
Hon. Frank Mayr, Jr.,
Secretary of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to the status of your appropriation for the printing and distribution of the Acts of the general assembly of 1933, and requesting an opinion as to whether the department of treasury is authorized by existing laws to make available such part of the appropriation for a like purpose for the fiscal year beginning July 1, 1934, as may be necessary to supplement the previous appropriation and enable the payment of the cost of such printing and distribution.

Section 8 of chapter 88 of the Acts of 1933, provides as follows:

"Sec. 8. In order to carry out the provisions of this act, the state board of finance is hereby given authority to make available any part of the annual appropriation, for the succeeding fiscal year, for operating expenses and equipment for any institution or department of state government; Provided, That such action shall be taken by the state board of finance only after such board has determined that an actual emergency exists for making such appropriations available from said appropriations for the succeeding fiscal year; and, Provided, further, That any institution or department of state government actually in need of having such appropriations made available from the appropriations for the succeeding fiscal year shall submit to the state board of finance a statement showing the necessity therefor, the reason for such appropriation being exhausted and an itemized account of the expenditures made from such appropriation."


Similar provisions have been present in the various Biennial Appropriation Acts since 1925. The evident purpose of the provision is to afford some elasticity as to the exact period during which an appropriation may be used in case of emer-
gency, placing upon the board of finance, whose functions are now exercised by the department of the treasury, the authority to meet such an emergency by making available the like appropriation for the succeeding fiscal year. The difficulty presented by your question, however, grows out of the fact that the appropriation for the printing and distribution of the acts is not an annual appropriation, and does not come strictly within the provision of section 8, supra, and the similar provisions of previous Biennial Appropriation Acts. The right of the department of treasury to make available the similar appropriation of the succeeding year is evidently based upon the fact that the line of division between fiscal years is more or less arbitrary and no very good reason exists for deferring emergency matters simply to await the passing of that arbitrary line. The same rule does not apply to a specific appropriation, such as the one under consideration, which is not an annual appropriation, and for that reason, I think it is doubtful whether the legislature intended the authority conferred by section 8, supra, to extend to such a case.

I call your attention, however, to section 13873 of Burns Annotated Indiana Statutes of 1926, which I think is still in effect, so far as the appropriation is concerned, and which provides as follows:

“It shall be the duty of the board of public printing to determine the number of copies of the acts of each session of the legislature that shall be printed and, for this purpose, there is hereby appropriated such sum as may be necessary to print such acts under the printing contract of the state, and the auditor of state is hereby authorized to draw his warrant upon the treasurer of state for such sum allowed, to be paid out of any funds not otherwise appropriated: Provided, The sum to be expended under the provisions of this act shall not exceed the sum necessary to print thirty thousand copies of the acts of each session of the legislature.”

I think the above provision contains sufficient basis from the standpoint of appropriation to authorize the auditor of state to draw his warrant upon the treasurer of state for the proper sum allowed “to be paid out of any funds not otherwise appropriated,” and subject to the provision as to the number set out in said section.