

ALCOHOLIC BEVERAGE COMMISSION: Whether Commission is limited in enforcement activities to appropriation contained in Section 12 of Chapter 30 of 1939 Acts.

January 6, 1941.

Hon. Hugh A. Barnhart,
Excise Administrator,
Alcoholic Beverage Division,
225 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you request an official opinion with respect to certain questions arising out of the appropriation made by Section 12 of Chapter 30 of the Acts of 1939, and the appropriation made for "Alcoholic Beverage Commission" appearing on page 215 of the Acts of 1939, which latter appropriation is a part of Section 2 of Chapter 47 of the Acts of 1939, the same being the General Biennial Appropriation Act of the 1939 session.

Section 12, *supra*, is one of the supplemental sections added to the Alcoholic Beverages Act by Chapter 30 of the Acts of 1939, and wherever the word "Act" is used in said section it refers to the State Alcoholic Beverages Act. The above Section reads as follows:

"Section 12. From the revenues arising through the provisions of this act, there is hereby specifically appropriated, in addition to the other appropriations effected by this act, the sum of seventy-five thousand dollars (\$75,000) each fiscal year for the purpose of effecting enforcement of the provisions of this act, the first of which shall be available to that purpose beginning with the fiscal year 1939-1940. Such amount shall be drawn upon only to defray salaries and expense of personnel employed by the commission in the investigation, procurement of evidence, and prosecution of violations of this act, and any balance remaining at the end of one fiscal year shall not revert to the general fund, but shall continue available for that purpose in the following fiscal year and shall be kept separate and apart by the treasurer and auditor of state earmarked as

'Alcoholic Beverage Commission Law Enforcement Fund.' " Acts of 1939, p. 117.

The appropriation appearing on page 215 when the same is related back to the beginning of the Section of which it is a part, reads as follows:

"Section 2. That for the conduct of the state government, its officers, boards, commissions, departments, institutions, societies, associations, services, agencies, and undertakings, and for other appropriations not otherwise provided by statute, the following sums are hereby appropriated for the periods of time herein designated: * * *

"Alcoholic Beverage Commission.

"Operating expense:

"Personal service for the fiscal year beginning July 1, 1939, one hundred fifty thousand dollars (\$150,000).

"Personal service for the fiscal year beginning July 1, 1940, one hundred fifty thousand dollars (\$150,000).

"*Provided, however,* That the salary of the excise administrator shall be five thousand dollars (\$5,000) and the salary of each member of the commission shall be four thousand five hundred dollars (\$4,500) payable from the appropriation for personal service of said commission.

"All other operating expense, available April 1, 1939, for the period ending June 30, 1939, six thousand dollars (\$6,000).

"All other operating expense for the fiscal year beginning July 1, 1939, eighty-five thousand dollars (\$85,000).

"All other operating expense for the fiscal year beginning July 1, 1940, eighty-five thousand dollars (\$85,000).

"Fixed charges for the fiscal year beginning July 1, 1939, one thousand five hundred dollars (\$1,500).

"Fixed charges for the fiscal year beginning July 1, 1940, one thousand five hundred dollars (\$1,500)."

Acts of 1939, pp. 201, 202, 215.

Section 11 of the Biennial Appropriations Act of 1939, provides as follows:

“Sec. 11. Whenever it is provided by statute that any department of the state government shall receive an annual appropriation from any moneys in the state treasury not otherwise appropriated and an amount is herein appropriated for such department, the amount herein appropriated shall be in lieu of such annual or continuing appropriation as heretofore fixed by law.”

Acts of 1939, p. 288.

It will be noted from reading Section 12, *supra*, that it is expressly provided that “any balance remaining at the end of one fiscal year shall not revert to the general fund.” The Section continues to provide that such sum shall remain available in the following fiscal year for the same purpose as set out in said Section and “shall be kept separate and apart by the treasurer and auditor of state earmarked as ‘Alcoholic Beverage Commission Law Enforcement Fund.’”

