10) taxpayers for the “*reduction or revision*” of such levy. Thus, although the statute speaks of the revision of the levy in reference to the taxpayers’ petition, the power of the school authorities and the State Board of Tax Commissioners is limited to a reduction or rescinding of the levy.

It is, therefore, my opinion that your questions should be answered as follows:

1. Actions taken in regard to Cumulative Building Funds under Chapter 57 of the Acts of 1945 are not rescinded by the amendment of that act by Chapter 248 of the Acts of 1947, but any action taken after the effective date of the 1947 amendment must conform to that act.

2. Consequently, any tax levy for the year 1947 and subsequent years must not exceed seventy-five (75) cents and,

if the levy provided in a plan adopted prior to the amendment exceeds seventy-five (75) cents, it is automatically limited by statute to that amount.

3. Where a time limit is expressed in the original proceedings for the establishment of the levy, that time limit controls except that if that time limit exceeds twelve years, it is automatically limited by statute to the twelve year maximum. A decrease in amount would not automatically increase the time fixed in the original plan.

4. The funds raised by the cumulative building fund levy may be invested in U. S. Government securities under the provisions of Chapter 9 of the Acts of 1945.

5. The funds raised by the cumulative building fund levy may be used to acquire the ground upon which to erect the building contemplated by the levy.

6. The school authorities or the State Tax Board may, under the provisions of the 1947 amendment, reduce or rescind an existing cumulative building fund levy, but may not increase it except by the process of rescinding the existing levy and proceeding anew under the provisions of Sections 1 and 2.

OFFICIAL OPINION NO. 33

June 10, 1947.

Hon. John H. Nigh, Director,
Indiana Department of Conservation,
Indianapolis, Indiana.

Dear Mr. Nigh:

I have your letter of April 28 requesting an opinion of this office on the interpretation of the statute pertaining to setting a fire or permitting a fire to spread. Your letter presenting your question is as follows:

“Fire prevention in state forests is one of the important duties of the Division of Forestry. Our District Foresters bring to the attention of the prosecuting attorneys any violation of penal statutes intended to protect public or private forests from fire.