In conclusion and by way of summary, all banks or trust companies, who have either principal offices or branches within a municipal corporation, must be designated as depositories if they file proposals and provide security pursuant to the terms of the Act.

OFFICIAL OPINION NO. 17

April 24, 1968

PUBLIC EMPLOYEES—SALARY OR COMPENSATION—STATUTES—Legislative Salary Increment Plan.

Opinion Requested by Hon. James M. Plaskett, State Senator.

You have requested my opinion concerning the interpretation of that portion of the 1967 Appropriations Act, Acts 1967, ch. 298, § 2, at p. 1069, which reads as follows:

"FOR THE STATE BUDGET
AGENCY

"Department and Institutional
Contingency Fund 3,500,000 3,500,000

"The foregoing department and institutional contingency appropriations shall be subject to allotment to departments, institutions, and all state agencies by the State Budget Agency with the approval of the Governor. Such allocations may be made upon the written request of proper officials, showing that contingencies exist which require additional funds for meeting necessary total operating expenses and merit salary increases.

"PROVIDED, HOWEVER, That such merit salary increases shall be given annually to all merit employees in classes I-VIII and all non-merit employees in classes with ranges of 35 or less."

OPINION 17

You state that you believe that it was the intention of the General Assembly to provide annual salary increases for all state employees within the classes and ranges specified. You further state your belief that the General Assembly intended that "all said employees would automatically receive their raises and would not be dependent upon their supervisors who, as I am sure you are well aware, have used favoritism in the past." Your questions are

(1) Does this statute require that each employee in the classes and ranges mentioned receive an automatic annual salary increase?

(2) If the answer to question No. (1) is Yes, and the amount appropriated by the statute is insufficient to give an increase to each such employee, may other funds of the State of Indiana be used to supplement this appropriated amount to pay salary increases?

(3) May money appropriated by this paragraph of the statute be used to correct "inequities" created by the new state pay plan?

The statute in question refers to "merit" increases, and to "merit" and "non-merit employees, but does not define those terms. However, the designation "merit system" was used in the Administration Act of 1961, ch. 269, Burns IND. STAT. ANN. §§ 60-101 to 60-114. In that Act, the Department of Administration was given the responsibility of administering the personnel policies of the State of Indiana, Act, section 4, as amended by Acts 1967, ch. 279, § 1, Burns § 60-104, and Act, section 10, Burns § 60-110. The latter section transfers the responsibility of administering the State Personnel Act from the State Personnel Bureau to the Personnel Division of the Indiana Department of Administration under the direction of the Commissioner of the Department. That section states:

> "The State Personnel Board shall continue to exercise the powers and duties imposed upon it by the State Personnel Act with respect to the *merit system.*" (Emphasis added.)

The State Personnel Act, Acts 1941, ch. 139, as amended, Burns §§ 60-1301 to 60-1348, created a personnel system

based upon "merit principles." Act, section 1, as amended by Acts 1965, ch. 369, § 1, Burns § 60-1301. The title of the Act reads in part "An Act concerning the establishment of a state personnel *merit* system." (Emphasis added.) Two categories of state employees were created: those in the "state service" and those not in the state service. Employees in the state service are further categorized as in the "classified" or the "unclassified" service, Act, section 8, as amended by Acts 1949, ch. 235, § 3, Burns § 60-1308. Employees in the classified service must qualify in a competitive test for their positions, Act, section 16, as amended by Acts 1949, ch. 235, § 6, Burns § 60-1316, and may be dismissed only for cause, Act, section 35, as amended by Acts 1967, ch. 339, § 1, Burns § 60-1335; see *Indiana State Personnel Bd. v. Jackson*, 244 Ind. 321, 192 N.E. 2d 740 (1963). They are the employees who are subject to the State Personnel Act. The Personnel Division of the Department of Administration, which administers both the State Personnel Act and the personnel system for state employees not in the classified service, has prepared "Personnel Rules for the Non-Merit Service, State of Indiana." (January, 1964). Section 3.1 of Rule III reads as follows:

> "The Non-Merit Service shall consist of the personnel of those agencies and departments and the divisions thereof not subject to the provisions of the State Personnel Act, Chapter 139, Acts of 1941, as amended."

Section 4.1 of Rule IV further refers to the "Merit System" as well as the "Non-Merit Service":

> "The Non-Merit Service shall be administered by the State Personnel Director for the Merit System Service, as appointed under the provisions of the Administration Act of 1961. . . ."

These "rules" have never been promulgated pursuant to Acts of 1945, ch. 120, as amended, Burns §§ 60-1501 to 60-1511, see Administration Act of 1961, section 6, Burns § 60-106. Nonetheless, the words used to indicate which employees of the state are considered "merit employees" or "non-merit

employees" by the Department of Administration. Furthermore, at the time the 1967 Appropriations Act was approved, March 9, 1967, the only state employees for whom classes I-VIII were designated were those in the classified service. Only employees not in the classified service were designated as being in classes with ranges of 35 or less. Therefore, it is my opinion that the words "merit employees" as used in section 2 of the 1967 Appropriations Act, at p. 1069 of the Acts, mean those employees in the classified service of the state and subject to the provisions of the State Personnel Act. The words "non-merit employees" as used in that portion of the 1967 Appropriations Act mean state employees not in the classified service of the state.

It next becomes pertinent to determine the meaning of the words "merit salary increases."

I have found no Indiana case defining the word "merit." However, the Ohio Supreme Court, in *State ex rel. King v. Emmons,* 128 Ohio St. 216, 190 N.E. 468 (1934), defined the word as follows:

> "According to Webster, 'merit' used as a noun means 'due reward or punishment; the quality of deserving well or ill; desert.' The original significance of the Latin root was to get a share. As a verb the word 'merit' means 'to earn by service or performance; to have a right to claim as a reward.' " 190 N.E. at 470.

The adjective "merited" is defined in *Webster's New International Dictionary* (2d Ed. 1949), to mean "deserved."

The State Personnel Act requires that all positions in the classified service be included in a classification plan. The plan shall group all positions in the classified service in classes based on their duties, authority and responsibilities, State Personnel Act, section 10, Burns § 60-1310. The Director of the Personnel Division of the Department of Administration, under the supervision of the Commissioner of the Department and the Governor, is required to prepare and recommend a pay plan for all state employees in the classified service and holding positions for which compensation is not fixed by law, Act, section 12, Burns § 60-1312, Administra-

tion Act of 1961, section 4, as amended by Acts 1967, ch. 279, § 1, Burns § 60-104. The pay plan takes effect when adopted by the State Personnel Board and approved by the State Budget Agency.

> "Such pay plan shall . . . provide, for each class of positions, a minimum and a maximum rate of pay and such intermediate rates of pay as the director considers necessary or equitable." State Personnel Act, section 12, Burns § 60-1312.

The Department of Administration is authorized to "formulate, establish and administer position classifications plans and salary and wage schedules all subject to final approval by the Governor" for agencies of the State of Indiana, Administration Act of 1961, section 4, as last amended by Acts 1967, ch. 279, § 1, Burns § 60-104; section 10, Burns, § 60-110; section 2, Burns § 60-102.

At the time the 1967 Appropriations Act was approved, March 9, 1967, separate pay plans for the "non-merit service" and for the "classified service" were in effect. Each pay plan provided for classifications or ranges, with a maximum and minimum salary for each classification or range, and a number of "steps" of salary increases between each maximum and minimum.

The State Personnel Act further provides:

> "In cooperation with appointing authorities, the director shall establish, and may from time to time amend, standards of performance and output for employees in each class of positions in the classified service or for groups of classes, and a system of service ratings based upon such standards. In such manner and with such weight as shall be provided in the rules, service ratings shall be considered in determining salary increases and decreases within the limits established by law and by the pay plan. . . ." Act, section 28(a), Burns § 60-1328(a).

The following rule was in effect on March 9, 1967, having been adopted pursuant to that statute by the State Personnel

Board to apply to classified service employees, Rule 4, § 4-2(D) as last amended on July 13, 1956, filed September 12, 1956, Burns RULES AND REGS. ANN. § (60-1312)-5, "1957 Ind. Rules and Regs." 143, 144, 145:

> "1. Salary advancement within an established range shall not be automatic, but shall be dependent upon specific written action by the appointing authority.
>
> *Such recommendations shall be based upon standards of performance as indicated by service ratings and other pertinent data.*
>
> "3. Salary increases granted to employees in the classified service, except in county departments of public welfare, shall be made on the basis of the approved increment plan. *Individuals employed in classes which fall in Level VIII or below shall be considered only once each six months for a salary increase. . . .* These time limitations apply to the *regular increase procedure. The amount of increase shall normally be one increment for the salary level involved.* As a reward for exceptionally meritorious service, it is permissible for an individual to be considered for a salary increase at the beginning of any quarterly period, and for the same reason an employee may be given an increase of more than one increment." (Emphasis added.)

The Department of Administration's "Personnel Rules for the Non-Merit Service, State of Indiana, (January, 1964) concerning salary increases are similar in intent, although not identical in language:

> "SALARY INCREASES. Salary adjustments within an established range shall not be automatic but shall be dependent upon specific written recommendations by the appointing authority, which shall be based upon standards of performance as indicated by service ratings or other pertinent data. *Ordinarily, salary increases shall be no greater than one step and shall be made no more often than annually at the nearest established quarterly increase date.* Salary increases

> or decreases resulting from the amendment of the compensation plan shall not prevent within-range increases in accordance with this section." (Emphasis added.) Section 6.6 of Rule VI.

It is apparent, therefore, that at the time the 1967 Appropriations Act was approved, the record of each employee in the classified service was reviewed annually or semi-annually to determine whether he should receive a salary increase. Salary increases within an established class were given to such employees only upon recommendation of the appointing authority based on standards of performance, *i.e.*, merit. Classified (or merit) employees in Classes VIII or below could not be considered for a salary increase more than once each six months, subject to an exception for "exceptionally meritorious service." Each increase was ordinarily to be one step up within the range (an increase of one increment). The "rules" of the Department of Administration indicate a similar policy in use for non-merit (non-classified) employees, with the exception that an increase ordinarily would be given no more than once a year to a particular employee. (The granting of any salary increase would, of course, be subject to the appropriation and availability of sufficient funds to pay it.)

In my opinion, the words "merit salary increases" as used in the 1967 Appropriations Act, Acts 1967, ch. 298, § 2, at 1069, mean the annual or semi-annual salary increases within employees' existing classifications or ranges for which each state employee is considered.

I have been informed that the appropriations in the past for annual or semi-annual salary increases given pursuant to these rules and this policy were part of the money appropriated to the State Budget Agency for "Department and Institutional Contingency Appropriation," *e.g.*, Acts 1965, ch. 191, § 2, at 425. The relevant language in the 1965 Appropriations Act is identical to that in the 1967 Appropriations Act previously quoted except that the 1967 Act adds the phrase "and merit salary increases," to the first paragraph, and adds the proviso which states that merit salary in-

creases "shall be given annually" to "all" employees in the specified classes and ranges.

It is my understanding that for some years preceding 1967, the amount appropriated for such purposes was that sum of money thought sufficient to pay annual salary increases to eighty percent (80%) of the employees of the state. The eighty percent (80%) of employees who received annual increases in any one year was made of those who were recommended by their supervisors as "meriting" such increases. Therefore, whether a particular employee received an increase depended upon a written recommendation of his supervisor, and thus was subject to the discretion of the appointing authority.

In 1961, $2,000,000.00 was appropriated to the Department and Institutional Contingency Fund for each fiscal year. In 1963 and 1965, $2,500,000.00 was appropriated for each fiscal year. That amount was increased by $1,000,000.00 per year in the 1967 Act. Acts 1961, ch. 298, § 2, at 797; Acts 1963 (Spec. Sess.) ch. 35, § 2, at 180; Acts 1965, ch. 191, § 2, at 425; Acts 1967, ch. 298, § 2, at 1069.

The 1967 increase amounted to forty percent (40%) per year over and above the appropriations for the preceding two biennia. The coupling of this increase in the appropriation with the new specific proviso concerning the payment of merit increases indicates that at least some of the increase in the appropriation is intended for salary increases for the twenty percent of employees in the specified classes and ranges who otherwise would receive no merit salary increases during the current biennium.

The pertinent section states that the contingency appropriation is to be used for the purpose of meeting total operating expenses and merit salary increases. Without more, there would be no doubt, in my opinion, that the Department of Administration, through its personnel division, could continue to grant merit salary increases to a percentage of, but not all, state employees in the specified classes and ranges, annually or semi-annually, subject to allotment of the funds to the employing department, institution or state agency for that purpose by the State Budget Agency with the approval

of the Governor. However, the proviso in the 1967 Act is mandatory in its terms.

The Supreme Court has explained the function of a proviso many times. In a case analagous to this one on the facts, the Supreme Court was required to construe a statute which, in section 1, provided that a tax "may" be levied. Section 2 prescribed the collection and disbursement of the tax fund, and concluded with a proviso reading as follows:

> " '*Provided, That in cities having a population of more than one hundred thousand according to the last preceding United States census,* SUCH TAX SHALL BE LEVIED. . . .' " *Morrison v. State ex rel. Indpls. Free Kindergarten,* 181 Ind. 544, 547, 105 N.E. 113 (1914).

The court explained its construction of the statute:

> "In construing statutes courts must give effect, when ascertained, to the legislative intent. In seeking such intent, effect must be given, if possible, to every word and clause of the act. *State v. Weller* (1908), 171 Ind. 53, 85 N.E. 761. Words and phrases must be given their plain, ordinary and usual meaning, unless a contrary purpose is clearly manifested. § 240 Burns 1914, § 240 R. S. 1881. It is proper, in doubtful cases, to resort to the history of the enactment of a statute to discover the legislative intent. *Stout v. Board, etc.* (1886), 107 Ind. 343, 8 N.E. 222.
>
> "The word 'shall' may be given the meaning of the word 'may', and *vice versa,* but the ordinary meaning of either word must be accorded, unless a defeat of the legislative intent would otherwise result. *Terry v. Byers* (1903), 161 Ind. 360, 68 N.E. 596. *The rational and appropriate function of a proviso is to restrain and qualify the preceding clause or clauses in the section in which it is found,* yet, where it is manifest that the legislature intended to give the proviso a scope beyond such section, it may be held as modifying a preceding one. *Stiers v. Mundy* (1910), 174 Ind. 658, 101 N.E. 632; *Interstate Com. Com. v. Baird*

(1904), 194 U. . 25, 24 Sup. Ct. 563, 48 L. Ed. 860, and cases cited; *Georgia R., etc., Co. v. Smith* (1888), 128 U. S. 174, 9 Sup. Ct. 47, 32 L. Ed. 377. In the case last cited it was said on page 181: 'The general purpose of a proviso, as is well known, is to except the clause covered by it from the general provisions of a statute, or from some provisions of it, or to qualify the operation of the statute in some particular. But it is often used in other senses. It is the common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them, to precede their proposed amendments with the term "provided," so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail, thus having no greater signification than would be attached to the conjunction "but" or "and" in the same place, and simply serving to separate or distinguish the different paragraphs or sentences.'" *Morrison v. State ex rel. Indpls. Free Kindergarten supra,* at 549, 105 N.E. at 115, quoted in part with approval in *Indiana Dept. of State Revenue v. Shock's Estate,* 122 Ind. App. 713, 718, 106 N.E. 2d 814, 816 (1952). (Some emphasis added.)

In the *Morrison* case, the Court traced the legislative history of the act as an aid in determining the legislative intent. There, as here, the proviso containing the word "shall" was added by amendment to the bill as introduced. (The 1967 Appropriations Act proviso in question was added to House Bill 1015 by Conference Committee report concurred in by the Senate and the House. See 1967 Senate Journal 1248.) In that case, the office of the proviso was held to be to qualify the operation of the statute by requiring a tax in cities of over one hundred thousand population despite the permissive "may" used in the preceding section of the statute.

The statute in question, pursuant to that rule, must be construed to mean that the allocation of the contingency funds appropriated to the State Budget Agency in the quoted line appropriation may be allocated by the Governor and the

State Budget Agency. Allocations may be made upon the written request of the proper officials, showing that contingencies exist, with the exception that sufficient money must first be allocated for an annual merit salary increase for each and every merit employee in classes I-VIII and all non-merit employees in classes with ranges 35 or less. Since the contingency fund "may" be allocated for other purposes but "shall" be allocated for annual merit salary increases for the specified ranges and classes, it is my opinion that funds appropriated for the Department and Institutional Contingency Fund must first be used for the required annual increases before they may be allocated for other purposes.

It is pertinent to note here that the ranges and classes to which the proviso applies are those in the lowest salary ranges and classes for state employees. Many of the employees who do not receive merit salary increases in a particular year are the same employees who did not receive salary increases in prior years. Although the employee is considered by his supervisor to be sufficiently competent to deserve continued state employment, he may be passed over for salary increases again and again. In my opinion, this is the practice which the proviso was designed to prevent. The Legislature has determined that each employee of the state in the specified classes and ranges who is retained in state employment is entitled to an annual salary increase.

Your second question is whether other funds of the State of Indiana may be used to supplement this appropriated amount to pay merit increases if the amount appropriated is insufficient to give an annual merit increase to each employee in the specified classes and ranges. Basic to your question is the premise that each wage or salary increase given must be a predetermined amount. Otherwise, the money so appropriated and used for merit salary increases could be divided equally or proportionately among the designated employees and other employees of the State of Indiana who are entitled to merit increases under prevailing rules concerning their service. The General Assembly did not specify a dollar or percentage amount for each required increase.

It is true, as previously set out, that the amount of a merit increase for a particular employee has ordinarily been

determined pursuant to a pay plan adopted by the proper state agencies and departments, and has ordinarily amounted to one "step" in the plan current at the time of the increase. See Rules of State Personnel Board, August 17, 1967, Rule 4-2(D)(3) for current rule governing "merit" employees. A pay plan was proposed by the Director of the Personnel Division of the Department of Administration, approved by the Commissioner of the Department of Administration, adopted by the State Personnel Board and approved by the State Budget Agency and the Governor of the State of Indiana, effective July 1, 1967. It is the first state pay plan in which classes and ranges of merit and non-merit employees have been integrated. It was adopted pursuant to the paragraph in the 1967 Appropriations Act, ch. 298, § 2, at pp. 1069-1070, which immediately follows the paragraph quoted on page 99, *supra*. This succeeding paragraph reads as follows:

"FOR THE STATE BUDGET AGENCY—

"Pay Plan Contingency Fund	10,000,000	10,000,000

"The above appropriation is for an integrated state-wide salary plan. All qualified employees would be allowed to advance to the new minimum. Those who have two full years in their present class would be allowed to advance to step B of the salary range assigned, and those with four full years or more in their present class would be allowed to advance to step C of the salary range assigned. The implementation of this plan would place all State employees under one uniform, competitive pay plan."

The new pay plan put into effect by order of the Governor is a great stride forward for the State of Indiana, and reflects the present administration's interest in obtaining the best possible services for the people of the State. The salaries and wages of employees of the State had for years lagged woefully behind salaries and wages in private employment,

and even behind those of other governmental units. The new pay plan is much more adequate.

The new pay plan is preceded by two pages entitled "State of Indiana — Salary Increment Plan," which contain six steps of salary advancements, lettered "A" through "F," for each pay range from 8 through 75. The listed increments are apparently those "steps" by which a merit increase would ordinarily be measured after the effective date of the pay plan, July 1, 1967. (The former ranges 35 or less and classes I-VIII have been integrated into identifiable classes by the new plan.) However, provisions of a pay plan adopted by the executive branch of the government cannot be used to defeat the mandate of the General Assembly. Therefore, if the pay plan establishes "steps" for increases which would, if given, exhaust the amount appropriated and allocated for annual merit salary increases for the specified classes and ranges before each person entitled thereto has received an annual merit increase, then the amount of increase in each "step" specified in the pay plan must be disregarded. The appropriated money must be used to give an equitable increase to each employee the General Assembly has determined is entitled thereto. Therefore, I do not believe that the General Assembly intended in this instance to authorize transfers to this fund from other appropriated funds.

Apparently, the problem of insufficient funds for merit increases has not arisen in prior years. One of the reasons it is arising in this biennium, according to Mr. Jack Booher, Director of the State Budget Agency, is that the new pay plan is having a highly desirable effect. Employees are remaining longer in the employ of the state. Therefore, there are fewer employees at a minimum salary in most classifications than there have been. As a result, the state institutions, in particular, are exhausting the line amounts appropriated to them for salaries at an early date. All, instead of a small part, of their merit salary increase funds have come from the contingency fund in question during this biennium.

Your third question is whether money appropriated to the Department and Institutional Contingency Fund can be used to correct "inequalities" created by the new state pay plan. At p. 979 of the 1967 Acts, as part of section 1 of chapter

298, the term "departmental and institutional contingency appropriation" is defined:

> "The term 'departmental and institutional contingency appropriation' as used in this Act, shall mean an appropriation to be used for necessary total operating expenses, of departments and institutions, and all State agencies, in addition to other specific appropriations made in this Act for such total operating expenses. Said contingent appropriation shall be allocated to the several State agencies as provided herein."

The term "total operating expense" is defined in that same section to include all payments for " 'personal service', 'services other than personal', 'in-state travel', 'out-of-state travel', 'services by contract', 'medical and professional services', 'materials, supplies and parts', 'equipment' and 'grants, subsidies, refunds and awards'." It does not include payments for "land and structures" and "pension fund contributions." Therefore, this fund, together with the "Department Contingency Fund for Equipment" and the "Institutional Contingency Fund for Equipment," appropriated in the same paragraph, constitutes the major contingency fund for the state in the fiscal years affected, except for contingency funds for land and structures and pension funds. (Other contingency appropriations include the preceding paragraph in the 1967 Act of $75,000.00 to the Governor's Emergency Contingency Fund for Total Operating Expense for each fiscal year, and the succeeding paragraph appropriation of $10,000,000.00 per fiscal year to the State Budget Agency for the Pay Plan Contingency Fund. Per diem and maintenance contingency funds are appropriated on p. 1070 of the 1967 Acts.)

In 1961, the then Attorney General was required to interpret very similar provisions in ch. 298 of the 1961 Acts, the 1961 Appropriations Act. He interpreted the 1961 Act as *in pari materia* with Acts 1961, ch. 123, Burns §§ 60-401 to 60-415, which created the State Budget Agency, particularly section 12(f), Burns § 60-412(f), and section 14, Burns § 60-414 thereof. Section 12(f) contemplates that "emergen-

cy or contingency appropriations" will be made to the Budget Agency in succeeding years in definitely fixed amounts. Section 14 reads in part as follows:

> "SEC. 14. Standards to Guide Executive Including Administrative Discretion. (a) *In the absence of other directions, purposes or standards specifically imposed therein,* or otherwise fixed by law, *an emergency or contingency appropriation to the budget agency which is general* and unrelated to any specific agency of the state, *shall be for the general use, respectively, of any agency of the state, shall be for its emergency or contingency purposes or needs, as the budget agency, in each situation, shall determine* and shall fix the amount to transfer, and shall order transfer thereof from such appropriation to the agency of state relieved thereby. From such emergency or contingency appropriations, the budget agency is hereby empowered to make and order allocations and transfers to, and to authorize expenditures by, the various agencies of the state to achieve the purposes, or meet the needs, circumstances and standards following, namely:
>
> "1. Necessary expenditures for the preservation of public health, and for the protection of persons and property which were not foreseen when the appropriations were made by the previous General Assembly.
>
> "2. Repair of damage to, or replacement of, any building or equipment owned by the state or by any agency of the state which has been so damaged as to materially affect the public safety or utility thereof, or which has been destroyed, if such is necessary to discharge the functions of the state or of any agency of the state, and if such damage or loss was caused by sabotage, fire, flood, wind, war, catastrophe or disaster.
>
> "3. Repair of damage to, or replacement of, any building or equipment owned by the state or by an agency of the state which has so depreciated or deteriorated or suffered obsolescence as to become un-

usable, but is required in the discharge of necessary functions of the state or of an agency of the state, and if such depreciation, deterioration or obsolescence was not foreseen at the time appropriations were made by the previous General Assembly.

"4. Emergencies resulting from increase of costs or any other factor or event unforeseen at the time appropriations were made which render insufficient the appropriated funds for food, clothing, maintenance or medical care necessary for the operation of any state institution.

"5. Emergencies resulting from increase in costs or any other factor or event unforeseen at the time appropriations were made which render insufficient the appropriated funds for the cost of instruction or other costs of operation of any of the four state agencies of higher education.

"6. *In addition to and without limitation by the foregoing, supplementation of an exhausted fund or account of any state agency, whatever the cause of such exhaustion, if such is found necessary to accomplish the orderly administration of such state agency, or the accomplishment of an existing specific state project:* Provided, however, That it shall be an express condition of any such supplementation, that such funds shall not serve to authorize a purpose or purposes which were included in the budget bill, or budget bills, to the previous General Assembly but were wholly omitted or excluded from appropriations made by the General Assembly.

"The provisions of this section shall not change, impair or destroy any fund previously created, nor be deemed to affect the administration of any contingency or emergency appropriations heretofore or hereafter made for specific purposes." (Emphasis added.)

My predecessor concluded, in 1961 O.A.G., p. 217, that the Appropriations Act and the Act creating the Budget Agency could be read together and both given legal effect. He stated

that contingency funds appropriated to the State Budget Agency in the Appropriations Act must be used for the purposes set forth in the Budget Agency Act, except as specified otherwise by an Appropriations Act itself. (In 1961, equipment was excluded from the authorized uses of the Department and Institutional Contingency Fund by the Appropriations Act.)

It seems clear to me that it was not the intention of the General Assembly that the entire amount of the Department and Institutional Contingency Fund for 1967-69 should be used for either required or permissive merit salary increases. The costs of unforeseen occurrences, such as the prevention or quelling of riots, the recent postal rate increase, increased costs of various supplies and equipment, emergency repairs, and other emergencies, including exhaustion of the pay plan contingency fund, must also be paid from this fund. However, the first sentence of section 14, Burns § 60-414, states that the provisions of that section concerning the allocation of the contingency fund by the Budget Agency shall be followed only in the absence of other directions specifically imposed in an appropriations statute. In 1967, the General Assembly *has* given another direction, *i.e.*, that annual salary increases shall be given to those employees in the specified classes and ranges. In answer to your first question, I stated that it is my opinion that funds appropriated for the Department and Institutional Contingency Fund must be allocated for the required annual increases before they may be allocated for other permissive expenditures. Therefore, the Department and Institutional Contingency Fund may not be used to "correct inequalities" in the pay plan until the required annual increases have been given.

One suggested solution to this problem is to give a one step salary increase at the beginning of the first or second quarter of 1968-69 to each employee in the specified classes and ranges who did not receive a merit salary increase in 1967-68. No merit salary increases would be given to any other state employee until such time as the specified employees have each received an increase. This suggestion seems eminently fair to me under the circumstances with which we are faced at the moment. Of course, if insufficient funds

remain to grant a full step to each of the employees who have not yet received a mandatory increase, the funds available should be pro-rated among them. These mandatory increases, although given in the 1968-69 fiscal year, would actually be attributable to the 1967-68 fiscal year.

If funds remain for merit salary increases in 1968-69 after the aforesaid merit salary increases have been given, the remaining funds should be first applied to 1968-69 annual merit salary increases for the specified classes and ranges. If insufficient funds are available to give each such employee a full step increase for the year, the increases should be pro-rated so that each such employee does receive an equitable share of the amount available. If funds available permit a full step increase to be given to each such employee, then any amount remaining for 1968-69 annual merit salary increases may be pro-rated among other employees of the State of Indiana. (Fortunately, the apparent shortage of funds in the Department and Institutional Contingency Fund does not mean that no employees of the state other than the specified classes and ranges may receive merit salary increases in the next fiscal year. I have been informed that many agencies of the state do have sufficient amounts remaining in their line appropriations to provide the usual merit salary increases for their employees. An additional factor which may make the fiscal situation in the Department and Institutional Contingency Fund more favorable than presently appears is the fact that, for reasons of fiscal prudence, "projections" of the amount which has been spent from a particular fund the first fiscal year of a biennium are always computed in a manner which will insure that the state will not spend more money than is available. In other words, there is a built-in "safety factor." Therefore, it is certain that when the figures showing *actual* expenditures from this fund are available on or around July 1, 1968, less money will be shown to have been spent than the "projected" amount. Therefore, more money will remain available for expenditure from this fund in 1968-69 than is presently shown by the "projected" figures.)

I feel impelled to comment that the General Assembly could more easily have achieved its desired purpose concerning mandatory annual salary increases for the lower paid

classes of state employees by creating a special fund for such merit salary increases only, and by stating the amount of each increase to be given. The past practice of including an unspecified amount for merit salary increases for every agency of the state in the contingency appropriation which must be used for most emergency situations is, in my opinion, a bad practice. That practice is certainly not binding on future General Assemblies.

The Appropriations Acts contain much substantive law. During my term of office, I have been required to render numerous opinions interpreting various sections of Appropriations Acts. At least in recent years, there has been no provision made for legal advice to the State Budget Agency during the time the appropriations bills are in preparation. Neither is special legal advice provided to the Ways and Means Committees of the House and Senate during a session. The Appropriations Bills have never been reviewed by the Attorney General. I believe that these agencies and the legislative committees are entitled to legal advice while they are engaged in the preparation of appropriations bills. The Office of the Attorney General does not presently have the staff, or the funds to hire sufficient staff, to give the legal advice so desperately needed. Any attorney advising such officers must be experienced in both legislation and the actual operation of state government. I respectfully suggest that you consider introducing legislation in the next session of the General Assembly which would provide funds permitting the Attorney General to secure and provide the sound legal advice necessary to the proper preparation of appropriations bills.