

schools and colleges, physicians and surgeons, *entitled thereto*, as requested in writing, etc. Further on in this same section the legislature sought to and did disclose their intent in said section by saying in substance that these bodies are to be distributed among the several incorporated schools and colleges, as nearly as may be practicable, a certain number of bodies to each college, proportioned to the number of bona fide students enrolled and in regular attendance thereto.

I can see that the duty was cast on your Board by the legislature of making a proper disposition of these bodies after having ascertained that the school or college is bona fide, in other words, one college or school should not receive a number of cadavers which would be out of proportion with the other schools and colleges of the State.

I conclude that a request from Dr. H. E. Vedder, President of the Lincoln Chiropractic College, for anatomical material in the name of the school should be honored; that the Lincoln Chiropractic College is a bona fide school or college within the purview of the statute; that said college should receive anatomical material after having complied with other sections of the statute pertaining to filing of bond, etc., and that the amount of anatomical material or number of cadavers should be ascertained by you for the college in the manner as set out in section 3 of the 1903 Act.

ACCOUNTS, STATE BOARD OF: Depositories for public funds. Citizens Gas & Coke Utility of Indianapolis.

May 6, 1937.

Hon. W. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion in the matter of public funds. Your questions are as follows:

"1. Are the receipts from operation of the gas system operated by the City of Indianapolis, Indiana, through its Board of Directors for Utilities of its Department of Utilities, 'public funds' within the meaning of chapter 3 of Acts 1937?"

"2. Are the officers of the Board of Directors for Utilities of the Department of Utilities of the city of Indianapolis, Indiana, 'local officers' as defined by Chapter 3 of Acts 1937 in that such board is established by law to function as a part of the government of any such municipal corporation?

"3. Do the provisions of section 6 of chapter 3 of Acts 1937 supersede, repeal, or impair, or do they supplement, the provisions of section 5 of chapter 67 of Acts 1931?

"4. Do the provisions of section 8 of chapter 3 of the Acts 1937 supersede, repeal, or impair, or do they supplement, the provisions of section 5 of chapter 67 of Acts 1931, particularly with respect to the selection of banks for deposit of receipts of the utility operated by the board of directors for utilities?

Along with the above inquiries it is understood that the city of Indianapolis is the owner of a gas plant theretofore owned and operated by the Citizens Gas Company. The gas plant system is operated by the city through its department of utilities, as authorized by chapter 78 of the Acts of 1929, which was amended by chapter 67 of the Acts of 1931 (Burns 1933, Sections 48-7101 and 7218). The business of the gas utility is transacted by a board of directors under the business name of "Citizens Gas & Coke Utility." This board has employed a manager and has designated one of its members as treasurer and certain banks have been designated by it as depositories for the money received in the operation of said utility gas property. Expenditures from such funds are made by the officers on authority of the board. It is the funds so received, handled and paid out that is the subject of your inquiry.

A definition of the term "public funds," taken from decisions in cases where statutes other than the Indiana Depository Act of 1937 were being considered, is not especially helpful. However, the substance of those cases which deal with public funds emphasize the fact that such funds must be of a public character and held by officers acting in their official capacity.

See *Andrews v. State Banks of Eagle Grove*, 212 N. W. 742 (Iowa), where library funds were held to be "public funds" and *State v. Jones*, 174 N. E. 783 (Ohio), where

police pension relief funds which are subject to legislative control were said to be "public funds"; also 50 C. J. p. 854.

The new Indiana Depository Act, chapter 3, Acts of 1937, contains the following definition in section 1 (e) :

"(e) The term 'public funds' means and includes all funds coming into the possession of the treasurer of state, treasurer of the board of trustees of any state benevolent, penal or educational institution, and all funds coming into the possession of any state officer by virtue of such office, and all funds coming into the possession of any local officer by virtue of such office, but shall not mean nor include funds coming into the possession of any public officer which are not impressed with a public interest nor designed for a public use."

The terms "local officer," "public officer" and "municipal corporation" are defined as follows in section 1 of the 1937 Act:

"(b) The term 'local officer,' or the plural thereof, means any person or persons elected or appointed to any office in any municipal corporation in the State of Indiana and includes all boards, commissions, departments, institutions and other bodies established by law to function as a part of the government of any such municipal corporation, but the term shall not include any state officer."

"(c) The term 'public officer,' or the plural thereof, means all persons who are state officers or local officers."

"(d) The term 'municipal corporation,' or the plural thereof, means all political subdivisions or municipal corporations of the State of Indiana, including, but not in limitation of the foregoing, counties cities, towns, townships, school cities, school towns, school townships, taxing districts and special assessment districts."

It seems to have been the intent of the legislature to bring within the terms of the 1937 Act all moneys that are "impressed with a public interest" or "designed for a public use"

that come into the hands of any public officer by reason of his official capacity.

Section 36 provides:

“Sec. 36. Other boards or commissions. Notwithstanding any other law of this state providing for the supervision, management and control of any public funds of the state or any municipal corporation, hereafter all public funds shall be under the jurisdiction and supervision of the appropriate board of finance created by this Act and shall be deposited and kept under and pursuant to the terms of this Act and to the order and direction of said board of finance.”

Your questions number 1 and 2 are answered in the affirmative.

As to your questions number 3 and 4, it is noted that the 1937 Act does not expressly repeal the 1931 Act referred to in your inquiry. Is there an implied repeal? In considering that question the following elementary rules of construction must be observed. Acts relating to the same subject should be read as one law, but where there is an irreconcilable conflict between two acts, the last one enacted will prevail. While repeal by implication is not favored, yet where two acts deal with the same subject, an implied repeal is regarded with more favor, however, statutes should be reconciled where it is possible to do so.

Keeping in mind these rules, it is my opinion that the 1937 Act was not intended to repeal section 5 of chapter 67 of the Acts of 1931. It is required by the 1937 Act, however, that the receipts from the operation of the utility be kept in certain designated depositories and, except to the extent that the “Citizens Gas & Coke Utility” does not have the power of designating the depositories, but such designation is to be made by the County Board of Finance, as in the 1937 Act provided, and the banks are subject to the insurance provisions of the 1937 law, no conflict or repeal of the 1931 law was intended, but the 1937 Act was intended rather to supplement the earlier law.

Subject to what I have just said, your questions number 3 and 4 are answered in the negative.