

would be materially impaired if it permitted the transportation of such animals in vehicles to plants, over which vehicles and plants it could not exercise the supervision provided for in this Act.

In my opinion, the provisions of chapter 278, Acts 1937, constitute a valid exercise by the General Assembly of the police power of the state which, in a legal sense, does not burden Interstate Commerce.

TAX COMMISSIONERS, STATE BOARD OF: County council, appropriation of public welfare funds.

July 19, 1937.

Hon. C. B. Benjamin, Commissioner,
State Board of Tax Commissioners,
231 State House,
Indianapolis, Indiana:

Dear Sir:

I have before me your recent letter which reads as follows:

“On June 1, 1937, the County Council of Owen County met in special session, transacted business and adjourned. No second or subsequent day’s session was held.

“Requests for appropriation of \$20,914.00 were considered and allowed in total amount of \$12,455.00.

“Is the above described action legal?”

“Does section 129, chapter 3, Act 1935, repeal Burns 1933 edition, section 26-521 to legalize action of Owen County Council June 1?”

To answer these two questions will necessitate a consideration of a number of acts and in so doing the answer to your second question will be first considered as the answer to your first question is governed by the answer to your second question.

Section 100, chapter 3, Acts of 1936, provides for the appropriation of additional funds for welfare work by the County Council if all available funds are exhausted, in which case the additional appropriation is deemed an emergency appropriation under chapter 150 of the Acts of 1936. The

relevant portion of section 100, chapter, 3, Acts of 1936, reads as follows:

“If the appropriation for any or all of the welfare services of the county as contemplated in this Act shall be exhausted prior to the close of the fiscal year for which such appropriations have been made, then and in that event an emergency shall be deemed to exist as contemplated in chapter 150 of the Acts of the General Assembly of 1935, and the County Council shall, in the manner prescribed by chapter 150 of the Acts of the General Assembly of 1936, make such additional appropriations as may be necessary to provide for the maintenance of the respective welfare activities of such county welfare board and if the amount of money in the county welfare fund or the general fund not otherwise appropriated is insufficient, the Board of County Commissioners shall borrow the money found to be necessary, in conformity with the provisions of sections 102 to 110, inclusive, of this Act and the County Council shall make the necessary appropriations for any advancements from the county general fund to the county welfare fund.”

Chapter 150, Acts of 1935, provides for the approval of the State Board of Tax Commissioners of all emergency appropriations made by a county council; that portion of said section applicable to this question being as follows:

“In the event the proper legal officers of any municipal corporation shall contemplate to meet the emergency and determine the expenditure of more money for the current year than was set out in detail in the published budget or in the budget as modified as a result of a hearing before the State Board of Tax Commissioners, said officers shall give ten (10) days' notice by publication as herein provided for publication of the budget and proposed tax levy of such additional amount proposed to be expended, fixing a date when the same shall be considered and determined upon, and taxpayers shall have a right to be heard thereon. No such proposed additional amount shall be appropriated or expended unless and until such appropriation and expenditure shall have been approved by

the State Board of Tax Commissioners, as hereinafter provided. * * *”

It is evident from the reading of these two sections that the legislature in passing section 100, chapter 3 of the 1936 Acts, intended that all emergency appropriations for welfare purposes were to be subject to the review of the State Board of Tax Commissioners, the same as any other emergency appropriation. Due to the difficulty of determining when an emergency has arisen as exemplified in the decisions of *Kants v. Board of Commissioners of Howard County*, 204 Ind. 434, and *McKinney v. Helms*, 2 N. E. (2nd) 800, section 100 of the Acts of 1936, declares an emergency to exist when welfare funds are exhausted, which emergency is sufficient in law to require an emergency appropriation. In declaring such an emergency the section specifically provides that appropriations thereunder shall comply with statutory provisions applicable to any emergency appropriation.

Therefore, in my opinion, it was not the legislative intent, by said section of the Welfare Act, to set up a new mode of proceeding in emergency appropriations, but rather to decree when an emergency existed which demanded an additional appropriation. The purpose of said section, not being to provide a new proceeding for emergency appropriations for welfare purposes, it follows that the provisions of the Act are not in conflict with section 26-521, Burns Ind. St. Ann., 1933, and therefore, the procedure for all emergency appropriations as provided for in said section of Burns 1933 were not repealed by section 129, chapter 3, Acts of 1936, the same being the repealing section of the General Welfare Act, the first portion of which reads as follows:

“Section 129. Repeal of existing laws. All laws and parts of laws in conflict with any of the provisions of this Act are hereby repealed and the following acts are hereby expressly repealed. * * *”

In view of the fact that courts do not favor repeal by implication, it cannot be said that section 129, chapter 3, Acts of 1936, repeals section 26-521, Burns 1933, for by no implication can it be said that section 100, chapter 3, Acts 1936, is in conflict with the general provisions relative to emergency appropriations as stated in section 26-521, Burns 1933. Therefore, for the foregoing reasons it is my opinion

that section 26-521 is applicable to emergency appropriation for welfare purposes and your second question is answered in the negative.

The answer to your second question being in the negative, the appropriation by the County Council of Owen County, June 1, 1937, must, to be valid, comply with the provisions of section 26-521, Burns 1933. Said section reads as follows:

“If at any time after the adjournment of the regular annual meeting in September, an emergency should arise for further appropriation(s), for any purpose for which the council is authorized to appropriate by this Act, such further appropriations may be made at a special meeting of the council, on estimates prepared and presented as hereinabove provided, by an ordinance passed by at least a two-thirds ($2/3$) vote of all the members of the council and not otherwise; Provided, however, That in cases where such additional appropriations are made of funds obtained or to be obtained by the issuance and sale of bonds, then such further appropriations may be made upon a finding by the County Council that an emergency or necessity exists therefor. *Each ordinance shall be read upon at least two (2) separate days before its final adoption, except in cases where the aggregate amount of appropriation requested and presented at any such special meeting shall not exceed fifteen thousand dollars (\$15,000.00), it shall not be necessary to read such ordinance on two (2) separate days, but may be passed on in one (1) day.* Provided, That nothing in this Act shall be deemed to alter, repeal or amend chapter 150 of the Acts of 1935.” (Our italics.)

From the facts set out in your letter, it appears that the ordinance for emergency appropriations as requested and presented at the special meeting exceeded the sum of fifteen thousand dollars (\$15,000.00). This being the case, it appears to me that the clear and unequivocal language of the above section demands that such ordinance, as here in question, be read at least two separate days before its final adoption in toto or in part. This section as originally passed was part of the County Reform Act of 1899, the manifest purpose of said Act being to place a check upon the expenditure of county

revenues. Therefore, to interpret this section to require anything but a strict compliance therewith would defeat the purpose of the Act. In my opinion, the italicized words above, especially "appropriation, requested and presented" cannot be interpreted to mean anything other than their clear import; i. e., if a request for additional appropriation be one cent above fifteen thousand dollars (\$15,000.00) then the provisions relative to the readings prior to passage must be complied with. To construe the section otherwise would be to allow the council to reduce the amount requested and presented to just below the maximum and pass the same without giving the taxpayers opportunity to be heard as contemplated by the Act.

The purpose of the County Reform Act and amendments thereto was to place checks upon expenditures of public money, and such purpose, if considered in construing the effect of Section 26-521, Burns 1933, leaves said section open to but one interpretation; that an appropriation of less than fifteen thousand dollars (\$15,000.00) upon a requested and presented ordinance for a larger sum must be read on two separate days prior to the passage thereof.

Therefore, it is my opinion that the appropriation by the County Council of Owen County on June 1, 1937, of \$12,455.00 was illegal as said appropriation was upon a request for \$20,914.00 and was passed upon the first day of the special session of said council.

HIGHWAY COMMISSION, STATE: Right of State Highway Commission to designate speed limits.

July 21, 1937.

Hon. Earl Crawford, Chairman,
State Highway Commission,
Indianapolis, Indiana.

Dear Sir:

I have at hand your inquiry with reference to the right of the State Highway Commission to designate speed limits on state highways passing through cities and towns in the State of Indiana.