

1967 O. A. G.

OFFICIAL OPINION NO. 34

October 18, 1967

**STATE BOARD OF FINANCE—Transfer of Funds from
General Fund or General Construction Appropriation
Fund to Industrial Development Fund.**

Opinion Requested by Hon. John P. Gallagher, Auditor of
State.

I am in receipt of your recent letter which reads as follows:

“Can the Board of Finance transfer and borrow funds from the General Construction Appropriation Fund (101-996) to the Industrial Development Fund (101-206)?”

“Can the Board of Finance transfer or borrow funds from the State General Fund to the Industrial Development Fund?”

While your letter is phrased in terms of the power of the Board of Finance to transfer funds, another factor must be considered, the power of the administrators of the Industrial Development Fund to accept the funds contemplated in your letter. Should either party lack the requisite authority, the transfer cannot be made.

We will first consider the authority of the administrators of the Industrial Development Fund.

The Industrial Development Fund was created by Acts 1965, ch. 186, the same being Burns §§ 53-606 through 53-616. The second section of that Act, Burns § 53-607, provides that “[t]here is hereby created a fund to be known as the ‘Industrial Development Fund’ from which fund loans may

OPINION 34

be made to municipalities in accordance with the provisions of this act and the rules and regulations adopted hereunder.” The third section of the Act, Burns § 53-608, provides that “[t]here is hereby appropriated to the Industrial Development Fund, from the general fund of the state the sum of two million dollars (\$2,000,000) and such fund shall not revert to the general fund but shall constitute and be a revolving fund to be used exclusively for the purposes of this act.”

The second section of the Act, Burns § 53-607, also provides that “[t]he administrative control of the fund and the responsibility for the administration of the provisions of this act are hereby vested jointly in the state board of finance and the Indiana Department of Commerce, Agriculture, Industry and Public Relations.” (The first section of the Act provides that the word “department,” when used in the Act, is to be understood as meaning the latter agency.)

Specific grants of authority to the administrators of the Fund (usually to the Department of Commerce) are dispersed throughout the Act. These grants are as follows:

Section 2; Burns § 53-607:

“. . . The department, subject to the approval of the state board of finance, is hereby authorized to adopt and promulgate such rules and regulations, in the manner prescribed by the provisions of Chapter 120 of the Acts of the General Assembly of 1945, that are deemed necessary by the state board of finance and the department for the proper administration of the fund and the provisions of this act. The department, subject to the approval of the state budget committee, shall have the authority to employ such personnel as may be necessary for the efficient administration of this act.”

Section 3; Burns § 53-608:

“. . . The department, subject to the final approval of the state board of finance, is hereby authorized and empowered, pursuant to the provisions of this act, to order and direct the auditor of state to make any ap-

proved loan from the revolving fund to any municipality, the money so loaned to be used by the municipality for the purpose of instituting, accomplishing and administering any approved industrial development program as defined in section 1, subsection (d) of this act. . . .”

Section 5; Burns § 53-610:

“The state board of finance and the department shall authorize the making of a loan to any municipality under the provisions of this act only when the following conditions exist: . . .”

Section 7; Burns § 53-612:

“The state board of finance and the department shall determine and ascribe to any applicant for a loan a priority rating, which rating shall be based primarily on the need of the municipality for any such proposed program as such need is related to the needs of other applicants for loans. . . .”

Section 8; Burns § 53-613:

“Any loan made pursuant to the provisions of this act may be made for any period not to exceed ten (10) years and shall bear interest at the rate of two percent (2%) per annum. . . .”

Section 10; Burns § 53-615:

“In the case of failure of any municipality to make any payments to the fund or any other payments required by this act, or in case any municipality is in any way indebted to such fund for any amounts incurred or accrued, such amounts owing to said fund by said municipality may be recovered in a suit in the circuit or any superior court of the county wherein such municipality is located, in an appropriate action by the State of Indiana, on the instigation of the state board of finance and the department, such suit to be

OPINION 34

prosecuted by the attorney general of the State of Indiana; . . .”

Section 11; Burns § 53-616:

“. . . A record of each application for loan and the action of the board of finance and/or of the department shall be filed by such body with the Legislative Advisory Commission for public inspection and for the information of the legislature.”

The foregoing is a comprehensive listing of the powers granted the administrators of the Industrial Development Fund. That listing of powers does not include the power to borrow money, nor the power to accept “transfers” of money from other funds, nor the power to return any money that has been borrowed or transferred. A basic tenet of administrative law was stated in *Boone County REMC v. Public Serv. Comm’n*, 129 Ind. App. 175, 186, 155 N.E. 2d 149 (1958) thusly:

“It is a fundamental principle of law that every administrative agency of the state of Indiana must find the source of its authority in the statute conferring it, and it can only exercise the power conferred in conformity with the statute. See *State Board Tax Comm. v. McDaniel* (1928), 199 Ind. 708, 160 N.E. 347; *State ex rel. v. Clamme* (1922), (T. D. 1923), 80 Ind. App. 147, 134 N.E. 676.”

The administrators of the Industrial Development Fund are given the power to administer the revolving fund created by Acts 1965, ch. 186, in accord with the provisions of that Act. The administrators are given neither the power to increase that fund nor to administer any other fund.

It should also be noted that the Industrial Loan Fund was considered by the 1967 General Assembly. On January 6, 1967, Senate Bills Nos. 21 and 23 were introduced. Either Bill would have increased the appropriation to the Industrial Development Fund; neither Bill survived the legislative process. For an administrative agency to now circumvent the re-

1967 O. A. G.

sult of the legislative process by its action would violate at least five sections of the Indiana Constitution, including, and most importantly, the separation of powers doctrine contained in Article 3, Section 1.

Since the administrators of the Industrial Development Fund cannot accept either transfers of funds or loans of funds from any source, there is no need to consider separately the power of the Board of Finance to effect transfers or loans of funds.

It is my opinion that the lack of authority in the administrators of the Industrial Development Fund to accept loans or transfers of funds negates the possibility of the Board of Finance having any authority to transfer or loan funds from any source to the Industrial Development Fund.

OFFICIAL OPINION NO. 35

October 20, 1967

FINANCIAL INSTITUTIONS—Indiana Consumer Loan Act—Rules and Regulations to Supplement Act.

Opinion Requested by Mr. Donald H. Sauer, Director of Financial Institutions.

I am in receipt of your inquiry concerning Chapter 267 of the Acts of 1967, the same being Burns §§ 18-3601 through 18-3619, known as the Indiana Consumer Loan Act.

Your specific questions are :

“1. To whom may a license be issued under the Indiana Consumer Loan Act?

“2. Does the Act prohibit the conduct of business under a license issued in accordance with the provi-