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In short, it would appear that the expenses involved in your question are a debt of the county in which the mother of the child is a resident, rather than of the State of Indiana or any department or agency thereof.

OFFICIAL OPINION NO. 52
December 4, 1968

AGRICULTURE—Appropriation of funds for research to control and eradicate johnson grass.

Opinion Requested by Hon. Wilbur E. Newlin, State Senator.

This is in response to your questions concerning the Johnson Grass Study Committee. Your questions are as follows:

1. Is there any method by which an additional appropriation to Purdue University can be obtained?

2. Can the Johnson Grass Study Committee permit its name to be used by non-profit farm organizations in soliciting contributions to the State of Indiana to be used for Purdue University?

The Johnson Grass Study Commitee was created by concurrent resolution of the General Assembly in 1963, Acts 1963, ch. 407, and section 1 provides that it shall continue to function until the concurrent resolution is abrogated by the Legislature. The powers and duties of the Committee are specified in Acts of 1961, ch. 359, § 1, to be devising means for the control and eradication of johnson grass (sergum halepense). Pursuant to section 5 of the 1963 resolution, the Committee functions under the guidance of the Indiana Legislative Council and reports its activities to the Governor and the General Assembly as directed by the Council.
Johnson grass is, according to the information you have supplied me, a noxious form of grass which grows up to six feet high and chokes competing crops. It is host to and preserver of a virus which destroys corn. It menaces crops in southern and central Indiana, causing a loss of eight million dollars annually. Indiana has a serious problem in coping with the weed because our climate is particularly suitable for its growth. Other states with less rainfall or colder winters have less trouble in controlling the weed. Because the seriousness of the problem is peculiar to Indiana, it has not been economically feasible for any chemical company to devote money to research which could result in control of johnson grass. Since the problem involves many counties in the state, solution at the state government level seems particularly appropriate.

Acts 1967, ch. 298, §2, the 1967 Appropriations Act, at p. 1012 of the 1967 Acts, appropriates $15,000.00 per year for each of the fiscal years ending in 1967 and 1968 to Purdue University for the eradication of johnson grass. This appropriation has not supplied sufficient funds to solve the problem. I do not find that any separate appropriation has been made to the Johnson Grass Study Committee, and the act creating it indicates that it shall be funded by appropriations to the Legislative Council, which has replaced the Legislative Advisory Committee.

Article 10, §3 of the Indiana Constitution reads as follows:

“No money shall be drawn from the Treasury, but in pursuance of appropriations made by law.”

See Ristine v. State ex rel. Board of Comm’rs., 20 Ind. 328 (1863), State ex rel. Board of Comm’rs. v. Ristine, 20 Ind. 345 (1863); 1945 O.A.G. p. 499. Therefore, we must find another appropriation from which funds may be transferred to Purdue for johnson grass research if money other than that appropriated at p. 1012 of the 1967 Acts is to be taken from the State Treasury for such purpose without legislative action.

One method by which money for a specific purpose may be obtained by an agency of the State of Indiana is by a transfer
or assignment by the State Budget Agency of funds appropriated to an agency for one purpose to another purpose of the same agency pursuant to Acts 1961, ch. 123, § 12(e), Burns IND. STAT. ANN. § 60-412(e). Section 2(e) of that Act, Burns § 60-402(e) includes the universities and colleges supported in whole or in part by state funds (including Purdue University) as "state agencies" within the meaning of that act. Section 27 of the Financial Reorganization Act of 1947, Acts 1947, ch. 279, Burns § 60-1827, gives similar powers to the State Board of Finance. However, universities supported entirely or in part by state funds are not "state agencies" within the meaning of the 1947 Act unless they are specifically included, section 1(b), as amended by Acts of 1967, ch. 184, Burns § 60-1801(b). They are not specifically included in section 27; therefore, they are excluded.

It is my understanding that the manner in which a request for such transfers and assignments is ordinarily handled is that allocations from one item to another under one appropriation are processed by the State Budget Agency, while transfers and assignments from one appropriation to another of the same state agency are ordinarily handled by the State Board of Finance. Since the johnson grass appropriation is a separate appropriation to Purdue, the Board of Finance would, in the ordinary course, handle a request for transfer of funds from another appropriation of Purdue. However, since the Board of Finance is not empowered to transfer or assign Purdue funds by section 27 of the Financial Reorganization Act of 1947, it may not make such assignment. Therefore, the Budget Agency is the only agency empowered to make such a transfer.

An intra-agency transfer made by the Budget Agency must be for a use and purpose the agency is required or authorized to perform. (Study of the johnson grass problem would seem to be well within the authority of Purdue University, particularly since an appropriation has been made to Purdue for that purpose.) Further, the transfer must be requested and consented to by the state agency whose appropriations are involved, Acts 1961, ch. 123, § 12(e), Burns § 60-412(e). Therefore, other funds appropriated to Purdue University (except trust funds) could be transferred by the Budget
Agencies to Purdue's use for johnson grass research if the above conditions are met.

Another possibility is an emergency allocation to Purdue for this purpose from the Department and Institutional Contingency Fund appropriated at p. 1069 of Acts 1967, ch. 298, § 2, the 1967 Appropriations Act. Such fund is 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," section 1 of Acts 1967, ch. 298, at p. 979 of the 1967 Acts. The contingency fund is subject to allotment to all state agencies by the State Budget Agency with the approval of the Governor, upon written request of proper officials, showing that contingencies exist requiring additional funds, 1967 Acts, p. 1069. As more fully explained in my 1968 O.A.G., p. 99, supra, the Appropriations Act is in pari materia with the act creating the State Budget Agency, particularly section 14 of Acts of 1961, ch. 123, Burns § 60-414, which sets out the standards to guide the Budget Agency in allocating general contingency funds appropriated to that agency. Of the various purposes for which the Budget Agency may allocate such contingency funds pursuant to that section, the only one which appears to me to apply to your situation is the following:

"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."

If Purdue has exhausted the funds appropriated to it by the Legislature for johnson grass research, and requires additional funds to fulfill its project, it could appeal to the Budget Agency for an allocation from the Department and Institutional Contingency Fund.

You have informed me that one method of providing research funds which has been suggested to the Johnson Grass Study Committee is that nonprofit farm organizations such as the Farm Bureau Cooperatives solicit and collect funds in the
name of the Johnson Grass Study Committee. The money would be paid to the State Treasurer for the State of Indiana, to be then paid over to Purdue for further johnson grass control research. You have expressed your doubts as to the validity of such an arrangement. I agree that to permit private corporations or individuals to solicit and collect gifts to the State of Indiana in the name of a legislative committee is illegal and fraught with danger. Further, if the gifts are made to the Committee or to the State of Indiana, and become public funds of the state, they could not be expended without an appropriation.

Purdue University has been authorized to accept gifts for purposes specified by the donors, Acts 1931, ch. 139, Burns §§ 28-5712 to 28-5715. The Purdue Research Foundation can also receive and administer gifts for a specified research project for Purdue. In my opinion, the wise procedure to follow would be for anyone interested in solving the johnson grass problem through further Purdue research, to encourage (but not collect) gifts directly to Purdue University or the Purdue Research Foundation for the purpose of controlling and eradicating johnson grass in Indiana.

OFFICIAL OPINION NO. 53

December 5, 1968

PUBLIC PROPERTY—Transfer of used and surplus personal property and equipment between governmental subdivisions or agencies.

Opinion Requested by Mr. John T. Hatchett, Commissioner, Department of Administration.

I am in receipt of your inquiry asking the following question:

"We are receiving requests from other units of government for the sale or transfer of such equipment as used