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:
“1. Do the balances of appropriations remaining unexpended at the end of any calendar year in the aviation fund of any city continue to be available for use during the succeeding calendar year?

“2. If your answer to question No. 1 is in the affirmative, are such unexpended balances of appropriations available for the payment of any obligations incurred in any year other than the year for which such appropriations were made?

“3. In the event that an appropriation is made from the general fund of any city for transfer to the aviation fund, does any balance of such appropriation remaining untransferred at the end of the calendar year revert to the general fund?”

Section 84a of Chapter 129 of the Acts of 1905, as amended by Section 1 of Chapter 128 of the Acts of 1945 (Burns' 1933, Section 48-1506a (Pocket Suppl.)), provides as follows:

“When any item of appropriation made under the provisions of Section 84 (Section 48-1506) of this Act shall remain unexpended in any fund at the end of the calendar year, the amount thereof shall immediately revert to the fund against which it was appropriated, and no warrant shall be drawn on such appropriation after the end of such year, Provided, however, that the provisions of this act shall not apply to any balance of funds appropriated for the use of any board of aviation commissioners of any city remaining unexpended at the end of a calendar year. Provided, that in any and all cases where any appropriation is not used and expended during such year because of any suit that may be instituted to restrain or enjoin the expenditure of any money so appropriated, then such appropriation shall not revert to the fund against which it was appropriated until one (1) year after the termination of such suit, if such suit shall terminate against the party or parties instituting the same.” (Our emphasis.)
Also, Section 7½ of Chapter 190 of the Acts of 1945, same being Burns' 1933, Section 14-420 (Pocket Supp.) provides in part as follows:

"A tax, which shall be in addition to other taxes of the municipality, may be levied annually by the governing body for aviation purposes, and the municipality treasurer shall collect such taxes as other municipality taxes are collected and when said taxes are collected they shall be deposited in the treasury of the municipality in a separate fund to be designated as the 'aviation fund.' The governing body of any such municipality may, at any time, appropriate and transfer to the aviation fund any sum or sums out of the general funds of such municipalities, in accordance with the law providing for the making of additional appropriations for municipalities.

"* * * All money remaining in the treasury to the credit of the board of aviation commissioners at the end of the calendar year, shall still belong to the general aviation fund to be used by the board of aviation commissioners for aviation purposes. All funds received by the board of aviation commissioners from whatever source shall be deposited in the treasury of the municipality to the credit of the aviation fund."

Also, Section 4, Chapter 190 of the Acts of 1945, same being Burns' 1933, Section 14-416 (Pocket Supp.) provides in part as follows:

"* * * On or before the first day of February of each year such board shall make a report to the chief executive officer of its proceedings with a full statement of its receipts and disbursements for the preceding year, and shall also report the acquisition of air navigation facilities and of other property which have come under the control of such board, improvements made, and general character of the work of such board and progress of aviation and air commerce under its control during the preceding year. Money received by the board shall forthwith be paid into the municipality treasury and credited to the department of aviation,
and all expenditures relating to the property and business under the control of such department, except as otherwise provided, may be provided for by special levy of taxes under provision of section 7 1/2 (Section 14-420), and shall be paid from the municipality treasury when ordered by said board as hereafter provided.

* * *

Finally, Section 5 of Chapter 190 of the Acts of 1945, same being Burns' 1933, Section 14-417 (Pocket Supp.) provides in part as follows:

"* * * Provided, however, that if at the time of the creation, appointment and qualification of such board of aviation commissioners in any such municipality as provided for in this act, any such municipality shall own or control any airport or landing field, or other air navigation facilities, then upon such qualification of said board of aviation commissioners, the exclusive control, management and authority over such airport or landing field and other air navigation facilities shall thereby at once be transferred to said board of aviation commissioners without the passage of any ordinance therefor; and the department or board or officer or officers of such municipality or other persons having possession or control thereof shall at once turn over and deliver to such board of aviation commissioners all personal property and records, books, plans, maps and other papers and documents relating to the aviation business of such municipality and the unexpended balance of any fund or funds theretofore appropriated by any such municipality for aviation purposes shall become a part of and be credited to the aviation fund of any such department of aviation. 