Your letter indicates that \$6,733.31 was carried over into the Excise Enforcement Fund for the fiscal year 1940-41 from the fiscal year 1939-40 pursuant to the above provision so that in the 1940-41 appropriation, for the purposes set out in said Section 12, there is the sum of \$75,000 plus \$6,733.31, making a total of \$81,733.31.

As I understand your letter, you desire first of all to be advised as to whether you are limited in Personal Service expenditures for the year 1940-41 to the sum of \$81,733.31 in investigation, procurement of evidence and prosecution of violations of the Act. Two questions arise in the consideration of your question. The first is as to whether Section 11 of the Biennial Appropriations Act of 1939 heretofore referred to operates to make unavailable the appropriation in Section 12 of Chapter 30, *supra*.

Upon a consideration of the language used in Section 12 of Chapter 30, *supra*, and the language used in Section 11 of the General Biennial Appropriations Act, I am of the opinion that Section 11 of the General Biennial Appropriations Act does not have the effect of making the appropriation contained in Section 12 of Chapter 30, *supra*, unavailable. It will be noted that the language of Section 11 is:

“Whenever it is provided by statute that any department of the state government shall receive an annual appropriation *from any moneys in the state treasury not otherwise appropriated* and an amount is herein appropriated for such department, the amount appropriated shall be in lieu of such annual or continuing appropriation as heretofore fixed by law.” (Our italics.)

However, the appropriation contained in Section 12 of Chapter 30, *supra*, is not—strictly speaking—an appropriation “from any moneys in the state treasury not otherwise appropriated” but is an appropriation which is to be earmarked for a specific purpose and is to be set up as a separate fund within the general fund. I think it is evident that the appropriation contained in Section 12 of Chapter 30, *supra*, was intended to be in addition to the appropriation for the Alcoholic Beverage Commission as set out in the General Biennial Appropriations Act.

It is my conclusion, therefore, that the \$81,733.31 above referred to is available to the Commission for the year 1940-41, but the Commission is limited in its use of said fund to the defraying of salaries and expense of personnel employed by the Commission in the investigation, procurement of evidence and prosecution of violations of the Alcoholic Beverages Act. The Section expressly so states and there is no room for interpretation.

The next question which arises is as to whether the Commission is authorized to use any unused portion of the appropriation for personal service included in the General Biennial Appropriations Act. In view of the broad language at the beginning of Section 2 of the General Appropriations Act, which has already been quoted, it seems to me that there is no such limitation, especially in view of the definition of personal service which, I think is broad enough to cover all types of personal service. Note the language of Section 1 of the Appropriations Act:

“The term ‘personal service’ wherever used in this Act shall be construed to include all payments made as and for salaries and wages to any and all officers and employees of the state, whether regular or temporary.”

Summarizing, in my opinion, the Alcoholic Beverage Commission is not limited for the fiscal year 1940-41 for enforcement purposes to the sum of \$81,733.31 arising out of the appropriation of Section 12 of Chapter 30, *supra*; but may use in addition thereto any necessary amount remaining in its Personal Service and All Other Operating Expense provided by the General Biennial Appropriations Act, limited—of course—by the fact that Personal Service and All Other Operating Expense are to be kept separate and distinct.

TREASURER'S FEES: For collecting delinquent personal property tax, payable out of funds for which taxes are collected.

January 6, 1941.

Mr. E. P. Brennan, State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein the following question is asked:

“Does the County Auditor have authority to deduct from each fund for which taxes are levied amounts sufficient to reimburse the general fund of the county for the payment to the treasurer of the fees paid him on account of the 6 per cent fees?”

The 6 per cent fees referred to in your question as paid to the treasurer are authorized by the following statutory provision:

“The county treasurers of the state shall in addition to the salary herein provided receive as their property six per cent on all delinquent personal property taxes only collected at any time during each calendar year.”

Acts of 1933, Ch. 21, Sec. 6, as amended by Acts of 1937, Ch. 53, Sec. 1; Sec. 49-1006, Burns' Ind. St. Ann. Supp. 1940.

Your question requires a determination as to whether the six per cent fees authorized in the above quoted statutory provision constitute a charge against the delinquent taxes col-