You have recently reported to me that the Adjutant General of the State of Indiana has communicated to you the desire of the State Armory Board to dispose of five armories owned by the State of Indiana and now surplus to its needs. The armories are located at Michigan City, Columbus, Princeton, Greensburg, and Mount Vernon. You have also informed me that the Cities of Greensburg and Mount Vernon have expressed an interest in acquiring the state armory property in their cities. Other state agencies may also desire to use some of the property surplus to the Armory Board. The Mass Transportation Authority of Greater Indianapolis desires to acquire for use as an expressway a portion of the state property used by the State Armory Board. In another area of the state, the State Armory Board desires to use state owned land in cooperation with a city board of aviation commissioners for the construction of airport facilities with federal funds.

It is apparent, therefore, that you and the State Armory Board need a statement of the various ways in which real estate owned by the State of Indiana and used by the State Armory Board may be disposed of when it is no longer needed for the purposes for which it was acquired.

It must be stated initially that

"Public officers have no authority to dispose of the State's lands except such as is conferred upon them by positive statute. Any sales of such lands by them
without such statutory authority are void as against the State, unless they are in some proper way ratified by the State." *State v. Portsmouth Sav. Bank* 106 Ind. 435, 451 7 N.E. 379 (1886).

I quoted that portion of the *Portsmouth Savings Bank* case in my Official Opinion No. 62 of 1967, at p. 419, in which I advised the State Fair Board of the manner in which surplus State of Indiana real property under its custody could be disposed of. In that opinion it was necessary to construe a number of statutes: an 1889 Act which authorized the Auditor of State to sell surplus land, and provided for its transfer, Acts 1889, ch. 162, §§ 6, 11, Burns IND. STAT. ANN. § 62-211, 62-216; the Financial Reorganization Act of 1947, ch. 279, § 12, as amended by Acts 1951, ch. 88, § 1, Burns § 60-1812; the Administration Act of 1961, Acts 1961, ch. 269, § 12, Burns § 60-112; and the Act creating the State Fair Board. The latter need not be considered in this opinion.

The Indiana Military Code, Acts 1953, ch. 187, specifically provides that the State Armory Board shall have the power to sell, lease, convey or otherwise dispose of any State of Indiana real property in the custody of the State Armory Board:

"When the aforesaid state armory board shall receive from the governor information of the disbandment of the organization of the armed forces of Indiana occupying and using an armory, provided by the state under the direction of the armory board, it shall be the duty of said armory board to take charge of such armory; and they are hereby authorized and directed to make sale of such armory, at public or private sale, after due publication for a period of ten days, for the highest price to be obtained for the same, and return the proceeds thereof into the state treasury." section 216, Burns § 45-1916.

"The state armory board is hereby authorized to sell, lease, convey or otherwise dispose of any real property belonging to the State of Indiana and being under the charge and in the custody and possession of the state armory board, whenever, in the judgment
of the state armory board, such real property can no longer be used for the purpose for which it was acquired. Such sale shall be made at public or private sale, after due publication, for the highest price to be obtained for the same. All money derived from the sale, conveyance or other disposition of any such real property shall be paid into the state treasury, but may be used for the purchase of other real property for armory purposes.” Section 217, as amended by Acts 1955, ch. 75, § 4, Burns § 45-1917.

“In the event that the state armory board shall determine to sell, convey or otherwise dispose of any such real property, the value of the property shall be determined by three disinterested appraisers appointed by the state armory board with the approval of the governor, and no such real property shall be sold, conveyed or otherwise disposed of for less than the appraised value thereof: Provided, If said property can not be sold at its appraised value, it may be reappraised. No such real property shall be sold, conveyed or otherwise disposed of unless such sale, conveyance or disposition be approved by the governor, and unless the attorney-general shall state in writing that all of the conditions necessary to the legal and valid sale, conveyance or disposition of such property have been fully complied with.” Section 218, Burns § 45-1918.