* * *

From the foregoing statutes the Legislature has clearly indicated that the aviation fund of a city shall constitute and remain a separate and special fund for the use of the Board of Aviation Commissioners of any city, and has specifically provided that the balance of any unexpended appropriations
remaining in the aviation fund shall not revert back to any other fund, but shall remain in the city aviation fund.

Your first question is not entirely clear. If you are asking as to whether the balance of any appropriation remaining unexpended at the end of the calendar year in the city aviation fund shall continue to remain in such fund for use during the succeeding calendar year on a proper appropriation made during the succeeding calendar year, then the answer to your question is in the affirmative. This conclusion is based upon the foregoing statutes which clearly indicate that appropriations made for the Board of Aviation Commissioners of a city and which shall remain unexpended at the end of a calendar year do not revert back to any other fund, but remain in the aviation fund for the use of the Board of Aviation Commissioners after a proper appropriation has been made.

However, if by your first question you are asking whether or not balances of appropriations remaining unexpended at the end of the calendar year are automatically available for use of the Board of Aviation Commissioners during the succeeding calendar year without a proper appropriation being made in the succeeding calendar year, then the answer to your first question is in the negative, as will be more fully pointed out in answering your second question.

In answering your second question reference should be made again to the statutes above quoted and also to that part of Section 71½, Chapter 190 of the Acts of 1945, same being Section 14-420 of Burns' 1933 (Pocket Supp.), which provides as follows:

"The said boards shall prepare and file with the chief executive officers of the municipalities annually at such time as the said chief executive officers shall designate, a full and detailed estimate of the appropriations required during the ensuing year for the maintenance and operation of the said airports and landing fields, showing therein the number of employees, including manager and secretary and the amount of salary and wages recommended for each. The expenditures for the maintenance and operation of said airports or landing fields shall be limited to the extent of specific appropriations of money made in advance by the legislative bodies upon estimates fur-
nished. Purchases and expenditures by the said aviation commissioners shall be made in the manner that other purchases and expenditures are required to be made for the municipalities and claims therefor shall be allowed in the same manner that other claims against municipalities are allowed: Provided, that the governing bodies of the municipalities may appropriate a sufficient amount for the necessary help, supplies and equipment, tools and everything necessary to the equipment and maintenance of said airports or landing fields. No obligations or liability of any sort shall be incurred by the said Board on behalf of said municipality unless the same shall fall within the appropriation specifically made for the purpose. All money remaining in the treasury to the credit of the board of aviation commissioners at the end of the calendar year, shall still belong to the general aviation fund to be used by the board of aviation commissioners for aviation purposes. All funds received by the board of aviation commissioners from whatever source shall be deposited in the treasury of the municipality to the credit of the aviation fund.” (Our emphasis.)

In 42 American Jurisprudence Section 43 under Public Funds at page 747, an appropriation is defined as follows:

“In specific terms, an ‘appropriation’ may be defined as an authority of the legislature, given at the proper time and in legal form to the proper officers, to apply a distinctly specified sum from a designated fund out of the treasury, in a given year, for a specified object or demand against the state. * * *” (Our emphasis.)

While it is true that Section 48-1506a of Burns’ 1933 (Pocket Supp.), set forth above, states the general rule that unexpended appropriations at the end of the year revert to the fund against which they were appropriated and then excepts any unexpended balances of funds appropriated for the use of the board of aviation commissioners, it seems clear that the exception was not intended to make such unexpended balances of appropriations available for use by the board of
aviation commissioners during the succeeding calendar year without a further appropriation. If this were the intention of the Legislature it would be in conflict with that part of Section 14-420 of Burns’ 1933 (Pocket Supp.), above quoted, which provides that the expenditures for the maintenance and operation of city airports or landing fields shall be limited to the extent of specific appropriations of money made in advance by the legislative bodies upon estimates furnished. Said section also provides that no obligations or liability of any sort shall be incurred by the board on behalf of the municipality unless the same shall fall within the appropriation specifically made for the purpose. The exception made in said Section 48-1506a to the general rule that unexpended appropriations revert at the end of the calendar year, was apparently intended by the Legislature to cover that situation set forth in Section 14-420 of Burns’ 1933 (Pocket Supp.) where the governing body of any municipality would appropriate and transfer to the aviation fund out of the general fund sums of money for the use of the Board of Aviation Commissioners.

