

or servant of the executive, including the administrative departments of the state. Since the trustees of Purdue University are by legislative enactment created a body corporate, they constitute a distinct and separate legal entity and cannot be classed as either officers, employees or servants of any department of state.

It is my opinion, therefore, that the trustees of Purdue University should be appointed for a statutory period of three years.

ACCOUNTS, STATE BOARD OF: Gasoline tax funds, appropriation by county council required annually.

September 7, 1937.

Hon. Wm. P. Cosgrove, State Examiner,
Department of Inspection and Supervision,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of September 3 in which you submit the following questions:

“1. Will the balance of county highway funds on hand December 31, 1937, which has not been used for maintenance and repair of highways during 1937, be placed in the construction account of such county?”

“2. Is it necessary for the county council to appropriate motor vehicle highway funds, which chapter 135 of the Acts of 1937 provides shall be used for construction and reconstruction of highways under the supervision of the State Highway Commission? (See sections 4 and 6.) If your answer is in the affirmative, must such appropriation be made at the annual meeting of such council?”

“3. If all of the estimated receipts of a county from the motor vehicle highway account for the year 1938 are not budgeted for maintenance of highways, is the surplus placed in the construction account by the provisions of the Act, or is it necessary for the county council to make appropriation of such surplus for construction, upon request of the Board of County Commissioners?”

In answer to your first question your attention is directed to sub-section (b), section 4, chapter 135, Acts of the Indiana General Assembly, 1937, which reads as follows:

“All funds allocated or distributed to the respective counties which are not used for maintenance shall be used for construction and reconstruction of the highways of the respective counties. Any surplus existing in the maintenance fund at the end of any year shall thereafter be used for construction and reconstruction of such highways by the respective counties.”

It will be noted that the Act above quoted takes effect on the 31st day of December, 1937. It is my opinion, therefore, that funds existing in the maintenance fund on that day are required to be used thereafter for construction and reconstruction purposes.

Your answer to the first question is accordingly in the affirmative.

In answer to your second question, your attention is directed to sub-section (a), section 4, chapter 135, Acts of the Indiana General Assembly, 1937, which reads as follows:

“The funds allocated to the respective counties of the state from the motor vehicle highway account shall be annually budgeted as provided by law, and, when distributed, shall be used for construction, reconstruction and maintenance of the highways of the respective counties, including highways which traverse the streets of incorporated towns, the cost of the repair and maintenance of which, prior to the 10th day of September, 1932, was paid from the county gravel road repair fund excepting where the commission is charged by law with the maintenance or construction of any such highway so traversing such street.”

It is apparent from reading the above statute that it was the intention of the legislature that these funds derived from gasoline taxes should be annually budgeted. I think the term “annually” contemplates the time when the county council is required by law to meet for the purpose of passing upon the annual budgets. I am further confirmed in this view by chapter 110, Acts of the Indiana General Assembly, 1935. This Act provides in part as follows:

“In all other instances, including all payments from any general or special fund to be used by any county or by the Board of Commissioners of any county in the construction, maintenance or repairs of any highways or bridges therein, or for any purpose other than as above stated, no warrant shall be drawn upon, or money paid out of the county treasury, unless an appropriation by the county council therefor has been made, for the calendar year in which the payment is made, and which appropriation remains unexhausted
* * *”

Our Appellate Court, in passing upon this particular legislation, spoke as follows:

“We find nothing in the Acts of 1923, *supra*, nor in any subsequent legislation enacted prior to the bringing of this action, which would seem to indicate that it was the legislative intent to limit the use of funds distributed to a county from gasoline and motor vehicle taxes to such amounts as the county council of the county might appropriate for the construction, maintenance, or repair of county highways. The legislature itself provided that the moneys so allotted ‘shall constitute a special road fund,’ and there is no provision in either of the statutes heretofore mentioned which requires an appropriation by the council or a petition by freeholders or voters of the county before the Board of Commissioners can lawfully use such funds for the purposes for which they were allocated to the county. That these funds might be used by Boards of Commissioners of the several counties of the state on their own initiative, and in the exercise of a sound discretion, for the construction, maintenance, or repair of county highways, seems clear from the language of the statute and the failure of the legislature to place any limit on the right of such boards in the use of such funds for any of the purposes for which said funds were provided by the state. There was a legislative appropriation of these funds for specific purposes, and none other was required until the legislature itself determined otherwise. In this connection we deem it proper to note that the legislature

of 1935 (Acts of 1935, Chap. 110, page 407) decided on a change of policy, *and since this law became effective an appropriation by the county council of these 'special road funds' is necessary.*"

Williams, et al., v. Willett, et al., 1 N. E. (2d) 664, 670.

It is my opinion, therefore, that in view of the above provisions the duty rests upon the county council to appropriate these funds to the uses provided by statute, and this is true both as to funds for maintenance of highways as well as funds for the construction of the same.

It is my opinion, therefore, that as to any surplus remaining in any of these funds, additional appropriations by the county council will be required before such funds could be expended for any purpose.

MOTOR VEHICLES, BUREAU OF: Authority to issue title on motor vehicle repossessed by a mortgagee under a chattel mortgage.

September 9, 1937.

Hon. Benjamin Friedman,
Chief Title Clerk,
Bureau of Motor Vehicles,
State House,
Indianapolis, Indiana.

Dear Mr. Friedman:

I have before me your letter of September 3, 1937, in which you request an official opinion concerning your authority and duty in the issuance of certificates of title in cases where finance companies have found it necessary for them to repossess a motor vehicle. You state that you have always honored an application for certificate of title when accompanied by a certificate of repossession in the form prescribed by the Bureau of Motor Vehicles in the case of a repossession pursuant to the terms of a conditional sales contract. You state further that this conclusion was based upon the theory that the title remained in the vendor.

As I understand your letter, the inquiry now is as to whether you are authorized to follow the same rule in case