STATE BOARD OF ACCOUNTS: County council, authority of county council to make budget appropriations authorized under the 1943 Act which is not yet in force.

August 17, 1943.

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 August 12, 1943, which reads as follows:

"A question has been submitted to this office as to the authority of a Common Council of a city to make an appropriation in the budgets of 1944 or a tax levy to be collected in 1944, for a purpose or function wherein the authority to do so is contained in an Act of the General Assembly of 1943, and when such Act does not carry an emergency clause and is not yet in force.

"It appears that several of such Acts will not become effective until after the Common Council has passed the budget ordinance.

"I would like to have your opinion on the question of whether appropriation, by the Common Council of a city, of funds not authorized by law at the time such appropriation is made, would be invalid."

Section 28 of Article 4 of the Indiana Constitution reads as follows:

"No act shall take effect, until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body, of the law."

Since the acts referred to in your letter do not contain an emergency clause, as provided by the above section of the
Indiana Constitution, such acts will not become effective as laws until they have been distributed as required by law and the governor has issued his proclamation, proclaiming the 1943 acts to be in full force and effect.

Answering the specific questions propounded by your letter necessitates a determination as to the validity and legal effect of any action taken by any taxing body in anticipation of the provisions of the 1943 acts prior to the effective date of such acts.

The law applicable to this question is well stated in Corpus Juris in the following language:

"* * * The general rule is that a statute speaks from the time it goes into effect and not otherwise, whether that time be the day of its enactment or some future day to which the power enacting the statute has postponed the time of its taking effect. * * * While a statute may have potential existence, although it will not go into operation until a future time, until the time arrives when it is to take effect and be enforced, a statute which has been passed by both houses of the legislature and approved by the executive has no force whatever for any purpose. Before that time no rights may be acquired under it and no one is bound to regulate his conduct according to its terms, and all acts purporting to have been done under it prior to that time are void."

39 Corpus Juris, paragraph 673, pages 1137-1138; Smith v. Thomas, 317 Ill. 150, 147 N. E. 788; Dunne v. County of Rock Island, 283 Ill. 628, 119 N. E. 1103; People v. Rose, 166 Ill. 422, 47 N. E. 64; Price v. Hopkin, 13 Mich. 318.

The Supreme Court of Indiana has declared the same rule by holding that an act of the legislature must be construed to speak and operate from the time it takes effect in exactly the same manner as a will speaks and operates from the time of the death of the testator.

Evansville etc. R. R. Co. v. Barbee, 59 Ind. 592 on 593;
Burns' R. S. Pocket Supplement 1943, Section 64-1331, which is the Budget Act, expressly provides:

"* * * When such state board of tax commissioners in its order shall order a reduction in the levy it shall indicate the item or items in the budget affected by such reduction, and the budget as set out by the municipal officers in the published statement or as modified on hearing by the state board shall limit the expenditure for the year, except in cases of casualty or accident or extraordinary emergency. 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 hereinafter 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. * * *"

Under the above section of the statute the local taxing authorities are given ample authority and opportunity to make the necessary appropriation required by any 1943 acts after such acts become effective.

However, it is my opinion that if there is no statute in force at the present time prohibiting appropriations which may hereafter be required under the 1943 acts when they become effective, there is no logical or legal reason why such items might not be included in the annual budget under the present law, but if such appropriations are prohibited or for-
bidden by any statute now in force under the rule above stated, such appropriations should not be included in an annual budget adopted under the present existing statute. Therefore, in answer to your specific inquiry, it is my opinion that if an appropriation of funds by a common council of a city is contrary to any law now in force, the same cannot be legally made until after the acts of 1943 become effective, and then the procedure required by Section 64-1331 must be strictly followed.

DEPARTMENT OF CONSERVATION: Hunting, fishing, and trapping licenses, whether existing laws on the subject are available to soldiers who have been transferred to the enlisted reserve corps.

August 17, 1943.

Hon. Hugh A. Barnhart, Director,
Department of Conservation,
140 North Senate Avenue,
Indianapolis, Indiana.

Dear Sir:

Your letter of August 13, 1943, received as follows:

“This Department has received a number of applications for free fishing, hunting and trapping licenses from soldiers and others who served in the present emergency on or after December 7, 1941, and who have received from the Government a Certificate of Service whereby they are not discharged but are transferred to the enlisted reserve corps subject to call.

“In view of the provisions in both the 1937 and 1943 Acts requiring such applicants to have an honorable discharge from the service to entitle them to free licenses, will you kindly furnish us with your opinion on this matter and just what our procedure under the circumstances should be.”

Section 33, Ch. 21, Acts of 1937, was amended by Sec. 1, Ch. 266, Acts of 1943, to read in part as follows: