

OPINION 48

a patient on a one day excursion without formal leave would remain an inmate of the institution. However, he would not remain an inmate under the definitions which have the connotation of "confinement." Should such a person be considered an "inmate," the only emergency medical or hospital services for which the State of Indiana would pay an out-of-state hospital would be those furnished by a public hospital with lower daily charges than a state-owned or operated hospital, pursuant to Section 4 of the 1947 Act, Burns § 52-1134.

You have informed me that the need for emergency medical services for patients on an out-of-state excursion has not yet occurred, but that you want to be prepared to handle any such emergency as it may arise. Therefore, it is my opinion that you would be wise to prepare for such possible emergency by giving formal leaves of absence, or convalescent leave, to each patient on such an excursion.

OFFICIAL OPINION NO. 48

November 27, 1968

TAXATION—MUNICIPAL CORPORATIONS—Payments of inheritance taxes—Marion County Treasurer as required to pay amount retained by county to Mass Transportation Authority of Greater Indianapolis.

Opinion Requested by Mr. Richard L. Worley, State Examiner, State Board of Accounts.

This is in reply to your request for an Official Opinion in regard to the following question:

"Is the 8% retained by Marion County on inheritance tax collections and required to be paid to the county

general fund, pursuant to the provisions of Acts 1957, Chapter 318, Section 1 (Burns' 7-2407), required to be paid by the county to the Mass Transportation Authority on and after the effective date of Acts 1967, Chapter 311?"

The Mass Transportation Authority Act, Acts 1967, ch. 311, § 19, the same being Burns IND. STAT. ANN. § 36-3449, provides, in part, as follows:

"Financing. (a) In order to provide funds for carrying out the duties, powers and obligations of the Authority, the Authority shall receive the following money on and after the effective date of this Act, except as provided in this section: . . .

"(9) *Any and all money disbursed by the State to the County or to cities and towns within the County as a return to local communities of a portion of the Indiana Inheritance Tax collected by the State in such areas. All such money shall be paid to the Controller of the Authority as it becomes available for distribution.*" (Emphasis added.)

Indiana Inheritance Tax is paid to the county treasurer pursuant to Acts 1931, ch. 75, § 13, the same being Burns § 7-2413 which provides in part:

"The tax in every resident decedent's estate shall be paid to the treasurer of the county in which the court is situated; and said treasurer shall issue receipt in duplicate."

Section 14 of the Act, as last amended by Acts 1957, ch. 318, § 6, the same being Burns § 7-2414, provides for payment of the funds to the State as follows

"Each county treasurer shall make a report, under oath, to the state board of tax commissioners on the first days of January, April, July and October, of each year, of all taxes received by him in the three months next preceding under this act, in resident decedents' estates, and credited to the State of Indiana, stating

OPINION 48

for what estate and by whom and when paid. The form of such report shall be prescribed by the state board of accounts. At the same time the county auditor shall issue his warrant payable to the treasurer of state for such inheritance taxes, interest and penalties as are due to the State of Indiana complying with the provisions of section 7 of this act. . . .”

Section 7 of the Act, as last amended by Acts 1957, ch. 318, § 1, being Burns § 7-2407 provides in part:

“In all counties of the state the court shall appoint the county assessor appraiser in every estate and the county shall receive and the county treasurer shall pay to the county general fund quarterly at the time of making his report and remittance to the Department of State Revenue an amount equal to eight per cent (8%) of the tax assessed and paid, which amount shall be deducted from the tax paid in each estate in which there is found a tax payable by the court.”

In my opinion, the Mass Transportation Authority Act was not intended to control the disposition of the eight per cent of Inheritance Tax collections retained by the county pursuant to the Inheritance Tax Act.

During the same session in which the Legislature enacted the Mass Transportation Authority Act, House Enrolled Act No. 1818 was also enacted, but did not become law because of the pocket veto of the Governor. House Enrolled Act No. 1818, which would have amended the Inheritance Tax Act, provides, in part, as follows:

“Acts 1931, ch. 75, s. 36 is amended to read as follows: Sec. 36. Ninety percent (90%) of the receipts from the inheritance tax imposed by this act which are deposited in the Inheritance Tax Account in the State Treasury pursuant to this act on and after January 1, 1967, shall be distributed to the general funds of the counties from which said tax was received: Provided, however, That the sum of Five dollars (\$5.00) may be allowed to prosecuting attorneys in each case wherein they are required to appear on be-

half of the state under the provisions of Section 15 of this act, said fees to be taxed as part of the costs in case and to be paid by the person or corporation from whom the tax is due: Provided, however, That in any county containing a city of the first class in which there exists a metropolitan thoroughfare or mass transportation authority, created pursuant to statute, that county's share of such money shall be distributed to said authority. . . ."