“The purchaser of any real property so sold, or to whom any such real property is conveyed or otherwise disposed of, shall pay the purchase money therefor, as shall have been agreed upon, and as shall be certified by the board to the treasurer of state for the use and benefit of the armory board, and shall take the receipt of said treasurer therefor. Upon presentation to the auditor of state of the receipt of the treasurer of state, accompanied by a request in the form of a certified resolution approved by the armory board, and setting forth the terms and conditions of such sale, conveyance or other disposition, and auditor of state shall cause to be executed a deed of conveyance to such purchaser, which deed shall be signed by the
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governor and officially attested by the auditor of the state with the seal of the State of Indiana.” Section 219, Burns § 45-1919.

The power to lease property was added by Acts 1955, ch. 75, § 4, amending section 217, Burns § 45-1917.

The 1889 statute cited above, therefore, is no longer applicable to sales of real estate in the custody of the State Armory Board, because the Indiana Military Code covers the entire subject matter of the earlier act.

The State Armory Board is exempted from the Financial Reorganization Act of 1947, by section 1 (b) thereof, as amended by Acts 1967, ch. 184, section 1, Burns § 60-1801(b), unless specifically included therein. The State Armory Board, unlike the State Fair Board, is not specifically included in section 12, as amended by Acts 1951, ch. 88, § 1, Burns § 60-1812, governing the sale of real estate. Therefore, the Financial Reorganization Act does not govern the transfer or disposition of state-owned real estate in the custody of the State Armory Board. See 1954 O.A.G. p. 188.

Section 12 of the Administration Act of 1961, Burns § 60-112, transferred the power of the State Armory Board to sell or dispose of state owned real estate to the Indiana Department of Administration:

“All authority vested by law in any officer or agency to dispose of or sell obsolete or surplus property is hereby transferred to the department.”

As I pointed out in my Official Opinion No. 62 of 1967, at page 420:

“A statute which is in irreconcilable conflict with an earlier statute will repeal the earlier statute only to the extent to which they cannot be harmonized. Payne v. Buchanan, 238 Ind. 231, 148 N.E. 2d 537, 150 N.E. 2d 250 (1958); Watson v. Strohl, 220 Ind. 672, 681, 46 N.E. 2d 204 (1943).”

Since the Administration Act of 1961 does not itself establish the manner or method of sale or disposition of surplus prop-
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erty, and the State Armory Board is exempt from the Financial Reorganization Act of 1947, it is my opinion that the provisions of the Indiana Military Code govern except to the extent that the Department of Administration, rather than the State Armory Board, is in charge of a sale or disposal of the property, and must also determine that the property is surplus. No doubt the Department of Administration was given duties in regard to the sale of property deemed surplus by one agency of the state in order that it might determine whether another agency of the state needs that property for its use.

Therefore, one procedure which may be followed in the event that the State Armory Board decides that Indiana owned real estate in the charge and custody of the board may no longer be used for the purpose for which it was acquired is that established by sections 217 to 219 of the Indiana Military Code, Burns §§ 45-1917 to 45-1919, as amended by implication by the Administration Act of 1961. The State Armory Board must resolve that the property may no longer be used for the purpose for which it was acquired, and that the property should be sold, leased or otherwise disposed of. That resolution should be conveyed to the Department of Administration. If the Department of Administration also determines that the property is surplus to the State of Indiana, the Department of Administration would then, with the approval of the Governor, appoint three disinterested appraisers, and the property would be sold by the Department of Administration in the manner specified in the Indiana Military Code. As stated therein, no sale or disposition may be made without the approval of the Governor1 and the legal opinion of the Attorney General.

The foregoing method of disposing of armories which are no longer usable as such is not, however, the only method for disposing of such property.

Section 214 of the Indiana Military Code, Burns § 45-1914, originally provided that the State Armory Board could accept

1 This is, of course, but a legislative recognition of the Governor's responsibility for the management of the State's real estate imposed by Art. 5, § 1 of the INDIANA CONSTITUTION, Tucker v. State, 218 Ind. 614, 681, 35 N. E. 2d 270, 295 (1941).
donations from political subdivisions of the state, and empowered the subdivisions to make such contributions. Acts 1955, ch. 75, § 3, amended that section by adding the provision that land so donated and not improved by the State by “the erection of structures thereon” may be reconveyed to the donor when the Armory Board decides that it has become unusable for the purposes for which it was donated. It appears that all of the properties in question which the original donors desire to have returned to them have been improved by the state by the erection of structures thereon, so that this section will not be relevant in any of the transactions about which you specifically asked.

