INDIANA STATE FAIR BOARD: Whether Board is governed by Chapter 59 of the Acts of 1941 or whether same is governed strictly by the State Fair Law of 1921.

May 28, 1943.

Honorable Guy Cantwell,
Secretary-Treasurer,
Indiana State Fair Board,
Indianapolis, Indiana.

Dear Mr. Cantwell:

I have before me your letter in which you request an official opinion as to whether your Board should be governed by the provisions of the 1921 State Fair Act (Burns' Indiana Statutes Annotated, 1933, Section 15-202; Chapter 77, Acts of 1921) or by Chapter 59 of the Acts of 1941 insofar as those Acts provide for expense reimbursement allowances.

The applicable part of the State Fair law provides as follows:

"* * * The members of the board shall receive ten dollars ($10.00) per day for each day actually employed and not to exceed five dollars ($5.00) per day for expense while actually employed and three cents (3c) per mile for traveling expenses. * * *" 

Burns' Indiana Statutes Annotated, 1933, Sec. 15-202.

The applicable part of Chapter 59 of the Acts of 1941 provides as follows:

"In all accounts rendered for traveling expenses, receipted bills for each item, except railroad fare, shall be submitted: Provided, however, That the budget committee is hereby authorized to fix and prescribe per diem or per diems in lieu of traveling expenses, other than transportation, in such amounts as they deem proper and equitable but in no case shall such per diem exceed six dollars per day. When such per diem is fixed receipted bills for each item will not be necessary. Per diem when fixed shall include meals, lodging, and all other traveling expenses except transpor-
tation. It will be sufficient in items covering railroad fare to verify same, if advisable, by referring to published tariff rates, and auto transportation shall be at the rate provided in the appropriation act. Constructive charges shall be eliminated from all vouchers, and under no circumstances shall the appropriation of the succeeding fiscal year be anticipated by predecessor."


The last above quoted provision is an amendment of Section 2 of an Act entitled,

"AN ACT for the more perfect auditing of moneys disbursed by the different Departments of State Government."

which was approved March 6, 1897, and is found in the published Acts of that session on page 175.

Acts of 1897, page 175.

The Act of 1897, supra, may be briefly summarized as follows: Section 1 provides that the disbursement of moneys for any purpose by the Departments of State Government shall be by vouchers specifically itemizing in every particular the different purposes for which the treasury warrant is authorized. It also provides that, when vouchers are presented to the Auditor of State for warrants, they shall be accompanied by itemized accounts and statements. Section 2 of the 1897 Act, the section which was amended in 1941, relates to the rendering of accounts for traveling expenses and requires that a receipted bill for each item except railroad fare shall be submitted. Section 3 of the 1897 Act provides that in the accounting for moneys expended, the items of the Appropriation Act shall be literally followed, and in no case shall moneys appropriated for one specific purpose be diverted for the purposes of another. Section 4 of the 1897 Act authorizes the Auditor of State to refuse to issue a warrant where the provisions of the preceding sections are not literally and specifically followed and where the terms of the Appropriation Act have been violated.

Acts of 1897, page 175.
With this law in effect the State Fair Board Act of 1921 was enacted, creating a Board of sixteen members, one of whom to be selected from each of the congressional districts in the state and the remaining members to be appointed by the Governor in such a way as to make an equal division in membership so far as possible between the leading political parties. In addition to these members, the Governor and the Dean of Agriculture of Purdue University are ex officio members of said Board. It is provided in said Act that the Board shall annually elect from its own members a president and vice-president and may employ a secretary-treasurer or secretary and treasurer and a superintendent of grounds and buildings. The salary of the secretary-treasurer is to be fixed by the Board subject to the approval of the Governor. Other sections provide for the state to take title to the real estate of the predecessor, Indiana State Board of Agriculture, and subsequent legislation provided that this property should be held by the state as trustee “for the interest of agriculture and allied industries as expressed in the said instrument of conveyance.” Section 6 of the 1921 Act set out the powers of the Indiana Board of Agriculture with relation to the property thus held by the state as trustee, among which was the power to hold a state fair. Included in this Act of 1921 was the provision, already quoted, on the subject of per diem for services of the members of the Board, allowance for expense reimbursements except traveling expenses, and providing a definite amount per mile for traveling expenses.

I think sufficient has been said to indicate very clearly that the 1921 Act was an Act dealing with a special subject and outlining provisions applicable only to it, while the 1897 Law was a general law designed at the time it was written to apply to all disbursements made pursuant to appropriations made by the appropriation act and over which the Auditor of State had very definite and specific authority.

Whatever view of the Act may be taken as to the applicability of the 1897 Act to the State Fair Board, under well-settled rules of statutory construction, the State Fair Board Act would take precedence and modify the prior general statute insofar as any conflict existed. It seems to me, however, that the State Fair Board Act of 1921 is not encompassed within the terms of the Act of 1897. The Act of 1897
repeatedly refers to the Auditor of State and the issuance by
him of warrants in disbursing moneys allowed to the several
departments by the appropriation act. Under the State Fair
Act, however, the Fair Board is not included as the recipient
of appropriations in the general appropriation act, and its
expenses are not paid through warrants issued by the Auditor
of State. The only place in which the Auditor of State
figures
is that the annual report of the Board is required to be placed
in the hands of the Auditor of State for examination, it being
provided that all books and accounts shall be subject to in-
vestigation by the State Board of Accounts; and the provision
that the money raised from the tax levy for the payment of
bonded indebtedness and interest is to be turned over to the
Board on a warrant drawn by the Auditor of State on the
state treasury from time to time as demanded by the Board.

Burns' Indiana Statutes Annotated, 1933, Sections
15-206 and 15-213.

In other words, since the Fair Board Act contemplates an
entirely different system of disbursement by means of checks
issued by the Board, the corrective and restraining powers of
the Auditor, as set out in the 1897 Act, would be entirely
inappropriate and, in fact, inapplicable.

For the reasons already given, I think it must be held that
the salary and expense reimbursement as provided in the 1921
State Fair Board Act are in no sense included in the provi-
sions of the 1897 Act nor in the amendment as set out in the
1941 Act. If, however, such 1897 Act be regarded as applic-
able, the same result would be reached by the application of
the familiar principle that an intermediate act upon a special
subject which modifies a prior general act will be held to
modify a later reenactment of the general act in the same way
in which such intermediate act modified the original general
act. In other words, whatever view of the case may be taken, I
think the provision of the Fair Board Act applies and is still
in full force and effect.

You submit the further question as to whether the Board
has the responsibility and right of its discretionary manage-
ment of Fair business subject only to the Governor's approval.
This question was answered in my letter to you bearing date
of February 10, 1943.