legally use or expend any money or funds derived from taxation in the State of Indiana in the performance or execution of the duties required in either of your questions, any more than such funds could be used for the purpose of providing school facilities or transportation means for school children living outside of the State of Indiana.

In the event such arrangements are entered into between the U. S. Government and township trustee any and all federal funds so handled should and must be kept and handled through a separate and distinct account system and should not be commingled with any state or township funds or money.

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STATE BOARD OF TAX COMMISSIONERS: Re-assessment of real estate, procedure for.
TOWNSHIP ASSESSOR: Salary, how fixed.

May 13, 1943.

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

Dear Mr. Bedwell:

I have before me your request for an official opinion which requires a construction of that part of Section 64-1019 of the December, 1942, Cumulative Pocket Supplement of Burns’ Indiana Statutes Annotated having to do with the question as to how the expenses of a reassessment of real estate under the provisions of the above section are to be paid; also a construction of Section 64-1019a of the December, 1942, Cumulative Pocket Supplement of Burns’ Indiana Statutes Annotated, 1933. You desire also that I consider the effect, if any, of Chapter 291 of the Acts of 1943 on the provisions above indicated of Sections 64-1019 and 64-1019a, supra. As a matter of convenience, I desire to restate certain of your questions so as to refer to the Burns’ Statutes Annotated 1933 wherever possible. Your first question, thus modified, is as follows:

"Is it essential to the validity of an order made by the State Board of Tax Commissioners under the pro-
visions of Section 64-1019 and Section 64-1019a of Burns' Indiana Statutes Annotated 1933, December 1942 Cumulative Pocket Supplement, that it specify and contain an estimate of the cost of making such a reassessment and that it specify definitely the time within which such reassessment shall be completed, and the date as to when such reassessment shall become effective?"

This question will be considered first as it stood when first enacted and without giving consideration to Chapter 291 of the Acts of 1943. I think it has been uniformly considered that administrative agencies, such as the State Board of Tax Commissioners, are agencies of limited jurisdiction and, for that reason, are restricted and limited in their actions to the powers granted by statute. In other words, such a Board has no general jurisdiction. In this connection, I call your attention to the case of State Board of Tax Commissioners v. McDaniel, 199 Ind. 708, page 716, where the Court said:

"This board" (referring to the State Board of Tax Commissioners) "is not one of general jurisdiction; its jurisdiction and powers conferred by statute are limited. Not only are the orders which it may make particularly described and limited, but the method of procedure which the board must pursue is plainly and unequivocally set forth in the law. Twice within recent years have the courts decided that the powers conferred upon the board are limited by the statute" (citing authorities).

Continuing, the Court further said:

"* * * but it has also been decided by the courts that where the statute provides the procedure through which the board must proceed as a foundation for its orders, such prescribed procedure must be followed implicitly, and such procedure is a measure of the power given."

See also State Board of Tax Commissioners v. Belt Railroad and Stock Yards Company, 191 Ind. 282, at page 285, where the Court said:
“The state board of tax commissioners is a body of special statutory powers and acts outside of its granted powers are absolutely void.”

In this same case, the Court quotes from the case of Gray v. Foster, 46 Ind. App. 149, as follows:

“In Gray v. Foster, supra, the court stated the rule as follows: ‘The State Board of Tax Commissioners is a statutory board, and its power and authority are conferred and limited by the statute. * * * Where power is given it to do a certain thing in a certain manner, the manner prescribed is the measure of power given.’”

Referring now to the statute, note the following, Sec. 64-1019:

“* * * After such hearing, the board shall have power to order such reassessment. Such order for the reassessment of any real estate, whether of an entire township or townships, county or counties, the state as a whole, or of specifically described real estate shall specify the time within which such reassessment shall be completed and the date as of which such reassessment shall become effective. No such order shall be made for such reassessment in a general election year. * * *”

Note next the provisions of Section 64-1019a, supra, which provides, among other things, as follows:

“* * * The order of the state board of tax commissioners ordering the reassessment of property shall contain an estimate of the cost of making such reassessment and the local assessing officials and county auditor shall not exceed the amount so estimated by the state board of tax commissioners.”

It would seem obvious, from the above quoted provisions, that your first question should be answered in the affirmative, unless such provisions be deemed directory only. It is to be noted, however, that each of said requirements are stated in the Act in the mandatory form, and upon the basis of the
cases referred to, I am of the opinion that such provisions should be considered as being mandatory rather than directory. This conclusion is strengthened by the fact that the provisions, concerning which you ask, became a part of the statute by way of amendment of the original provision which would ordinarily imply that, in making such an amendment, the Legislature had in mind the making of a definite change. In other words, in order to hold the provisions referred to as directory only, I would be disregarding the ordinary rule that when the Legislature amends a section of an act, the presumption would be that some change is intended. In my opinion, your first question should be answered in the affirmative.

