May 1, 1944.

Opinion No. 46

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Judge Bedwell:

This will acknowledge receipt of your letter dated April 20th, 1944, which reads in part as follows:

"We have received from Mr. Otto K. Jensen, State Examiner, copy of your official opinion of April 18, 1944, concerning the validity of the action of the Marion County Council at its meeting on March 27th, and the question has been presented to us as to the effect of such holding upon the additional appropriation in the amount of $106,912.81, which was approved by the County Council of Marion County at such meeting on such date, and which was approved by the State Board of Tax Commissioners under the provisions of Ch. 150 at page 532 of the Acts of 1935 (Burns' R. S. 1943 Replacement, Sec. 64-1331) on April 12, 1944.

"In its action upon additional appropriations, this Board follows the provisions of Ch. 150 of the Acts of 1935, but it does not examine or attempt to pass upon the legality of the proceedings of the appropriating bodies of the local taxing units. In other words, before passing upon same, we require the following:

"(1) Proofs of publication of legal notice as provided by Ch. 150 of the Acts of 1935 must be filed, and it must be shown that the appropriating bodies of the local taxing unit had acquired jurisdiction by legal notice to make the additional appropriation.

"(2) A certified copy of the determination by the local appropriating body must be filed with the County
Auditor of the county in which the municipal corporation is located, and the County Auditor must certify a copy of such determination to the State Board of Tax Commissioners.

“(3) The State Board of Tax Commissioners then fixes the time and place for the hearing of the matter and gives notice as provided for by Ch. 150 of the Acts of 1935.

“The particular questions upon which we desire an official opinion, are as follows:

“(1) Would the additional appropriation in the amount of $106,912.81 made by the Marion County Council on March 27, 1944, and approved by the State Board of Tax Commissioners on April 12, 1944, be valid and effective, so that the Auditor of Marion County could draw warrants thereon for the payment of the expenditures therein provided.

“(2) Assuming that there have been irregularities in the proceedings of the Common Council of a city or the Advisory Board of a township, or of the Board of Town Trustees of a town, or the County Council of the County, or any other local body that is authorized to make additional appropriations, but proper notice has been given as required by Ch. 150 of the Acts of 1935 and a determination to make such additional appropriations has been made by the local appropriating body, would the action of the State Board of Tax Commissioners approving such additional appropriations be final and conclusive so that no question could be raised concerning any irregularity or illegality in the proceedings of the local appropriating body; and would the local officials be protected in making disbursements of such additional appropriations after approval thereof by the State Board of Tax Commissioners, despite the fact that local appropriating bodies had not complied with statutory requirements in making the original determination.”

Section 1, Ch. 150, Acts 1935, being Burns’ R. S. 1943 Replacement Volume, Section 64-1331, commonly referred to as the Budget Act, controls additional appropriations to cover
emergencies arising after the annual budget and tax levy has been determined and provides, in part, as follows:

"* * * In the event the proper legal officers of any municipal corporation shall contemplate to meet the emergency and determine the expenditure of more money for the current year than was set out in detail in the published budget or in the budget as modified as a result of a hearing before the state board of tax commissioners, said officers shall give ten (10) days' notice by publication as herein provided for publication of the budget and proposed tax levy of such additional amount proposed to be expended, fixing a date when the same shall be considered and determined upon, and taxpayers shall have a right to be heard thereon. No such proposed additional amount shall be appropriated or expended unless and until such appropriation and expenditure shall have been approved by the state board of tax commissioners, as hereinafter provided. * * * The state board of tax commissioners shall fix a time and place for the hearing of such matter, which shall not be less than five (5) or more than fifteen (15) days thereafter, and said hearing shall be held in the taxing unit or in the county where such taxing unit is located, which proposed to make additional appropriations to the regular budget as finally determined upon. Notice of such hearing shall be given by the state board of tax commissioners to the executive officer of the taxing unit and taxpayers by a letter by the secretary or one (1) member of the state board of tax commissioners, and inclosed in a sealed envelope with full prepaid postage, addressed to said officer at their usual place of residence at least five (5) days before the date of the hearing. The decision of the state board of tax commissioners upon the expenditure of such additional amount of money, or any part thereof as may have been determined upon, shall be final and conclusive. Any officer or officers of any municipal corporation having authority by law to make appropriations for the expenditure of public money, who shall appropriate any money for any item set forth in the published budget, or for any item as modified on the order of the state board of tax commissioners, in excess
of the amount estimated to be expended in such budget, or in excess of any additional expenditure without having first given notice to the taxpayers and allowing taxpayers the right to appeal to the state board of tax commissioners, or without certifying their determination to make additional appropriations to the state board of tax commissioners, as herein provided, shall be guilty of malfeasance in office and shall be liable to such municipal corporation in the amount of such excess so appropriated, together with the costs of said action and reasonable attorney fees * * *.” (Our emphasis.)

The above statute has been construed by the Supreme Court of Indiana in the following cases:
In the case of City of Gary v. Cosgrove, 211 Ind. 294 on page 300, we find the following language, to-wit:

"* * * When the effect of all the foregoing language as used in the Act of 1935 is considered, it seems to us that the contention of the appellant is without foundation and that the matter of additional appropriations must be submitted to the state tax board and that their action is final and conclusive. * * *”

Again, in the case of O’Rourke v. Board of Commissioners of Lake County, 215 Ind. 195 on page 200, the Supreme Court says:

"* * * The 1935 act cited above clearly provides for notice and hearing in order to make special or additional appropriations, and in cases only where an emergency exists, and neither the board of county commissioners nor the county council has authority to fix salaries or make appropriations unless an emergency exists. Where an emergency arises for additional appropriations in excess of those made in the annual budget ordinance, the matter of such additional appropriations must be submitted to and approved by the state board of tax commissioners. * * *

“It is the opinion of this court, and it so holds, that the matter of additional appropriation for the use of the appellant and as an increase in his salary is one
which comes clearly within the jurisdiction of the state board of tax commissioners under the provisions of the statute in force in this state; *that its decision is final, and, when it was determined by the state board that the appropriation should be disapproved, the effect of that determination was conclusive as against the appellant.*” (Our emphasis.)

Considering the language contained in Section 64-1331, and the decisions of the Supreme Court of Indiana, it is my opinion that the effect of the decision by the State Board of Tax Commissioners upon any additional appropriations is final and conclusive only upon the questions: (a) as to the existence of an emergency for such additional appropriations, and (b) the amount of such additional appropriations. Notice to the taxpayers is required to be given, first, of the meeting of the county council, and, second, when the matter is set for hearing before the State Board of Tax Commissioners. The purpose of such notice is to give the taxpayers an opportunity to be heard upon the questions of the purposes for which the money is to be spent and upon the amount of the expenditure.

Johnson v. Lenz, 209 Ind. 627 on 632.

There is nothing in the statute, or in the language of the Supreme Court, in the various cases construing Section 64-1331, which indicates that the Legislature intended for the decision of the State Board of Tax Commissioners to be final and conclusive as to the legality of such additional appropriations in any other respect except as above stated.

Therefore, it is my opinion that the legality of an additional appropriation may be challenged for any other reason except as to the question of the existence of an emergency for the additional appropriation and the amount thereof, in a proper action, notwithstanding the decision of the State Board of Tax Commissioners approving such appropriation.

Hamer v. City of Huntington, 215 Ind. 594;  
Van Der Veer v. State ex rel. Herron, 97 Ind. App., p. 1;  
City of Indianapolis v. Wann, Receiver, 144 Ind. 175;  
Johnson v. Lenz, 209 Ind. 627.
In answer to your first question, I call your attention to the provisions of Burns' R. S. 1933, Section 49-3006, which reads as follows:

“When, heretofore or hereafter, in good faith, any auditor of any county in the state of Indiana, pursuant to the order or authority of the board of commissioners of any such county, or pursuant to the judgment or order of any court of common-law jurisdiction in any such county, in any case wherein said county was a party and was duly served with process, shall have issued his warrant upon the treasurer of said county, then and in such event, no civil suit shall be maintained against said county auditor or his bondsmen for the issuance of said warrant, although such warrant shall have been drawn pursuant to some order of the board of commissioners or judgment of the court which is either void or voidable, but the validation of such act of the auditor shall not prevent the recovery of any sums of money from any person receiving the same that might have been recovered if this act had not been passed.” (Our emphasis.)

