

OFFICIAL OPINION NO. 14

July 2, 1969

Hon. Trudy Slaby Etherton  
Auditor of State  
240 State House  
Indianapolis, Indiana

Dear Mrs. Etherton:

This Opinion is in response to your letters of March 28, 1969, and May 21, 1969, raising a series of questions regarding procedures with reference in particular to House Enrolled Act No. 1024, which became effective on March 15, 1969, when signed by the Governor and which is designated as Acts of 1969, Ch. 392, as found in Burns' (1969 Supp.), Sections 68-1234 through 68-1238.

I shall treat the two pages of questions in the March 28th letter for purposes of answering as questions #1, #2, and #3, and the two pages of questions in the May 21st letter as questions #4, #5, and #6.

1. "Section 4, paragraphs (1) and (2) of the act, provides for a distribution according to 'the last preceding United States decennial census.' There are 14 cities and towns in the state which are now incorporated but were not incorporated in 1960. Some of them are listed in the census report as unincorporated areas showing population as follows:

Russiaville	1064
Cedar Lake	5766
Woodlawn Heights	29
Austin	3838
Total	<hr/> 10,697

"All of them are receiving current distributions of monies provided to be made 'according to the last United States census,' which is the census certified at the time of incorporation as follows:

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“Huntertown	722	Santa Claus	46
Burlington	603	Country Club Heights	83
Russiaville	1042	Woodlawn Heights	29
DeMotte	1576	Crane	356
Cedar Lake	7494	Rome City	1395
Wanatah	672	Burns Harbor	1263
Dupont	344	Austin	3971
Total			19,596

“Is the Auditor of State authorized to distribute any of the 7th and 8th cents gasoline tax to these cities and towns on any population basis or must the distribution be delayed until the 1970 census is certified which will more than likely be well into 1971?”

The Act plainly states in Section 4, paragraphs b(1) and b(2), that the distribution shall be on the basis of population according to the last preceding United States *Decennial* Census. The Legislature used the word “decennial,” so it must mean the word “decennial.” More explicitly, that means that your distribution of the 7th and 8th cents of the Indiana Motor Fuel and Fuel Use Tax shall be to those cities and towns which qualify under the last decennial census, which was the census taken in 1960. Those who qualify in 1970 will then be eligible to receive appropriate distribution thenceforth.

2. “Are the cities and towns incorporated since 1960 entitled to receive distribution credit for street mileage as provided in Section 4, paragraphs (1) and (2) regardless of your answer to our question No. 1?”

The answer to your second question is contained in my answer to your first question, above.

3. “Section 5, paragraph (b) provides that counties request their allocations within 4 calendar years and cities and towns within 2 calendar years. The governmental units within the county then have one more year to request the funds. Paragraph (c) then provides for the disposition of allocations ‘not requested for specific projects within the above 3-year period.’

“It appears that the county portion has a total of 5 years, cities and towns 3 years, while each of them include one additional year. To what does the ‘3-year period’ refer?”

Your question arises from an apparent contradiction in the Act. However, the object of statutory interpretation is to determine the intent of the Legislature.

The intent of the Legislature in this instance is readily determined. Section 5 of the Act is concerned with the use of the monies allocated to the various units of local government. Subsection (a) sets out the condition to be met by the local units in using the allocations. Subsection (b) sets out the time in which the allocations are to be used (4 years by counties, 2 years by cities and towns). Subsection (c) specifies what happens to allocations not used within the permitted time.

In setting out the time in which the allocations are to be used, subsection (b) also provides that, should an allocation not be used in that allowed time, then that allocation will be available for one year to the local units of government occupying the same geographical area as the unit that did not use the allocations. That is, allocations not used by a county will be available to the cities and towns located in that county, and allocations not used by a city or town will be available to the county in which that city or town is located.

Subsection (c) is obviously intended to operate only when the allocation is not used either by the unit of government receiving the original allocation or by a unit of government occupying the same geographical area. This subsection is intended to provide that allocations not timely used by the local units receiving those allocations are to be made available to other local units throughout the state. Thus, even though the subsection specifies only the three-year period applicable to allocations to cities and towns, the subsection should be used as if it stated that monies allocated to local governmental units that are not requested for specific projects within the time limits set out in subsection (b) are to be made available to local units throughout the state.

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4. "Do Sections 3 and 4 of the above Chapter 392, Acts of 1969 refer to the gross amounts collected under the increased rates in the per cent to be deposited and credited to the two accounts?"

Sections 3 and 4 of Ch. 392 of the Acts of 1969 refer to the *gross* amounts collected under the increased rates. The last sentence of Section 3 plainly states that.

5. "If it is your opinion that refunds and costs of collection should be deducted before allocation of the increase in collections, at what point in the deduction of costs should the Primary Highway System and Local Road and Street funds be separated from the Motor Vehicle Highway Fund for allocation to the units of government?"

The answer to question 5 is contained in my answer to question 4, above.

6. "Is it intended that the arterial road and street board to be established pursuant to Chapter 352, Acts of 1969, shall be the authority to pass on eligibility of proposed local projects to receive the 75% of cost from the funds in Chapter 392, Acts of 1969? If this is not the intent, then who would have the authority since the Auditor of State has no engineers to make such a determination? If the Auditor of State receives applications for distribution from the funds provided by Chapter 392 before the road and street board is appointed, who shall make such determination?"

Sections 3 and 4 of Ch. 352, Acts of 1969, clearly set out the allocation procedures for these monies: 55% of the monies collected from the 7th and 8th cents of the Indiana Motor Fuel and Fuel Use Tax shall be deposited in the Primary Highway Special Fund. The other 45% of the gross revenue generated by the 7th and 8th cents of the aforesaid taxes go into the Local Road and Street Account on a monthly basis. Section 4, subparagraph b(1) and (2) further delineates method of allocation. The monies in the Local Road and Street Account shall be allocated to each county on the basis of the ratio of each county's passenger car registrations to the total

passenger car registration of the state. The Auditor shall further determine the suballocation between the county and the cities within the county as follows:

(1) In counties having a population of 50,000 or more, 60% of the monies shall be distributed on the basis of population according to the last preceding United States decennial census and 40% distributed on the basis of the ratio of city and town street mileage to county road mileage.

(2) In counties having a population of 50,000 or less, 20% of the monies shall be distributed on the basis of population according to the last preceding United States decennial census and 80% distributed on the basis of the ratio of city and town street mileage to county road mileage.