Your next question is as follows:

“If an order for such a reassessment is made by the State Board of Tax Commissioners under the above provisions during the year 1943, will it be necessary that such reassessment be completed during the year 1943, or can such reassessment be completed in the year 1944, which is a general election year?”

The language of the statute applicable to this question is:

“No such order shall be made for such reassessment in a general election year.” Section 64-1019, supra.

It seems to me that, if the order is made in a year which is not a general election year, the time for completion might be in the next year. The thing which the statute forbids is that the order shall not be made in a general election year.

Your next question is as follows:

“Construing Section 64-1019a, supra, with Chapter 291 of the Acts of 1943, is it necessary that the county council of a county fix the per diem and salaries of the deputy assessors and assessing officials who shall make such reassessment, and is it necessary that an appropriation therefor be made by the county council before they can be paid for their services?”
In answering this question, I desire first of all to call attention to the chronology of the language in the Tax Act of 1919 providing a method of paying the expenses of such a reassessment as is referred to in your question. As the Act was first enacted it contained the following language:

"The expenses of each re-assessment in the case of any unit or units shall be borne by same and paid by the proper officer of said unit or units, and warrants drawn covering same on any funds not otherwise appropriated, without any appropriation having been made therefor; * * *." Acts of 1919, p. 282.

The above language was a part of Section 152 of such Act. This section was amended in 1925, Acts of 1925, p. 68, but no change was made in the wording of the particular provision. It was again amended in 1927, Acts of 1927, p. 234, but the language was untouched from what it had originally been. It was again amended in 1935, Acts of 1935, p. 815, and, while some minor changes were made in the language used, the general effect was the same. The 1937 amendment is the last statement upon the subject except Chapter 291 of the Acts of 1943. As amended in 1937, Section 152, supra, in so far as it affects the question before me, was amended so as to include the following language:

"Such order for the reassessment of any real estate, whether of an entire township or townships, county or counties, the state as a whole, or of specifically described real estate shall specify the time within which such reassessment shall be completed and the date as of which such reassessment shall become effective. No such order shall be made for such reassessment in a general election year." Acts of 1937, p. 60.

The expense provision was not written into Section 152 but was embraced in a supplementary section added to Section 152 which reads as follows:

"All expenses of the reassessment, including the cost of advertising, shall be borne by the county in which the property reassessed is situated. Such expenses shall be paid by the auditor of the county who
shall draw warrants on county funds not otherwise appropriated without prior appropriation having been made therefor. The order of the state board of tax commissioners ordering the reassessment of property shall contain an estimate of the cost of making such reassessment and the local assessing officials and county auditor shall not exceed the amount so estimated by the state board of tax commissioners.” Acts of 1937, p. 62.

It will be noted that, from the original enactment of Section 152 through all of its various amendments, there was a provision placing the expense of a reassessment ordered pursuant to said Section 152 on some particular unit or units and providing that such expense should be paid by the proper officer out of money not otherwise appropriated and without any other specific appropriation. I think, as a matter of fact, that provision of the section constituted, in itself, an appropriation. However, up until the amendment of 1937, there appears to be no ceiling. In 1937 it was made a part of the duty of the State Board of Tax Commissioners to place a ceiling on this appropriation, setting out in their order an estimate of the cost of the reassessment above which the local officers and the auditor would not be authorized to go.

I call attention also to the fact that, during all this period, usually as a part of the 1919 Tax Act, the provision had been made for the fixing of salaries of township assessors and of their deputies. The 1937 Act provided a ceiling, as already indicated, beyond which the local officer could not go in incurring expenses. The question then is first as to whether such appropriations are sufficient and second as to whether the provisions of Chapter 291 of the Acts of 1943 make it necessary for the county council to act on such matter. I think the language referred to whereby the Legislature provided that the expense of a reassessment was to be borne by the particular unit or units being reassessed and providing that the amount as fixed by the Tax Board should be paid without any other specific appropriation is sufficient in and of itself to constitute an appropriation, which, after all, does not depend upon the form of words but as to whether those words contain the authority for the spending of the money
involved. It seems to me that the purpose of these various amendments, up to and including the amendment of 1937 which appeared as Section 2 of the 1937 Act, were put in with the very apparent purpose of preventing any thwarting of the power granted to the Tax Board to make such reassessments. The question is asked as to whether the provisions of Chapter 291 of the Acts of 1943 make any difference. The provision of the 1943 Act referred to is as follows, after providing for the fixing of salaries and per diems for township assessors and their deputies,

"The salaries and per diems provided for herein shall be fixed by the county council and shall be paid subject to an appropriation being made therefor by the county council."

The question as to whether the above provision makes any difference requires a consideration as to whether such provision repeals the special provision provided for the expenses of a reassessment of real estate. There is no express repeal of the specific provision by the 1943 Act, but it does contain the provision that "all laws and parts of laws in conflict herewith are hereby repealed." This language is little, if any, more than a general provision having only the effect of an implied repeal which is not favored in the law. The question is: Is this language intended to make the Tax Board subservient in the performance of its duty of reassessments by the county council denying to such local officers the money with which to do the work, notwithstanding the Tax Board had proceeded in conformity with the law for such reassessments. I do not think such a result was intended. I think the two provisions should be construed together so as to make the provision of the 1943 Act available as a general act within its field and leave untouched the reassessment expense item as it stood before. It will be remembered that the general law upon the subject, familiarly referred to as the county reform act of 1899, long before the passage of the 1943 Act, required prior appropriations in order to authorize payment of most salaries. Acts of 1899, Chapter 154, Section 22, page 343, Burns' Indiana Statutes Annotated, 1933, Section 26-522. This was a part of the general law on the subject of appropriations when the provision which we have been considering
appeared in various amendments of Section 152 of the Tax Act of 1919. It, of course, modified the general law on the subject of appropriations and I think it is fair to say that the subsequent general law on the subject of salaries and appropriations enacted in 1943 is modified by the provision of the tax law referred to just as it had modified the prior existing law.

In this connection, I call attention to the language used in Section 273, 2d edition, of Lewis' Sutherland Statutory Construction:

"'A later law which is merely a re-enactment of a former does not repeal an intermediate act which has qualified or limited the first one, but such intermediate act will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first.'"

See also the case of Gaughan v. State, 187 Ind. 334 at page 337, where the Court said:

"It is a rule of statutory construction that a later law which is merely the re-enactment of a former law does not have the effect of repealing an intermediate statute which has qualified or limited such former law; but such intermediate act will remain in force to limit or modify the re-enacted law to the same extent that it did the first."

Of course, it is not contended that the 1943 Act covered the entire field of Section 26-522, supra, but, in so far as it goes on the subject of appropriations, it is identical with the provision of Section 26-522, supra.

The question which I am considering is double. As to the first part, that is the fixing of the salaries of assessors and deputy assessors, that is expressly the duty of the county council under the 1943 Act, and the amendments of the Tax Law which we are considering do not deal with that subject. In my opinion, therefore, the first part of the question now under consideration, which is the third question submitted by you, is in the affirmative. The answer to the second part is in the negative.
Your next question is as follows:

"In 1941 the State Board of Tax Commissioners adopted a general resolution for the reassessment of all the real estate of Marion County and provided that such reassessment be held in 1943, but no definite date was fixed for the completion of the assessment of improvements upon the real estate, and no estimate of the cost of such reassessment was fixed by the State Board of Tax Commissioners. A copy of such order is transmitted herewith. We would appreciate your opinion as to whether this order is valid in its present form."

Upon the basis of my conclusion in earlier parts of this opinion, this question should be answered to the effect that such order is not valid in its present form.

Your next question is as follows:

"Clause (b) of Section 64-1019, supra, provides for the filing with the State Board of Tax Commissioners, on or before March 31st of any year, of petitions by individuals for the reassessment of their individual real estate. Assuming that there exists a valid outstanding and incompletely general order by the State Board of Tax Commissioners for a reassessment of real estate in the particular taxing unit where individual real estate owners have filed individual petitions, can a valid order for reassessment upon the individual petitions be made?"

I do not think the statute contemplates that there may be a reassessment of an entire taxing unit and while the same is pending an assessment of real estate limited to individual ownership. The above question is answered in the negative.

Your next question is as follows:

"Under Section 64-1019a, supra, can the State Board of Tax Commissioners compel the payment by county officials of the costs of assessing real estate, although the county council refuses to make any appropriation and refuses to fix the per diem and the salaries of
This question is in two parts. In answering the first part, I desire to say that, upon the basis of this opinion, no appropriation by the county council is necessary. However, I think the right and duty devolves upon the county council to fix the per diems and salaries of assessors and deputies and I do not think your Board has anything to do with that particular feature. The answer to the second part of the question is, therefore, that your Board has no authority in the fixing of compensation of assessors or of their deputies but the party performing the service can compel the issuance of warrants by the proper county official for the payment of the costs including salaries within the limitation fixed by the Board in its order without an appropriation by the county council.

**INSURANCE COMMISSIONER:** Deposits by Indiana Insurance Companies in banks within foreign state, but not required by law, whether such companies are entitled to credit for same in making up their deposit liability.

May 14, 1943.

Hon. Frank J. Viehmann,
Insurance Commissioner,
State of Indiana,
Indianapolis, Indiana.

Dear Mr. Viehmann:

This will acknowledge receipt of your letter of May 1, in which you request an official opinion as follows: