Board of Trustees,
Indiana State Prison,
Michigan City, Indiana.

Gentlemen:

I am in receipt of your letter of May 7, 1946 in which you request an official opinion upon the following questions:

"The Board of Trustees of this institution is contemplating the construction of an additional building or two for the purpose of operating a textile plant. In this connection there are two questions that have arisen:

"(1) Within the scope of moneys appropriated, does the Board have the power to use current balances in the Industrial Rotary Fund for such construction?

"(2) If the above Industrial Rotary Fund balances are to be considered as moneys already appropriated, does the Board have the power to enter into a contract with an architect to produce plans and specifications for the construction of the above mentioned buildings?"

Section 22-521 of Burns' 1933 provides as follows:

"It shall be unlawful for the board of trustees of any benevolent, scientific, reformatory, or educational institution of the state to borrow money upon the credit of the state, or to contract any indebtedness on the credit of the state, or to make expenditures for improvements for said institutions in any way, unless the said loans or expenditure of money are first authorized by an act of the general assembly for such purposes." (Our Emphasis.)

In view of the above statute it is necessary to determine whether the Legislature has consented to the expenditure for improvements suggested in your letter. Section 22-106 of Burns', 1933, provides in part as follows:
"* * * The board of trustees of the Indiana State Prison is hereby authorized, by and with the consent and approval of the governor, to transfer the whole or any part of any existing rotary fund which is designed and appropriated to finance the operation of any particular industry in the prison or to afford employment to the inmates thereof, to a rotary fund which may be established and used by the board of trustees of the prison to finance the operation of any other industry, project or undertaking which the board may deem suitable to afford employment to the inmates of the prison."

I am unable to find any statute which specifically defines this Industrial Rotary Fund. However, in the 1945 Appropriation Act, p. 465, the term "Rotary Fund" is defined in general as follows:

"A rotary fund is any designated part of the general fund which is set apart as working capital and devoted by law to a specific purpose. The fund may consist of an appropriation made thereto, together with any income from the fund so used; or the fund may consist of earnings and income only from certain sources. However derived, the money in such fund shall be used exclusively for the purpose designated by law as working capital. All or any part of the money in the fund may be withdrawn at any time. The whole or any part of the money so withdrawn may be repaid at any time. The fund at any time shall consist of the original appropriations made thereto, if any; all receipts accruing to such fund; and all money withdrawn and invested or to be invested. The money constituting such fund shall be kept intact by separate entries in the auditor’s office and no part thereof shall be used for any purpose other than the lawful purpose of the fund or be transferred or revert to any other fund at any time, except that any excess over and above any prescribed amount shall be transferred to the general fund at the close of each fiscal year."
It is to be noted that Section 22-106 of Burns' 1933, above quoted, does not specifically authorize the Board of Trustees to use any part of a rotary fund for the construction of buildings. It is further to be noted that under the 1945 Appropriation Act, above set forth, the term "Rotary Fund" is a part of the general fund set apart as working capital. The term "Working Capital" does not ordinarily include buildings, but it is usually limited to cash and quick or liquid assets. The term "Working Capital" is defined in Webster's Dictionary as: "the portion of the capital of a business which is not invested in plant, etc., but remains liquid."

Under the authority of Section 22-106 of Burns' 1933, above quoted, the Attorney General of Indiana held that the Board of Trustees of the Indiana State Prison could use funds of the Industrial Rotary Fund for the purpose of purchasing stacks, boilers and equipment to produce electric current to run their industries. (1931-1932 Ind. O. A. G. p. 861). However, I find no opinion authorizing the Board of Trustees to purchase buildings with funds obtained from the Industrial Rotary Fund.

Moreover, it is apparent from other statutes enacted by the Indiana Legislature that they had not consented to the construction of buildings with funds obtained from the Industrial Rotary Fund. In the 1945 Appropriation Act, p. 521, the Indiana Legislature specifically authorized the Board of Trustees and the Warden of the Indiana State Prison to expend out of the Industrial Rotary Fund the sum of $6,500.00 for the purchase of land to be used as a parking lot.

Also, under the 1945 Appropriation Act, p. 518, the Legislature expressly appropriated the sum of $788,900.00 in a Contingent Fund for public improvements, including structures and non-structural improvements in any of the penal or benevolent institutions. It also appropriated the sum of $100,000.00 for the use of the several state penal, benevolent and charitable institutions for the purpose of acquiring architectural or engineering services in preparation of the construction of any building or buildings for said institutions. In view of these specific appropriations in the 1945 Appropriation Act for the construction of buildings for state institutions, it is clear that the Legislature was thereby giving its
consent to such construction, and did not intend by other statutes to consent to the construction of buildings at state institutions. If Section 22-106 of Burns' 1933, above quoted, is to be construed as authorizing the construction of buildings at the Indiana State Prison, then it would have been unnecessary for the Legislature to specifically provide for the purchase of land for a parking lot at the Indiana State Prison, or to authorize the construction of buildings at state institutions.

Based upon the foregoing reasons and authorities, it is my opinion that the Board of Trustees of the Indiana State Prison does not have the power to use current balances in the Industrial Rotary Fund for the construction of an additional building or two for the purpose of operating a textile plant, and your first question is answered in the negative.

In view of my answer to your first question, your second question is also answered in the negative, and it is suggested that if you desire to enter into a contract with an architect for plans and specifications for the construction of the buildings in question, you follow the provisions of the 1945 Appropriation Act, p. 519, which authorizes the Budget Committee and the Governor to allot to the state penal, benevolent and charitable institutions sums of money for acquiring architectural and engineering services in preparation for the construction of a building or buildings.

OFFICIAL OPINION NO. 53

June 3, 1946.

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

Dear Sir:

I have your letter of recent date in which you ask for an interpretation and the application of Chapter 128 of the Acts of 1945 insofar as it affects the aviation funds of any city. Your questions are as follows: