loss, the same would constitute a satisfaction of the employer's claim against the employee. In that event the employee could not thereafter object to such retention by the employer while he retains the benefit of the satisfaction of such employer's claim against him.


However, I am of the further opinion that if the employee demands the payment of his wages in full under Sec. 40-201, Burns' (1933), he may require such payment, leaving the employer to enforce his claim under the contract by due process of law.

STATE BOARD OF ACCOUNTS. AVIATION: City may include sum in budget for aviation notwithstanding it also has five cent special levy. Application of general levy limit.

August 30, 1944.

Opinion No. 83

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

Dear Sir:

This will acknowledge your letter of August 22nd in which you submit the following question:

"The City of Bloomington in its budget estimates and notice of proposed tax rates for the year 1945 has included a rate of five cents on each one hundred dollars of assessed valuation for aviation purposes. In addition thereto there is included in the general fund budget an estimate for appropriation for a transfer from the general fund to the aviation fund.

"The question is presented as to whether the inclusion in the general fund budget of a sum for transfer
to the aviation fund may be done notwithstanding and in addition to the five cent special tax for aviation.

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

Section 3, Chapter 89, of the Acts of 1943, provides in part as follows:

"* * * A tax of not less than one-half cent ($\frac{1}{2}c$) nor more than five cents (5c) on each hundred dollars ($100$) of taxable property in such city as the same appears on the tax duplicate, which shall be (in) addition to other taxes of the city, shall be levied annually by the common council for aviation purposes, and the city treasurer shall collect such taxes as other city taxes are collected, and shall, between the first and fifth days of each month notify the board of aviation commissioners of the amount of such taxes collected for aviation purposes during the preceding month, if any, and upon the date of the notification above referred to, the city treasurer shall credit the aviation fund with such amount of taxes for aviation purposes as may have been collected at that time. The common council of any such city may, at any time, appropriate and transfer to the aviation fund any sum or sums out of the general funds of such city, and any such common council may, at any time, borrow money and may issue bonds of the city therefor in the manner now or hereafter to be provided by law for the issue of bonds for the general purposes of such city, and may turn the proceeds therefrom into the aviation fund of such city. Said board shall have full complete and exclusive authority to expend for and on behalf of such city all sums of money thus realized from taxation, appropriation and the sale of bonds, and also that may be realized from the sale or lease of privileges on land controlled by said board, from rentals, charges and fees and other income collected for the use of property under the control of such board, and from gifts, donations, payments or from any other source, for the acquisition, improvement, management, operation, control or maintenance
of the property under the control of such board for
aviation purposes, but the said board shall have no
power to contract debts beyond the amounts which are
or will be thus available: * * *.” (Our italics.)

Sec. 14-507, Burns' R. S. 1933, Pamphlet Part.

It is my opinion that under the provisions of the above
statute the common council of the city has the power to ap-
propriate and include in its budget to be paid from the general
fund, a sum to be thereafter transferred from the general
fund to the aviation fund and that this may be done notwith-
standing the fact that a tax of not less than one-half cent
(½¢) nor more than five cents (5¢) on each one hundred dol-
lars ($100) of taxable property has been levied by the com-
mon council for aviation purposes under the first sentence of
the above quoted section.

However, this power to appropriate and include in the gen-
eral fund budget a sum to be transferred from the general
fund is subject to limitations contained in Section 48-6708,
Burns' R. S. 1933, which in part reads as follows:

"* * * Provided, however, That except as other-
wise expressly provided in this act, it shall be unlawful
for the common council to levy a tax or taxes for any
one (1) year exceeding in the aggregate, in cities of
the first class, seventy-five cents (75¢), and, in all
other cities, one dollar and twenty-five cents ($1.25),
upon the hundred dollars of the assessed and appraised
value of the property subject to taxation in such city
for the year in which the levy is made, * * * ."

Therefore, the entire levy for the general fund of such city
could not exceed $1.25 upon the $100.00 of assessed valuation
of the property subject to taxation in the city. This limita-
tion of $1.25 would not include the five cents (5¢) levy above
referred to as under the provisions of the statute quoted such
five cents (5¢) on each $100.00 of taxable property is in ad-
dition to other taxes of the city.