

ACCOUNTS, STATE BOARD OF: Board of Health, specific appropriation 1937 repeals Ch. 212, Acts 1929, as to Milk Tax Fund.

May 25, 1937.

Hon. Ed Brennan,
 Director of Budget,
 Indianapolis, Indiana.

Dear Sir:

I have given careful consideration to the effect of the legislative appropriation provided for the Department of Commerce and Industries and particularly that section which appears on page 567 of the Acts of the Indiana General Assembly, 1937, which applies to the administration, general milk and dairy products and milk tax fund, which contains this provision:

“Such appropriation, insofar as the same is for the use of the State Board of Health, as provided in chapter 212 of the Acts of 1929, is in lieu of any and all appropriations and provisions of said chapter.”

It will be noted that section 3 of chapter 212, Acts of the Indiana General Assembly, 1929, above referred to, levies a license tax on certain individuals and provides that:

“Such tax should be paid to the state treasurer monthly on or before the fifteenth day of each month covering sales of such products made within the preceding calendar month and the proceeds of such tax shall be available to the Indiana State Board of Health for the lawful uses and expenses of the food and drug department.”

The question, therefore, presented is whether or not expenditures may still be made in excess of the appropriation by the Indiana General Assembly, 1937, under the authority conferred in the original Act of 1929. The rule is that claims cannot be paid in the absence of an appropriation made therefor and the constitution prohibits the drawing of any money from the State except in pursuance of the appropriation made by law.

May v. Rice, 91 Ind. 546.

It is perhaps true that the language of the Act of 1929 is sufficiently definite to constitute an appropriation since no specific or definite language is required to constitute such an appropriation. As was said by our Supreme Court in the case of Henderson, Auditor, v. Board of Commissioners, etc., 129 Ind. 92 at page 100:

“It is true, as claimed, that no money can be rightfully drawn from the treasury except in pursuance of an appropriation made by law, but such an appropriation may be made impliedly, as well as expressly, and in general, as well as specific terms. * * * The use of technical words in a statute making an appropriation is not necessary. There may be an appropriation of public moneys to a given purpose without in any manner designating the act as an appropriation. It may be said generally, that a direction to the proper officer, or officers, to pay money out of the treasury on a given claim, or class of claims, or for a given object, may, by implication, be held to be an appropriation of a sufficient amount of money to make the required payments.”

However, the language of the appropriation bill, as passed by the General Assembly in 1937, sets apart a specific amount of money for the State Board of Health in the administration of this particular program and specifically states that:

“Such appropriation, in so far as the same is for the use of the State Board of Health, as provided in chapter 212 of the Acts of 1929, is in lieu of any and all appropriations and provisions of said chapter.”

It is my opinion, therefore, that this expressly repeals the appropriation made by the Act of the General Assembly, 1929. Being an express repeal it is my opinion that there is no authority, therefore, for an expenditure of an amount in excess of the appropriation as fixed in the Acts of 1937.