

and unable to teach for a number of years and was thereafter given a contract for further service brings her within the meaning and purview of the statute so as to acquire a tenure status.

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**STATE BOARD OF ACCOUNTS: Filled-in land in Lake Michigan—whether sale price should be covered into General Fund.**

**LAKE MICHIGAN: Whether sale of filled-in land should be covered into General Fund.**

July 18, 1941.

Mr. Otto K. Jensen,  
State Examiner,  
State Board of Accounts,  
Indianapolis, Indiana.

Dear Mr. Jensen:

I have before me your letter in which you state, in part, as follows:

“Field Examiners from our department making an examination of the office of the Auditor of State have brought to our attention the receipt of \$10,442.75 on October 16, 1939, from the Carnegie-Illinois Steel Corporation for the privilege of filling in 417.71 acres of ground then under the waters of Lake Michigan, in accordance with Chapter 91, Acts of 1907.

“This money was receipted into the State General Fund in accordance with a ruling given by your office to Virgil Simmons, Administrative Officer of the Department of Conservation, on October 4, 1939. The ruling held that the money should not be receipted into the Conservation Rotary Fund, but should be credited to the General Fund.”

You further state that prior to the ruling above referred to it had been the practice to credit similar items such as receipts for sale of saline and swamp lands, etc., to a special fund known as “Reclamation of State Lands” and periodically to transfer any money in the fund to the principal of the Common School Fund. This was done under the authority of Section 2 of Article 8 of the Constitution, and especially the following paragraph thereof:

"The Common School Fund shall consist of \* \* \* all lands that have been or may hereafter be granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the Swamp Lands, granted to the State of Indiana by the act of Congress of the twenty-eighth of September, eighteen hundred and fifty, after deducting the expense of selecting and draining the same."

You further state that on July 1, 1939, the balance in the Reclamation of State Lands Fund was \$12,907.40, which had been accumulated since 1929; that during the year \$478.82 was added and on June 29, 1940, the whole amount in said fund and balances of certain other funds were transferred to a special fund known as "Common School fund" on the books of the State Auditor, but that no distribution of said sum has been made to County Auditors, the entire amount remaining in the Treasury of State. At the present time the sum of \$409.79 has accumulated in the Reclamation of State Lands Fund. You submit the following questions:

"1. Should money received from the sale of the privilege of reclaiming submerged lands on the shore of Lake Michigan in accordance with Chapter 91, Acts of 1907, be credited to the General or Common School Relief Fund?

"2. If such money belongs to the Common School Relief Fund, may the Auditor of State, with approval of the Board of Finance, transfer the amount of \$10,442.75 from the General Fund to the Common School Fund to correct the handling of the money received on October 4, 1939, which was in the previous fiscal year without special authority of the General Assembly?

"3. If such money belongs to the General Fund may the Auditor of State, with approval of the Board of Finance, transfer the \$13,386.22, or as much thereof as shall be found to have been paid for the reclamation of submerged lands in Lake Michigan, from the Common School Principal Fund to the General Fund?"

The statutory authority for the filling in and reclaiming of the submerged land under Lake Michigan and within the borders of the State of Indiana is contained in Chapter 91 of the Acts of 1907. Acts of 1907, pp. 126-127.

This Act consists of four sections. Section 4 is the emergency section whereby the Act was put in full force and effect from and after its passage. Section 1 granted the right to reclaim such lands by owners of land bordering upon the waters of the Lake. Section 2 defined the dock and harbor line as being the line that has been or may thereafter be established by the United States, or its proper officials, and made it unlawful to fill in any land, or construct any dock or wharf beyond said dock or harbor line. Section 3 provides the procedure to be followed by such owners to obtain the permission of the Governor to fill in and improve such land as is referred to in Section 1, and thereupon provides as follows:

“\* \* \* upon the filling in and improvement thereof, and the filing of good and sufficient evidence that the same has been done, in the office of the secretary of state, and upon paying the state treasurer the sum of twenty-five (\$25) dollars per acre for the land so filled in, such owner or owners shall receive from the state a patent, \* \* \*”

It will be observed that the language above used does not state that the money received for such land is to be credited to any particular fund in the State Treasury. The statement is simply that it is to be paid to “the State Treasurer” which, in the absence of some specially designated fund, I think, should be construed to mean that it should be paid to the State Treasurer for credit to the General Fund. In other words, I think in the absence of a limitation to a certain fund the above language should be construed to mean that the money thus received should be credited to the General Fund. This conclusion is reached without reference to the provision of the Constitution above quoted so that there remains the determination of the question as to whether the Constitution requires a definite disposition of the purchase price of such land. If it does, then of course, the constitutional provision would prevail and even though the statute would seem to provide otherwise the constitutional provision would take precedence and govern. I do not think, however, that the constitutional provision as to

what constitutes the Common School Fund is in conflict with the statutory provision above referred to.

In your letter you have referred to the fact that it had been the practice to credit similar items such as receipts for the sale of saline and swamp lands, etc., to the fund known as "Reclamation of State Lands." I do not think, however, that the funds arising from the provisions of Chapter 91 of the Acts of 1907 are embraced within the provision of Section 2 of Article 8 of the Constitution, which is the basis for the ultimate crediting of such receipts to the Common School Fund. An examination of Section 2 of Article 8 reveals that the saline fund is expressly designated as belonging to the Common School Fund. The same is true as to the proceeds of the sale of swamp lands, but the lands to be reclaimed under the terms of Chapter 91, *supra*, are neither swamp land nor saline land nor are they granted to the State of Indiana in the ordinary sense of the term "grant." For a discussion of the subject generally as to how the State's title to such lands is acquired see:

Lake Land Co. et al. v. State of Indiana, ex rel.  
etc., 68 Ind. App. 439; Shively v. Bowlby,  
152 U. S. 1.

In view of the above decisions it seems to me that the submerged lands under Lake Michigan within the borders of the State of Indiana do not fulfill the condition of being "granted to the State where no special purpose is expressed in the grant." The language "expressed in the grant" undoubtedly has in contemplation a grant by virtue of some written instrument and I do not find that the submerged land under Lake Michigan was thus acquired by the State of Indiana, and I think, therefore, that your first question should be answered to the effect that money received from the sale of the privilege of reclaiming submerged land on the shore of Lake Michigan in accordance with Chapter 91 of the Acts of 1907, should be credited to the General Fund. The opinion, however, is limited to money thus received and does not include money derived from the sales of swamp lands or of saline lands which, by the express terms of the Constitution, should be credited to the Common School Fund.

The first question, being thus answered, the second question requires no answer.

As to your third question, I see no objection to transferring any part of the fund arising from Chapter 91 of the Acts of 1907 to the General Fund, if it has been erroneously credited to the Common School Fund.

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**STATE HIGHWAY COMMISSION: Advertisement for bids, whether provision of appropriation act may be considered in determining whether advertisement is necessary.**

July 21, 1941.

State Highway Commission of Indiana,  
Mr. James D. Adams, Chairman,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 11, 1941, wherein you call attention to Sec. 6, Ch. 231, Acts 1941 (Biennial Appropriation Act), and the definitions contained in Sec. 1 of the Act, and ask whether the provisions of this Act take precedence over any conflicting provisions contained in the previously enacted Ch. 12, Acts 1941. (Highway Act.)

You particularly refer to conflicts found between the two acts as to awarding contracts pursuant to competitive bids advertised for and received. In Sec. 11 of the Highway Act, *supra*, is found the following:

"It is further directed that all road, bridge, culvert and purchase contracts shall be advertised twice in all daily papers of general circulation published in the capital city of the State of Indiana and that notice of each project shall be separate in itself."

In Sec. 6 of the Biennial Appropriation Act the following is contained:

"The purchase of any of the items included under all other operating expenses, or equipment that may enter into maintenance, repairs or equipment of any institution or department of the state government covered by this appropriation act, shall be by competitive bids as far as it is practicable, and to this end it shall be the duty of the proper authorities to invite