

103 to the Labor Commissioner, in which I express my opinion upon the legal effect of such language as "at the close of the war." For the reasons stated in that opinion, I am of the opinion that said appropriation has not as yet reverted to the general fund.

OFFICIAL OPINION NO. 105

September 19, 1945.

Hon. Hinkle C. Hays, Member,
Flood Control and Water Resources Commission,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of August 30th, inquiring as to the validity of two resolutions adopted by the executive committee of the Indiana Flood Control and Water Resources Commission at its meeting held August 17, 1945. Concerning said resolutions you state:

"1. The minutes of the meeting show the following: 'Mr. Chambers asked that additional personnel be employed for the engineering group and that Mr. Harker be permitted to employ them. Mr. Wiley made the following motion: "I move that the Chief Engineer be authorized to employ a hydrologic engineer, a geologist, and a draftsman." The motion was seconded by Mr. Morse and carried.'

"2. Also the minutes show the following: 'The question of federal river authority was taken up and the following motion was offered by Mr. Wiley: "I move, as a member of the Executive Committee, that we do not approve any establishment of river authority in Indiana." Mr. Roessler seconded the motion which carried unanimously.'

You state that you raise no point as to the merit of either motion, but only question of the authority of the executive committee to act in either matter as and when it did, and asking for an opinion for the guidance of the commission and the executive committee.

The Flood Control Act is Chapter 318, page 949, Acts of 1945. Section 4 of said Act creates the Indiana Flood Control and Water Resources Commission of nineteen members, consisting of three *ex officio* members and sixteen to be appointed by the Governor. Said Section 4 also provides:

“* * * A majority of commissioners shall constitute a quorum for the transaction of any business, the exercise of any powers or the performance of any duties. The Commission shall have not less than four stated or regular meetings in each calendar year, and as many additional or special meetings as its business may require. The Chairman may, in his discretion, call a special meeting, and shall call a special meeting at the request of the Executive Committee or any five commissioners.”

It is provided by Section 7 as follows:

“The Commission shall keep and maintain its office in the City of Indianapolis. *The Commission is hereby designated as an agency and instrumentality of the state* and shall be and be taken as being a legal entity *acting solely in the execution of the sovereign power of the state.* The Commission with the consent of the Attorney General of Indiana, may employ counsel, who shall be under the direction of the Attorney General, to advise the Commission and represent it in legal actions, and the Attorney General may advise the Commission and represent it in any legal proceeding.”
(Our emphasis.)

It thus appears that it is the commission which is the state instrumentality and agency and upon which is conferred the sovereign power of the state.

Section 8 provides that:

“*The Commission shall adopt, pursuant to methods provided by law, from time to time, rules and regulations for the transaction of its business and for the administration and exercise of its powers and duties.*”
(Our emphasis.)

By Section 15 jurisdiction over the public and private waters in the state and the lands adjacent thereto necessary for flood control purposes is vested *in the commission*.

Section 16 authorizes and empowers "The Commission" to act for and on behalf of the state, subject to the approval of the Governor in all matters of flood control and water resources of the state in cooperation with other agencies. It would thus seem clear that it is the commission, as such, in which is vested the power and authority to act for and on behalf of the state in administering the provisions of the Act.

Section 10 of said Act provides as follows:

"The Commission shall have the power to utilize any agency of the State in connection with its investigation, studies and preparation of plans, or the performance of other duties, to employ such technical experts, engineers, clerical and other assistants as shall be necessary, and through the State Purchasing Agent to purchase such supplies, equipment, instruments, and machinery as it shall deem necessary to perform its duties." (Our emphasis.)

Under the above section the power to employ technical experts is expressly placed by the Act in the commission. It would appear that a hydrologic engineer, a geologist, and a draftsman are technical experts and it is, therefore, my opinion in answer to your first question that the power to employ such technical experts is in the commission and not in the executive committee.

Section 5 of the Act relates to the executive committee and is as follows:

"There shall be an Executive Committee of the Commission, which shall consist of nine commissioners, who shall be selected and designated annually by the governor from the membership of the commission to serve during the calendar year. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of any business, the exercise of any powers or the performance of any duties. The Chairman and the Secretary of the Commission shall be the Chairman and the Secretary respectively

of the Executive Committee. *It shall have general authority to function and act for the Commission between meetings of the Commission and shall have such powers and authority as are expressly conferred by law or as may be delegated to it, from time to time, by the Commission.*" (Our emphasis.)

I assume from your letter that no power or authority has been conferred upon the executive committee by the commission to act in connection with either of the resolutions in question. In view of the fact that, as above pointed out, whatever sovereign power was conferred by the Legislature by this Act, was conferred upon the commission; Section 5 gives the commission authority to delegate such powers and authority as may be legally delegated by the commission to the executive committee. At least in the absence of such express delegation, action of the executive committee between meetings of the commission would be subject to approval or disapproval of the commission at its next regular or special meeting. The second resolution, above referred to, seems to involve a question of policy and under the provisions of the Act such questions are to be determined by the commission.

In answer to your second question, it is my opinion that this resolution should either be approved or disapproved at the next meeting of the commission and that in the absence of approval by the commission it is not binding upon it.

OFFICIAL OPINION NO. 106

September 21, 1945.

Hon. Beecher Conrad,
Member House of Representatives,
State of Indiana,
Petersburg, Indiana.

Dear Sir:

Your letter of September 10, 1945 has been received in which you request an official opinion on the following questions: