ACCOUNTS, STATE BOARD OF: Dog tax funds, manner of distribution of surplus in county fund.

March 27, 1937.

Hon. Otto Jensen,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your request for an opinion as to the proper manner for distribution of county dog tax funds, pursuant to the recently enacted legislation as evidenced by House Bill Number 120, passed by the Indiana General Assembly, 1937.

The former law in force on March 8, the same being the second Monday in March for the year 1937, provides that:

“When it shall so occur on the first Monday of March of any year in any township in the State of Indiana that said fund shall accumulate to an amount exceeding one hundred dollars ($100) over and above orders drawn on the same, the surplus aforesaid shall be paid and transferred to the county treasurer of the county in which such township is located and the fund arising from such surplus from the townships of the county shall constitute a county dog fund and shall be distributed among the townships of the county in which the orders drawn against the dog fund exceed the money on hand. This distribution shall be made on the second Monday in March of each year.”

* * *

This Act contains the further provision that:

“And when it shall occur upon the second Monday in March of any year that there is a surplus left of the county dog fund after provisions have been made for the payment of all sheep, horses, cattle, swine, goats, mules, chickens, geese, turkeys, ducks, or guineas killed, maimed or damaged of all the townships of the county, such surplus shall be distributed for the schools of the county in the same manner the common school revenue of such county is distributed, except as provided in the next succeeding section.”
It will be noted that the Act of the General Assembly, 1937, contains similar provisions as to the reports required by the township trustees to be made to the Auditor of the county on the first Monday of March of each year as to the amount collected and held in the Township Dog Fund. It contains the further provision, however, that:

“If the dog fund of any township and the share of the county dog fund which is distributed to such township during any year is insufficient to pay for all of the sheep, horses, cattle, swine, goats, mules, chickens, geese, turkeys, ducks, guineas, tame rabbits, or game birds and game animals held in captivity under authority of a ‘game breeder’s license’ issued by the Director of the Division of Fish and Game of the Department of Conservation killed, or maimed or damaged by dogs in such township during such year, any such losses registered and any orders drawn which are unpaid and unprovided for shall be paid out of the State dog account. When it shall occur upon the first Monday in May of any year that there is a surplus left of the county dog fund after provisions have been made for the payment of all sheep, horses, cattle, swine, goats, mules, chickens, geese, turkeys, ducks, guineas, tame rabbits, or game birds and game animals held in captivity under authority of a ‘game breeder’s license’ issued by the Director of the Division of Fish and Game of the Department of Conservation killed, maimed or damaged of all the townships of the county, such surplus shall be paid to the Auditor of State and shall be placed in a separate account of the general fund of the state treasury which shall be known as the state dog account.”

It will be noted, therefore, that a state dog fund is created by the 1937 Act and the authority formerly conferred upon the County Auditor to distribute the surplus of the county dog fund to the common school revenue of the county is repealed and the duty is now imposed upon the County Auditor to pay the surplus left of the county dog fund, as the same is determined to be on the first Monday in May of any year, to the State Auditor, which fund shall be kept separate by the State Auditor and shall constitute a state dog account.
Section 11 of the 1937 Act provides that this state dog account shall again be used for the payment of unpaid claims for stock killed by dogs, to the various townships of the state whose funds were insufficient to pay their claims.

The question is therefore presented as to what disposition shall be made of the funds on hand in the county dog fund of the various counties on March 9, 1937. The 1937 Act expressly repeals the former Act which provided that the county dog tax fund should be transferred to the common school fund of the county and now requires that said fund shall be transferred to the state dog account. It is my opinion that the common school fund had no vested interest in the funds on hand and undistributed by the County Auditors on March 9, 1937, and as a result of such lack of interest in such funds on hand they cannot now claim a right to have such funds distributed, since the authority for such distribution no longer exists.

As was said in the case of Center School Township v. State, ex rel., Board, etc., 150 Indiana, 168—

"The fund out of which the money in dispute was distributed to appellant was collected and accrued under legislative authority, and, in a legal sense, was the property of the State, and the surplus certainly was subject to be disposed of or applied by legislative authority to any public purpose not inconsistent with the constitution. Appellant is a public corporation. The creature of the legislature; or, in other words, but an instrument in the hands of the latter to carry out its will in regard to the common school system of the State, and therefore at all times, in respect to the control or disposition of its funds, it is subject to the will of the law-making power, provided, of course, that such will must not be so exercised as to disturb existing contract rights."

In view of the above authority it is my opinion that if the County Auditors failed, on or before the 9th day of March, 1937, to make the distribution of the funds in the county dog tax fund to the common school fund of the county the repeal of the law now has taken away such right.

It is my further opinion, therefore, as to funds on hand in the county dog tax fund on March 9, 1937, the same shall now be retained until the first Monday in May and on such date shall be paid to the Auditor of State.