

of appointment without the approval of such common council was constitutional. On page 585 of the opinion the court said:

“There is no constitutional question involved here. It is true that the members of the old board were public officers. *Long v. Stemm et al.* (1937), 212 Ind. 204, 7 N. E. (2d) 188. But ‘offices are neither grants nor contracts, nor obligations which cannot be changed or impaired. They are subject to the legislative will at all times, except so far as the Constitution may protect them from interference. Offices created by the Legislature may be abolished by the Legislature. The power that creates can destroy. The creator is greater than the creature. The term of an office may be shortened, the duties of the office increased, and the compensation lessened, by the legislative will.’ *The State ex rel. Yancey v. Hyde* (1891), 129 Ind. 296, 302, 28 N. E. 186.”

The above rule would also be applicable to a common council.

I am therefore of the opinion that where the salary of an attendance officer is fixed by the appointing power under the provisions of Section 1, Chapter 294, Acts 1943, it is mandatory on the county council to appropriate funds for the payment of such salary and that such mandatory provision of such statute is constitutional.

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OFFICIAL OPINION NO. 128

December 11, 1945.

Hon. Clarence E. Ruston, State Examiner,  
State Board of Accounts,  
Room 304, State House,  
Indianapolis 4, Indiana.

Dear Sir:

Your letter of November 30, 1945, requests a construction of Chapter 128, Acts of 1945. The Act concerns municipal corporations, and your questions are as follows:

"1. If a contract is awarded during a 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, are payments thereon authorized after the end of the calendar year from the appropriation available at the time of the execution of the contract?"

"2. If your answer to question No. 1 is in the negative is a special appropriation required for the payment of the unpaid contract price during the ensuing calendar year?"

"3. If your answer to question No. 1 is in the affirmative, does a verbal or written order for materials, goods or supplies constitute such a contract?"

Section 1, Chapter 128 of the Acts of 1945 provides in part as follows:

"\* \* \* When any item of appropriation made under the provisions of Section 84 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. \* \* \*"

1. An answer to your first question requires a construction of the word "unexpended" as used in the foregoing statute.

In the case of *Norman v. Central Kentucky Lunatic Asylum* (1891), 92 Ky. 10, 17 S. W. 150, the court was required to construe what funds were "unexpended" in the fund of such institution under a statute which provided that the president of the board of commissioners of each lunatic asylum must report quarterly to the State Auditor the amount unexpended in the treasury above a certain per capita per patient. The board had previously, by resolution, appropriated nineteen thousand five hundred dollars (\$19,500.00) for new boilers

for the Asylum and the work was in progress under contract, but not completed at the end of such quarterly period, and the amount payable under the contract was not due and payable until the work was finally completed. On page 16 of the opinion the court said:

“The construction contended for requires that no repairs can be undertaken, however necessary, and, although the money may be on hand to make them, unless they can be paid for or all the liabilities attending them be created before the time for the next quarterly report from the officers of the institution.

“One of the meanings given by all lexicographers of ‘expend’ is ‘to dispose of,’ and in our opinion, when the Board had exercised the power, which they clearly possessed, and had set apart the money then on hand for a specific purpose, it was within the fair meaning of the statute and the intention of the law making power no longer unexpended.”

Also see:

People v. Swigert (1883), 107 Ill. 494, 499.

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 I am therefore of the opinion if a contract is awarded during a calendar year in which there is a proper and sufficient appropriation available therefor but 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 appropriated is in fact no longer “unexpended” and would not revert to the fund against which it was appropriated under the provisions of the foregoing statute.

2. The answer to the foregoing question obviates the necessity of any answer to your second question.

3. In answer to your third question I wish to advise the foregoing opinion would apply to any purchase made by any valid contract, whether written or oral. It is difficult to answer your question as to whether or not any contract could be verbal without knowing the specific articles being purchased and the conditions under which such purchases were made. Purchases of materials, equipment, goods and supplies by the State or any political subdivision are controlled by the provisions of Chapter 99 of the Acts of 1945 which permit pur-

chases under the sum of five hundred dollars (\$500.00) to be made without the giving of notice or the receiving of bids. Section 4 of the statute requires copies of the purchase orders to be filed with the local designated officer in the case of a county, city, *et cetera*, and in my opinion requires such purchases to be made by written contract if by bid and notice, or by written purchase order if not made pursuant to notice given and bids received.

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OFFICIAL OPINION NO. 129

December 11, 1945.

Hon. John H. Lauer, Chairman,  
State Highway Commission of Indiana,  
State House Annex,  
Indianapolis, Indiana.

Dear Sir:

I have your memorandum in which you submit questions for an opinion concerning certain provisions of the Appropriation Act of 1945 as they affect the expenditures of the State Highway Commission. The questions and supplementary facts as stated in your memorandum are as follows:

"1. May the Highway Commission charge the following expenses to its construction appropriation when incurred for the Highway Planning Survey?

- (a) Repair of equipment other than motor vehicles used by the Highway Planning Survey.
- (b) Electricity used in automatic traffic counters.
- (c) Blueprints.
- (d) Rent of International Business Machines and Supplies for same.
- (e) General office supplies.
- (f) Miscellaneous supplies.
- (g) Other miscellaneous expenses.

"2. May the Highway Commission charge the construction appropriation and credit the miscellaneous appropriation with rental of automobiles and