remaining an unexpended balance in a particular fund or in the general fund of the city, such unexpended balance will revert to the fund against which the appropriation was made. If there is a reversion to the general fund of the city, then under Section 48-5607 of Burns' 1933, above set forth, the common council may transfer such unexpended amounts out of the general fund into the park fund.

If the unexpended balance of the specific appropriation reverts to a particular fund, then under Section 48-6917 of Burns' 1933, the common council may transfer it into the general fund and then transfer it from the general fund into the park fund.

In answering your first question it is, therefore, my opinion that the amount of any decrease made in any appropriation, as provided in Section 48-1506 of Burns' 1933, which appropriation was made out of the general fund of the city, would be available for appropriation and transfer to the park fund as provided in Section 48-5607 of Burns' 1933 (1945 Pocket Supp.).

In answering your second question it is also my opinion that the amount of any decrease made in any appropriation as provided in Section 48-1506 of Burns' 1933, which appropriation was made out of a particular fund, and not the general fund of the city, would be available for transfer to the general fund as provided by Section 48-6917 of Burns' 1933, and from there would be available for appropriation and transfer to the park fund, as provided in Section 48-5607 of Burns' 1933 (1945 Pocket Supp.).

OFFICIAL OPINION NO. 77

August 2, 1946.

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

Dear Sir:

I am in receipt of your letter concerning cumulative building funds, in which you ask my official opinion on the following questions:
“1. In the event that a school corporation has established a cumulative building or sinking fund under the provisions of Chapter 57, Acts of 1945, is the levy provided for in such proceedings, fixed and established for the full term of such fund without further annual action by the tax levying body?

“2. In the event that a school corporation has established a cumulative building or sinking fund under the provisions of Chapter 57, Acts of 1945, can the funds derived from the levy made therefor be expended currently as raised?

“3. In the event that a school corporation has established a cumulative building or sinking fund under the provisions of Chapter 57, Acts of 1945, can the funds raised by the levy or levies therefor be anticipated for the current use by temporary or term loans:

(a.) For the current year during which the levy is in process of collection?

(b.) For future years?”

Chapter 57, page 126, of the Acts of 1945 (Sec. 28-1108 to Sec. 28-1110, Burns’ 1945 Supp.) provides as follows:

“All school corporations, officers thereof, boards of school trustees, school commissioners, and township trustees are hereby authorized to provide a cumulative building or sinking fund to provide funds for the erection of new school buildings and the remodeling of old school buildings. Before this fund can be established, the proposed action of any school corporation, officers thereof, board of school trustees, school commissioners, and township trustees to establish such a fund shall be first approved by the state board of tax commissioners.”

“Whenever any township trustee, board of school trustees, board of school commissioners and officer lawfully having charge and control of the public schools and educational affairs of any school township, school town, school city or public school corporation created by law and vested with power and authority to levy
taxes, shall determine to provide a cumulative building or sinking fund as provided for in section 1 (§ 28-1108) of this act, such trustee, board or officer shall give notice thereof to the taxpayers affected thereby before such proposed action shall be presented to the state board of tax commissioners for approval, and provide for a public hearing on such proposal. Ten (10) days' notice by publication of such proposal and of such public hearing in two (2) newspapers of opposite political parties published in the taxing district, or in one (1) newspaper if only one be there published, and in case no newspaper is there published, then the same shall be published in any two (2) newspapers representing the two (2) leading political parties, published in the county and having a general circulation in such taxing unit, or if only one (1) such paper shall be published then such notice published in such paper shall be sufficient to comply with the requirements herein, and by posting such notice in three (3) places in such taxing district, shall be required. If after such public hearing, such proposed action shall be submitted for approval to the state board of tax commissioners the state board of tax commissioners shall require notice of such submission to be given to the taxpayers of such taxing district by one (1) publication and the posting of notices in the same manner as above provided, and ten (10) or more taxpayers in any such taxing district, other than those who pay poll tax only, and who will be affected by such proposed tax rate, may file a petition with the county auditor of the county in which such taxing district is located not later than ten (10) days after such publication, setting forth their objections to such proposed levy. Upon the filing of any such petition, such county auditor shall immediately certify such petition to the state board of tax commissioners. The state board of tax commissions shall, within a reasonable time, fix a date for a hearing, on such petition, which shall be held in the county in which such taxing district is located, and notice of such hearing shall be given to the executive officer of the taxing unit and to the first ten (10) tax-
payers whose names appear upon such petition, by a letter signed by the secretary or any member of said state board of tax commissioners and sent by mail with full prepaid postage to said officer and to said taxpayers at their usual place of residence at least five (5) days before the date fixed for such hearing. After a hearing upon such proposal the state board of tax commissioners shall thereupon certify their approval or disapproval of such proposal to the auditor of the county, and the action of the state board of tax commissioners with respect to said proposed levy shall be final and conclusive."