A transfer of the use of state owned property from one state agency to another may be made pursuant to Acts 1959, ch. 172, Burns §§ 62-1601 to 62-1604, when such transfer is necessary or desirable for the welfare or convenience of the state. The procedure to be followed is carefully outlined in that statute, but may be briefly stated as follows: (1) The chief administrative authority of the board currently in possession (in this case, the State Armory Board), adopts a resolution finding that such real estate is surplus to the needs of said board, and requesting that the Governor transfer the use of the land; (2) The chief administrative authority of the board to which the use will be transferred adopts a resolution finding that the use and possession of said real estate is “necessary or convenient” for its use and also requests the Governor to transfer the use of the property; (3) Approval of the Attorney General is given to the procedure followed; and (4) Approval of the Governor is given, and he executes a proper declaration of departmental transfer of said real estate, to be attested by the Auditor of State and recorded in the county in which the real estate is located.

You have indicated that some of the transfers desired would be from the State of Indiana to a subordinate political subdivision of the state. Sale or exchange of real estate by the state to such a body is authorized by Acts 1957, ch. 229, § 1, as last amended by Acts 1965, ch. 253, § 1, Burns § 53-403. That section reads in relevant part as follows:
"Except as provided otherwise in the second grammatical paragraph of this section, any public body which owns any real estate, either improved or unimproved, may, upon a finding and declaration that such real estate is no longer needed for its purposes, sell, trade or exchange such surplus real estate to or with any other public body or department, board, commission or officer thereof upon compliance with the terms of this act: Provided, That this act shall not be applicable to any real estate acquired by a county at public sale for the payment of delinquent taxes. Except as hereafter provided, before such sale or trade or exchange may take place, the public body proposing to sell such real estate, or in the case of a trade or exchange the public bodies proposing to trade or exchange real estate, shall file a petition with the circuit court or Superior Court of the County in which such public body or bodies are located requesting the appointment of three (3) disinterested freeholders of the public body or of each public body in case of a trade or exchange, as appraisers to determine the fair market value of the real estate of such public body or bodies. Upon their appointment by such court, the appraisers shall proceed to fix the fair market value of the real estate owned by the public body of which they are freeholders and shall report the amount so fixed to the court within two (2) weeks from the date of their appointment. A public body may then sell such real estate owned by it to any other public body for an amount not less than the amount fixed as the fair market value by the appraisers, or in the case of an exchange, for an amount not less than the amount by which the fair market value of the real estate owned by it, as fixed by the appraisers, exceeds the fair market value fixed by the appraisers of the property to be received in exchange."

2 The second paragraph of this section permits transfer of real estate without appraisal and without consideration between public bodies having coextensive territory. That paragraph applies only to bodies which have identical boundaries, and would not apply to the State and any
"Public bodies" is defined in section 2 of the 1957 Act, Burns § 53-404, to include the state and any county or city or any other "political, municipal, public or quasi public corporation or any department, board, commission, agency or officer thereof." This definition would, in my opinion, include all of the governmental units which you indicated desire to receive transfers of state owned land in the custody of the State Armory Board (several cities and the Mass Transportation Authority of Greater Indianapolis. The public body which owns the real estate in question is the State of Indiana. The State Armory Board must first resolve that the real estate is no longer needed for its purposes. The Department of Administration must agree with the State Armory Board that the property is no longer needed by the State, and the Governor must approve. The Department of Administration, with the approval of the Governor, may then request the Attorney General to file a petition on behalf of the State of Indiana with the circuit or superior court of the county in which is located the public body which desires to acquire the real estate. The petition shall request the appointment of three disinterested freeholders of the State of Indiana. If the state intends to sell the land to its political subdivision, the appraisers shall fix the fair market value of the real estate owned by the state and report that amount to the court within two weeks after their appointment. The sale may thereafter be made, for not less than the amount fixed by the appraisers. The legality of the transaction must be approved by the Attorney General, and the purchase money paid and deed given pursuant to sections 218 and 219 of the Indiana Military Code, Burns §§ 45-1918, 45-1919.

