AUDITOR OF STATE: Authority to pay members of Board of Public Harbors and Terminals out of general Appropriation Act.

March 7, 1940.

Hon. Frank G. Thompson,
Auditor of State,
Indianapolis, Indiana.

Dear Mr. Thompson:

I have before me your request for an official opinion with regard to the expenditures of the $50,000 appropriation to The Indiana Board of Public Harbors and Terminals made by the General Assembly in its Biennial Appropriation Act of 1939. (See Acts of 1939, page 276).

The Indiana Board of Public Harbors and Terminals was created by Chapter 86 of the Acts of 1939. (Acts of 1939, p. 484). Section 5 of this Act provides as follows:

"Sec. 5. The Board may pay each member a per diem of ten dollars ($10) for each day actually spent in the performance of his duties as a member of the board and actual expenses incurred in connection therewith, out of any funds which may come into the hands of said board by appropriation by the General Assembly of the State of Indiana or from other sources. The board may employ such assistants as are necessary to carry out the duties as imposed by this act, such employees to be paid a reasonable amount, commensurate with the services rendered, to be paid out of such funds as may come into the hands of said board by appropriation by the General Assembly of the State of Indiana or from other sources."

The language of the Appropriation Act is as follows:

"To defray the cost of the state's share of construction of a harbor at the mouth of Burns ditch in Porter County, Indiana, upon the following conditions, to-wit: The sum of money herein appropriated shall be available to and expended by the Indiana Board of Public Harbors and Terminals when and if certain private corporations owning land upon and adjoining the site of the proposed harbor or channels connected therewith shall donate the necessary ground, ease-
ments and rights-of-way and shall construct one or more new industrial plants adjoining the site of the proposed harbor, fifty thousand dollars ($50,000); said appropriation to remain available until the purposes for which same is appropriated shall have been completed, and said appropriation shall be expended only upon vouchers of the Indiana Board of Public Harbors and Terminals.”


Your question is as to whether you are authorized to pay out of the above appropriation the expenses referred to in Section 5 quoted above. In my opinion, you are not authorized to pay these expenses out of the above appropriation until and unless the conditions are fulfilled which make the appropriation available. It will be noted that the language of the Appropriation Act is that: “The sum of money herein appropriated shall be available to and expended by the Indiana Board of Public Harbors and Terminals when and if certain private corporations owning land upon and adjoining the site of the proposed harbor or channels connected therewith shall donate the necessary ground, easements and rights-of-way and shall construct one or more new industrial plants adjoining the site of the proposed harbor * * *.” (Our italics.)

The word “when” refers to time and clearly, in my opinion, limits the availability of the above appropriation to such a time as when the conditions shall have been fulfilled.

Section 5 of the Act creating the board is subsequent in point of time of adoption to the adoption of the Appropriation Act and, on that account, it may modify the Appropriation Act; but that fact does not alter the situation because the expenses therein referred to cannot be paid out of any funds except those “which may come into the hands of said board by appropriation by the General Assembly of the State of Indiana or from other sources.” I think the language “come into the hands of said board” is equivalent to “becomes available to said board” from which it seems to me to follow that until the $50,000 appropriation becomes available to the board it is not a fund which has come “into the hands of said board.”
It has been urged that Section 6 of the Act creating the board provides that "this act shall be construed liberally to secure the beneficial intents and purposes thereof." However, I do not think this provision is sufficient to enlarge the provisions of the Appropriation Act so as to make the appropriation available contrary to its express provisions.

In my opinion, there is now no authority and has never been any authority in the statute for the payment of personal services, other operating expenses and legal expenses of the board out of the $50,000 appropriation, supra, until the conditions as set out therein, which make the appropriation available, have been fulfilled.

INSURANCE, DEPARTMENT OF: Foreign Insurance Companies in Indiana prior to 1935 may make the kinds of insurance provided in their charters.

March 14, 1940.

Mr. Frank J. Viehmann,
Insurance Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Sir:

Your letter of March 8th asks for an interpretation of Section 227 of the Indiana Insurance Law of 1935, which reads as follows:

"No foreign or alien company shall be admitted for the purpose of transacting any kind or kinds of insurance business in this state, the transaction of which by a domestic company is not permitted by the laws of this state: Provided, however, That where a foreign or alien company, whose charter provides for the transaction of the kind or kinds of insurance described in more than one class of section 59 of this act, has been transacting business in this state under a certificate of authority issued by the insurance department or insurance commissioner prior to the passage of this act, such company may be issued a certificate of authority under the provisions of this act to make the kind or kinds of insurance provided by its charter. A