Moreover, there is a difference between the meaning of the terms “appropriation” and “fund” as used in the law which is clearly pointed out in a recent official opinion of this office. (1945 Ind. O. A. G. No. 116). The term “fund” usually means a sum of money set aside for a particular purpose or purposes. The term “appropriation” is an act of the legislature setting apart a certain sum or fund of money for a particular purpose so that the public officers are authorized to draw and expend the money so set apart and no more for the specified purpose only.

Section 48-1506a of Burns’ 1933 (Pocket Supp.), above quoted, provides for the reversion of unexpended appropriations and only excepts the balance of funds appropriated for the use of the Board of Aviation Commissioners. In view of the difference in meaning between the terms “fund” and “appropriation” it is apparent that the legislature was not intending to provide by this Act that unexpended appropriations for the use of the Board of Aviation Commissioners should not revert.

At most it is doubtful whether the Legislature intended by Section 48-1506a of Burns’, above quoted, to provide that
appropriations unexpended at the end of the calendar year for use of the Aviation Commissioners would continue to be available for use without further appropriation during the succeeding calendar year, and in such a case the doubt should be resolved against such a construction. In the case of Ristine, Auditor, etc. v. State of Indiana ex rel. The Board, etc. (1863), 20 Ind. 328, the Indiana Supreme Court held that if there is any real doubt as to whether the Legislature has exercised its function to appropriate, the officers should not take this money from the treasury. The court said at page 336:

"* * * If it is doubtful whether the legislative power has exercised its function in this particular, the officers of State should not take the money from the treasury. See The People v. Schoonmaker, 3 Kernan, N. Y. R. 238. It may be laid down as a maxim in constitutional government, that officers, as a general rule, should not assume to exercise doubtful powers. Such assumption is the first step in usurpation, in setting at naught, in fact, the Constitution. That step should not be taken; for if it is, there is danger that it will be followed by others in the same direction, till the constitutional prohibition is entirely trodden under foot. There is no necessity that the State officers should assume doubtful powers. * * *"

Based upon the foregoing reasons and authorities it is my opinion that unexpended balances of appropriations are not available for the payment of any obligations incurred in any year other than the year for which such appropriations were made.

However, in connection with your second question, I wish to call your attention to official opinion No. 128 addressed to you, dated December 11, 1945, in which Chapter 128 of the Acts of 1945, same being Burns' 1933, Section 48-1506a (Pocket Supp.), was construed. In that opinion it was held that if a contract is awarded during the calendar year in which there is a proper and sufficient appropriation available therefor, but the full amount of the contract price is not paid prior to the end of the calendar year because full performance of the contract is not completed, that such money so appro
appropriated is in fact no longer "unexpended" and would not revert to the fund against which it was appropriated under the provisions of said Chapter 128 of the Acts of 1945. In such a case such an appropriation would be available for the payment of the contract in a year other than the year for which the appropriation was made.

Your third question is also answered by referring to Section 48-1506a of Burns' 1933 (Pocket Supp.), above quoted. As heretofore pointed out, that section specifically provides that when any appropriation is made and remains unexpended in any fund at the end of the calendar year, the amount shall revert to the fund from which it was appropriated, but that this provision does not apply to any balance of funds appropriated for the use of any board of aviation commissioners of any city remaining unexpended at the end of a calendar year. Attention is also called to that part of Section 14-420 of Burns' 1933 (Pocket Supp.) above quoted which provides in part as follows:

"* * * All money remaining in the treasury to the credit of the board of aviation commissioners at the end of the calendar year, shall still belong to the general aviation fund to be used by the board of aviation commissioners for aviation purposes. All funds received by the board of aviation commissioners from whatever source shall be deposited in the treasury of the municipality to the credit of the aviation fund."

These provisions clearly show that if an appropriation is made from the general fund of any city for transfer to the aviation fund, any balance of such appropriations remaining not transferred at the end of the calendar year does not revert to the general fund. Your third question is, therefore, answered in the negative.