Section 19(9) of the Mass Transportation Authority Act refers to "any and all money *disbursed by the State* to the County." A county treasurer, like all other county officers, performs his statutory duties as an agent of the State. *Applegate v. State*, 205 Ind. 122, 185 N.E. 911 (1933). However, it does not necessarily follow that the eight per cent of Inheritance Tax collections paid by him to the county general fund is "disbursed by the State" within the meaning of the Mass Transportation Authority Act. The phrase "disbursed by the State" appears to be more consistent with House Enrolled Act No. 1818, which provides for distributions to the counties from the State treasury. In my opinion the better construction is that Section 19(9) of the Mass Transportation Act was intended to refer to money distributed to the counties pursuant to House Enrolled Act No. 1818. In seeking the legislative intent expressed in an act, courts may invoke the aid of other acts of the Legislature at the same session, even if such acts were vetoed. *Board of Comm'rs of Hamilton County v. State*, 184 Ind. 418, 111 N.E. 417 (1916).

Section 7 of the Inheritance Tax Act specifically directs the county treasurer to pay the eight per cent to the county general fund. If the Mass Transportation Authority Act requires the treasurer to make a different disposition of the funds, the Acts are in conflict and the later must control. *Hamilton County Council v. State*, 227 Ind. 608, 87 N.E.2d 810 (1949). But a construction effecting a repeal by implication will be avoided, if possible. *Rosenbloom v. Hutchins*, 222 Ind. 590, 55 N.E.2d 315 (1944). The Legislature is presumed to know the provisions of prior laws on a subject, and to repeal them by express terms if repeal is desired. *Collins*

OPINION 48

Coal Co. v. Hadley, 38 Ind. App. 637, 78 N.E. 353 (1906). The better construction, therefore, is the construction giving effect to the specific directive of the Legislature to pay the eight per cent to the general fund.

The purpose of the payment of the eight per cent to the county general fund is to defray the expense of the appraisal of estates for Inheritance Tax purposes. This is further evidence that the 1967 Legislature did not intend that this money be directed to the Mass Transportation Authority. The above quoted provision of section 7 of the Inheritance Tax Act was part of an amendment embodied in Acts 1957, ch. 318, § 1. Section 2 of the same amendment deleted the following language from section 8 of the Inheritance Tax Act:

“Said court shall within ten days from the filing of any schedule, excepting those schedules where a decree finding no tax payable has been entered by the court, transmit the same to the county assessor, who by virtue of his office shall be the inheritance tax appraiser in every estate, and such county assessor shall receive as compensation for his services as appraiser in estates in which there is found a tax payable an amount fixed by the court in addition to his salary to be paid to him as now provided by law; Provided, however, That the court shall make no allowance in excess of fifty dollars as compensation for such services in any one estate appraisal without the approval of the Indiana Tax Board expressed in writing.”

During the same session, the Legislature passed Acts 1957, ch. 319, an act regulating the compensation of certain county officers, including assessors. Section 16 of that Act, the same being Burns § 49-1068, provides that fees received by these county officers shall be paid into the county general fund. In *Combs v. Cook*, 238 Ind. 392, 394, 151 N.E.2d 144, 145 (1958), the Supreme Court of Indiana stated:

“As a part of the plan of adjustment of the compensation paid county officials, Senate Bill No. 37 was introduced and enacted as Chapter 318 of the Acts of 1957. This Act amended the Inheritance Tax Act of

1968 O. A. G.

1931, as amended, and provides that certain fees formerly payable to the county assessor shall, after the effective date of the Act, be paid into the general fund of the county.”

In view of all the foregoing, it is my opinion that the eight per cent retained by Marion County from Inheritance Tax collections is required to be paid to the county general fund, and is not required to be paid to the Mass Transportation Authority of Greater Indianapolis.

OFFICIAL OPINION NO. 49

November 29, 1968

**AGRICULTURE—SEED INSPECTION—Seed sold to
commercial feeders as commercial seed.**

Opinion Requested by Dr. E. D. Schall, State Chemist and
Seed Commissioner.

I am in receipt of your request for an opinion concerning the classification of “commercial feed” and “customer-formula feed” as defined in Acts 1955, ch. 161, as amended, and the inspection fee to be paid thereon.

Your letter explains that a number of commercial growers of meat animals are unable to finance the purchase of animals and feed, and that such growers have entered into contractual arrangements of various natures with the distributors of animal feed. You also enclose a number of sample contracts of various types.

Your basic question is under which, if any, of the various sample contracts submitted does the distributor have to pay the prescribed inspection fee for the gross tonnage of feed