

extent of permitting and authorizing an election or appointment at a latter day than that named in the law, where the body whose duty it is to elect or appoint on a day certain neglects to perform the duty and the obligation still remains.' ”

The same proposition is announced in a number of cases cited in *State v. City of Buchanan*, 123 S. E. 182.

It is my opinion, therefore, that this duty is a continuing one and mandate might lie if the council neglects to discharge this duty.

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**PUBLIC INSTRUCTION, SUPERINTENDENT OF: Special school funds, authority of city school boards to interchange budget items.**

March 25, 1937.

Hon. Grover Van Duyn,  
Assistant Superintendent of Public Instruction,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge your letter of March 24th submitting the following question:

“The city of Evansville is unable to secure funds from outside sources to rehabilitate the school buildings and equipment due to the flood. A careful investigation has shown that certain accounts in the budget will show a balance at the end of the fiscal year. May the School Board under the provision of Senate Bill No. 154, passed by the 1937 session of the Legislature, transfer certain sums from accounts in the budget which will be unexpended to capital outlay accounts for the purpose of this rehabilitation work?”

Section 8 of Senate Bill No. 154, approved March 6, 1937, contains the following provision:

“Every such board of school trustees shall have, as respects the levy of taxes by it, power annually to levy such amount of taxes as in the judgment of such board, made matter of record in its minutes,

should be levied to produce income sufficient to conduct and carry on the school and library work committed to such board, and it is hereby made the duty of such board annually to levy a sum sufficient to meet all payments of principal and interest as they will mature in the year for which such levy is made on the bonds, notes, or other obligations of such board, and the fund arising from any levy made by such board shall be known as its 'Special Fund.' Such special fund may lawfully be used by such board for any school, library, administrative or other purpose within the scope of the duties of such board, as imposed by law, with complete interchangeability of the several budgetary items comprising such 'Special Fund' in order to provide funds with which to meet necessary and unforeseen contingencies, without complying with the provisions of chapter 150 of the Acts of the General Assembly of 1935."

It will be noted that the organization of the Board of School Trustees, as mentioned in the above section, does not become operative until after the first day of August, 1937. The question therefore presented by your inquiry is whether or not the present School Board of the city of Evansville has present authority to interchange the several budgetary items of their present special school fund to meet their emergency created by the recent flood.

It is my opinion that the above quoted Act does not warrant such an interpretation. It is my opinion that the special fund mentioned in the above section can only apply to the budget which will be levied by the Board of School Trustees after their organization in August, 1937.

It is my further opinion that if the present school officials desire to expend any funds now appropriated in excess of the items set forth in their published budget for the year 1937 they should first comply with the requirements of chapter 150 of the Acts of the Indiana General Assembly, 1935.