1970 O. A. G.

OFFICIAL OPINION NO. 1

January 30, 1970

Hon. Phillip E. Gutman
Indiana Bank Building
Fort Wayne, Indiana 46802

Dear Senator Gutman:

This is in response to your letter requesting my Official Opinion in answer to the following question:

1. Do Acts of 1967, Ch. 252, as found in Burns' (1968 Supp.), Sections 48-1727 to 48-1730 permit cities and towns to create as many as ten separate and independent "cumulative capital improvement funds" for the enumerated purposes of the Act?

ANALYSIS

Rules of statutory construction dictate that words and phrases are to be taken in their plain, ordinary, and usual sense. 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1967 Repl.), Section 1-201; Indiana Department of State Revenue v. Colpaert Realty Corporation (1852), 231 Ind. 468, 109 N. E. (2d) 415. Following this rule leads to the conclusion that the General Assembly intended only one "cumulative capital improvement fund" for each town or city.

The title provides for "the establishment of cumulative capital improvement funds in cities and towns * * *" Section 1 provides that "all cities and towns may establish cumulative capital improvement funds * * *" and Section 2 provides that "The common council of all cities and the board of trustees of all towns may establish such cumulative capital improvement funds * * *"

That the word "funds" appears in the plural form is only correct grammatical syntax. In all other sections the singular form is consistently used. Section 48-1729, supra, provides in part:

"Notice of a proposed levy to provide funds for the cumulative capital improvement fund provided for herein shall be given to all taxpayers in the city or
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...town before the proposed action is presented to the state board of tax commissioners for approval.” (My emphasis)

The tax levy limitation of the first sentence of Section 48-1730, supra, provides a maximum “not to exceed one dollar ($1.00) on each one hundred dollars ($100.00) of assessed valuation on all taxable personal and real property within the taxing district to provide for a cumulative capital improvement fund.” To be consistent under the multiple-fund contention, if that tax levy limitation applied to each of ten (10) such funds, it would be possible to have levies for such number of funds totaling ten dollars ($10.00). This would be ten (10) times greater than the maximum levy provided for the cumulative building fund previously authorized by the Acts of 1961, Ch. 152, Sec. 4. That would be no limitation at all.

In my opinion, the Legislature could not have intended to permit such a possible geometric increase in the tax burden on local taxpayers. The whole purpose in setting a limit on the tax rate would be defeated by such an interpretation. This is strongly persuasive of the proposition that one fund was intended by the 1967 Act to be known as “the cumulative capital improvement fund,” the monies for which could be derived from a single tax levy not to exceed one dollar ($1.00).

In addition, the time limitation for such levy, “not to exceed ten (10) years,” would produce great confusion if as many as ten separate levies for as many as ten separate funds were to be commenced at as many as ten different times. By adherence to the one-fund, one-levy basis, such confusion would not arise.

CONCLUSION

It is, therefore, my opinion that the Acts of 1967, Ch. 252, supra, authorizes the creation by each city and each town of only one “cumulative capital improvement fund.”