Applying the provisions of this statute and assuming that no appropriate steps have been taken to challenge the legality of such additional appropriations at any time prior to the actual expenditure of the funds, and that claims are properly filed with, and allowed by, the board of commissioners of the county, as provided by law, then and in that event, it is my opinion that, under the provisions of the above quoted statute, there would be no liability upon the part of the county auditor or his official bond for the issuance and payment of such warrants, prior to actual knowledge of such invalidity.

In support of this conclusion, I quote from Vol. 43, American Jurisprudence, Section 306, on page 112, as follows:

“It is in general held that officers are not liable for paying out public money in reliance on an unconstitutional statute where the payment was made in good faith before the law was held unconstitutional.”

In answer to your second question, I call your attention to the language used by the Supreme Court of Indiana in the
case of Hamer v. City of Huntington, 215 Ind. 594. On page 603 of 215 Ind., Judge Swaim, speaking for the court, says:

"* * * Any party dealing with a municipality is bound to take notice of the limited powers of the municipality and of the laws governing the municipality in making contracts. * * * If one dealing with a city could plead ignorance of the laws governing the city or of the appropriated balance which the city has and thereby make valid a contract made by the city contrary to Sec. 48-1507 Burns, supra, the effect of said statute and our budget laws would be destroyed.

"* * *

"Appellees contend that the appellant is estopped from maintaining this action for equitable relief because he 'had knowledge and notice of the proceedings of the Common Council of the City of Huntington, Indiana, and the Board of Public Works and Safety of said city at the time such proceedings were taken, relating to the sale of bonds, appropriation therefor, and the contract for the purchase of a combination fire truck and equipment.' The appellant taxpayer had a right to assume that the public officials of the City of Huntington would comply with their statutory duties in respect to the purchase of fire equipment for the city. A taxpayer is not bound to keep himself informed as to appropriation balances and to bring an action for injunction against city officials to prevent their entering into contracts which would purport to obligate the city in an amount beyond its appropriated funds, or be barred from thereafter objecting to the payment of a claim based on such a contract. Such a contract being void a claim based thereon is invalid and a resident taxpayer who will be affected thereby may maintain an action for an injunction against the payment of such claim. * * *"

Therefore, it is my opinion that the action of the State Board of Tax Commissioners in approving additional appropriations, is not final and conclusive so that no question can thereafter be raised concerning any irregularity or illegality in the proceedings of the local appropriating board, if such
irregularity or illegality involves a mandatory and jurisdictional step necessary to constitute a valid appropriation.

STATE BOARD OF ACCOUNTS: Coroner—Fees. Entitled to fees for number of days services actually performed.

May 6, 1944.

Opinion No. 47

Hon. Otto K. Jensen,
State Examiner,
Department of Inspection and Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

This will acknowledge receipt of your letter dated May 4th, 1944, which propounds the following question:

"In a case where a coroner filed his claim for services for one day for viewing body and one day for swearing witnesses and hearing evidence, we are asked whether he is entitled to receive compensation for an additional day for making his report, if dated subsequent to the day of hearing the evidence, and also for an additional day for filing his report and verdict with the clerk of the circuit court.

"I would like to have your opinion upon the question thus presented."

In considering the proper answer to your letter, I call your attention to two official opinions rendered by the Attorney General to you under dates of September 3, 1941; and October 28, 1941 respectively, and which said official opinions are found in Opinions of the Attorney General, 1941, pages 306 and 360 respectively.

In addition to what is said in these opinions, I call your attention to the language contained in Burns' R. S. 1933, Section 26-807, which reads as follows:

"The county commissioners shall examine into the merits of all claims so presented; and may, in their