If, however, the city or county body acquiring the State's real estate is offering other real estate of that body in exchange for the property, its provisions are limited to public bodies having coextensive territory in order to avoid the possibility that the officers of one body would give away property purchased with their taxpayers' money to another public body having a different group of taxpayers.

3 Corporations organized under Indiana law to construct and lease a school building to a school corporation pursuant to chapter 273 of the 1947 Acts, Burns §§ 28-3220 to 28-3233, are the only exception made in the statute.
change, it must join the petition of the State of Indiana filed in the circuit or superior court in the county of its location, and three disinterested appraisers must be appointed from its freeholders to appraise the real property belonging to it and to be exchanged with the State. The lands may thereafter be exchanged, the public body owning the less valuable real estate to pay the other public body an amount not less than the difference between the appraised values of the properties. Otherwise, the procedures to be followed are the same, as outlined above.

A different situation is presented in Allen County. The City of Fort Wayne owns Baer Field, acquired from the federal government after World War II. Baer Field is used as a base by the Indiana Air National Guard. The Air Guard is quartered there on land donated in fee or leased by the city to the State without consideration. The runways at that air field do not have sufficient extension and overrun to provide proper landing space for the jet aircraft now used by the Indiana Air National Guard. The instrument landing system also needs modification. Several years ago, the State of Indiana, through the State Armory Board, purchased land for the purpose of using it for an extension of the runway and overrun. I have been advised that federal funds are available to the Indiana Air National Guard for the construction of the desired extension and overrun, and that the Federal Aviation Agency will construct suitable lighting and instrument facilities if such overrun is constructed on the land now owned by the State of Indiana. Baer Field is operated by a Board of Aviation Commissioners of the City of Fort Wayne created pursuant to Acts 1945, ch. 190, § 2, as last amended by Acts 1949, ch. 109, § 2, Burns § 14-413. The last paragraph of section 5 of that Act, as last amended by Acts 1957, ch. 135, § 1, Burns § 14-417 reads as follows:

"Said commissioners and any other agency or instrumentality of this state or any of its political subdivisions or municipal corporations are hereby authorized to contract with each other for the rendition of any services, the rental or use of any equipment or facilities or the joint purchase and use of any equipment
or facilities which are deemed proper by the contracting parties for use in the operation, maintenance or construction of an airport operated pursuant to the provisions of this act.”

This paragraph would seem to provide ample authority for various types of agreements between the State of Indiana and the Board of Aviation Commissioners of the City of Fort Wayne to construct facilities jointly or to authorize the use of facilities of one by the other. The city, acting through its board of aviation commissioners, is authorized to accept federal funds and to comply with the provisions of United States laws, rules and regulations prerequisite to the receipt of federal funds, Acts 1945, ch. 190, § 17, as amended by Acts 1949, ch. 109, § 11, Burns § 14-430. The State Armory Board is empowered by section 214 of the Indiana Military Code, as amended by Acts of 1955, ch. 75, § 3, Burns § 45-1914, to receive donations from the federal government for the purposes of erecting armories. Therefore, it appears to me that the City of Fort Wayne Board of Aviation Commissioners, the State Armory Board and the United States Government may cooperate to use federal funds to build armory facilities, including runways, needed for the use of the Indiana Air National Guard and other persons using Baer Field.

This opinion is not exhaustive of all of the possible methods of transfer of state owned land used by the State Armory Board. However, given the facts you presented, I believe that this general statement of some of the statutes which do authorize such transfers will furnish guidelines for your conduct of those transactions. Each transaction will, of course, require individual consideration at the time it is proposed.

4 Subject of course, to compliance with section 1 of Acts of 1947, ch. 114, Burns § 14-326, concerning approval of the Aeronautics Commission of Indiana, when it is applicable.