"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 (5) 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 from the above statute that the building fund established by the action of the school authorities must be limited to the erection of new school buildings and the remodeling of old school buildings and that the fund can not be diverted to any other purpose than the purpose for which it is raised. The statute provides for a notice and a hearing to the local taxpayers and submission of the proposal to the State Tax Board. The tax board is required to give notice by publication and posting and ten or more taxpayers “who will be affected by such proposed tax rate” may object “to such proposed levy.” Upon the filing of such objection it is required that the tax board hold a hearing upon proper notice given. The decision of the tax board upon such hearing “shall be final and conclusive.” It could hardly be argued that such levy would be final and conclusive if it were subject to later review by the county board of tax adjustment upon each
year's levy. Furthermore, it would seem to be unnecessary to repeat the hearings once had upon the levy. I believe, therefore, that where the levy is established any plan duly adopted by the school authorities which is established for the full term provided in such plan, it need not be re-established in the annual budget each year, but should merely be certified by the school authorities when they certify their annual levy.

It will be noticed that this statute contains no provision limiting the time when the funds derived from such levy may be expended, but requires merely that such funds be deposited in a special fund to be known as the building fund, which shall not be used for any other purpose than the purpose for which it was raised. Therefore, I believe the funds may be spent at any time provided that such expenditures are limited to the purposes contained in the plan adopted by the school authorities.

This statute contains no provision expanding power of the school authorities to borrow money. Neither does it contain a provision against anticipation of the collection of the taxes levied for funds. Therefore, it is necessary to point to some other express statutory authority before the school authorities may borrow against these funds, and such statutes must be strictly followed.

In this regard I call your attention to an opinion of the Attorney General (1927-1928), page 424, wherein it was held that obligations payable only out of a tax levy already established do not constitute a debt or obligation.

Therefore, in answer to your questions I am of the opinion:

(1) When a cumulative building or sinking fund has been established under the provisions of Chapter 57, Acts of 1945, the levy provided for in such plan is thereby established for the full term outlined in the plan without further annual action, but should annually be certified as a part of the levy by the tax levying body of such school corporation.

(2) The funds derived from the levy so made may be expended currently as collected, provided that they are expended only for the purposes set forth in the plan adopted.

(3) The funds raised by the levy so made may be anticipated for current use only if authority to anticipate tax collections is found in some other statute applicable to the
particular school corporation and only to the extent and in the manner authorized by such other statute.

OFFICIAL OPINION NO. 78

August 5, 1946.

Hon. Burrell E. Diefendorf, Chairman,
Indiana Alcoholic Beverage Commission,
Illinois Building,
Indianapolis, Indiana.

Dear Sir:

Your letter of recent date requests an official opinion on the following question:

"Is it legal for the Indiana Alcoholic Beverage Commission to issue a retail permit to sell alcoholic beverages on premises where such sale is restricted by a covenant in the chain of title of the premises involved and said covenant has been upheld by a decision of the higher Courts as in the case of Sorrentino v. V. Cunningham (1941), 111 Ind. App. 212, in the area of the Original Town of Irvington?"

The restrictive covenant involved is contained in the plat of the Original Town of Irvington, and restricted original and subsequent owners of the land covered by said plat from selling any intoxicating beverages on the premises except for sacramental, medicinal or mechanical purposes. The case you refer to was an action for an injunction by certain owners of real estate against the defendant, and the injunction enjoined the defendant from "selling, or suffering to be sold, any intoxicating beverages, except for sacramental, medicinal or mechanical purposes." The Appellate Court of Indiana in affirming the action of the trial court, held the restrictive covenants valid, that there was no such change in conditions that established the right of the permittee to ignore and violate the restrictive covenants in question, and that the plaintiffs had not been guilty of laches seeking equitable relief. A rehear-