has been superseded by the Financial Reorganization Act of 1947, § 12, as amended by Acts of 1951, ch. 88, § 1, Burns § 60-1812, previously quoted, which prescribes that proceeds from the sale of property

> "shall be deposited in the state treasury and credited to the fund from which the property was purchased."

Therefore, it is my opinion that the proceeds of the sale would return to the State Fair Board if, as indicated by you, the State Fair Board purchased the property originally from funds under its control.

Since the answer to your first question is in the affirmative, it may be unnecessary for me to answer your second question. However, I should like to point out that I can find no statute authorizing the exchange of land under the control of the State Fair Board for other land held by private owners. In the event that there should be land adjoining the Fair Board and owned by the State of Indiana or other governmental agency of this State which the Board should desire to acquire, a different question would be presented. I would be happy to answer any legal questions you might have concerning such a transaction with a particular governmental agency.

OFFICIAL OPINION NO. 63

December 29, 1967

STREAM POLLUTION CONTROL BOARD—Making Grants to Municipalities Having Qualifying Programs.

Opinion Requested by Hon. Joseph W. Harrison, State Senator.

Your letter in which the Honorable Austin E. Barker, Indiana State Representative, and the Honorable Keith E.

Barnhart, Attica City Attorney joined, requests an interpretation of certain provisions of the General Appropriation Act for the Biennium beginning July 1, 1967, Acts 1967, ch. 298, § 2, p. 977 at p. 1033 (House Enrolled Act No. 1015, at page 69), which reads as follows:

> "The State of Indiana is hereby authorized to make grants, as funds are available, to municipalities to assist them in financing the construction of those portions of water pollution control projects which qualify for federal aid and assistance under the provisions of Public Law 660 of the 84th Congress, known as the Federal Water Pollution Control Act, as now or as may hereafter be amended, including the Clean Water Restoration Act of 1966.
>
> "There is hereby appropriated to the Stream Pollution Control Board of the State of Indiana, to be administered through the State Board of Finance, a sum of 3.65 million dollars for fiscal 1967-68 and 4.95 million dollars for fiscal 1968-69, from the general fund of the state to be utilized under the provisions of this act to make grants to municipalities to assist in the construction of municipal water pollution control projects. The Stream Pollution Control Board, 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 approved grants to municipalities, the money to be used by the municipalities for the purpose of improving or accomplishing water pollution control projects.
>
> "The state's contribution towards the construction of water pollution control projects shall not exceed twenty-five percent (25%) of the eligible cost of each project. It is the intent and purpose of this act to provide state funds for such projects or portions of such projects as qualify under the provisions of the aforesaid federal act.
>
> "The Stream Pollution Control Board of the State of Indiana, through the State Board of Finance, shall

be the agency for the administration of the funds granted by the state. The allocation and administration of said grant funds shall be done in the same manner as the allocation and administration of federal funds granted for water pollution control projects.

"The determination of the relative need, the priority of projects, and the standards of construction shall be consistent with the provisions of Public Law 660 of the 84th Congress, as now or hereafter amended.

"The Stream Pollution Control Board of the State of Indiana is hereby empowered to adopt regulations, in the manner prescribed by the provisions of Chapter 120, Acts of 1945, necessary for the effective administration of this act; and, subject to approval of the State Budget Agency, to employ such personnel and pay such administrative and operation costs from the appropriation provided in section 3 as may be necessary for the efficient administration of this act."

You state the City of Attica has made application and qualified for federal aid in the construction of a sewage system. Your specific questions may be stated thusly:

1. If the city accepts federal funds prior to July 1, 1967, will it be disqualified for state aid under the provisions quoted above?

2. Would it be necessary for the city to apply after July 1, 1967, to be eligible for such state aid?

3. Is such state aid dependent upon federal grants made after July 1, 1967?

The last paragraph of the statute quoted above authorizes the Stream Pollution Control Board of the State of Indiana to adopt regulations for the administration of the Act. Our best information indicates no regulations have been proposed and none are contemplated.

By the first paragraph above quoted the state is authorized to make grants, "as funds are available . . . to assist . . . the construction of those portions of water pollution control projects which qualify for federal aid and assistance under . . . the Federal Water Pollution Control Act, as . . . amended . . ." No date is expressly fixed as the date on which projects must "qualify." Statutes are presumed to speak prospectively unless an intent to speak retrospectively clearly appears. *Chadwick v. Crawfordsville,* 216 Ind. 399, 413, 24 N.E. 2d 937, 129 A.L.R. 469 (1940).

Nothing to indicate an intent to speak, or take effect, retrospectively appearing, it may be assumed that this provision is to be interpreted as though it read "projects which [when funds are available in the future] qualify for federal aid." The Act contains an emergency clause making it effective on passage. Acts 1967, ch. 298, § 16, p. 1081. It was signed by the Governor March 9, 1967.

The state funds appropriated for the purpose of making state grants are "3.65 million dollars for fiscal 1967-68 and 4.95 million dollars for fiscal 1968-69." The Act does not contain a definition of "fiscal 1967-68" or of "fiscal 1968-69." Section 1 of the Act, however, contains, *inter alia,* nineteen definitions, two of which (p. 3 of House Enrolled Act No. 1015; p. 979 of Ind. Acts of 1967) reads as follows:

> "The term 'year 1967-68' as used in this Act, shall mean the fiscal year beginning July 1, 1967, and ending June 30, 1968.
>
> "The term 'year 1968-69' as used in this Act, shall mean the fiscal year beginning July 1, 1968, and ending June 30, 1969."

It is quite apparent that the draftsman of the appropriation in question used the expressions "fiscal 1967-68" and "fiscal 1968-69" as the equivalent, respectively, of "year 1967-68" and "year 1968-69." It follows, therefore, that no funds will be available for state grants under these provisions until July 1, 1967.

However, nothing in the express words of the Act, or in any known rule of construction, indicates to me that the

word "qualify," as used in the statute, means to perform an act. On the contrary, it seems to me to have reference to a state of being. The pronoun "which" is the subject of the verb "qualify." The pronoun "which" stands for the noun "projects." Projects, whether considered as the intangible idea of the tangible thing to be constructed or the tangible constructed thing itself, are inanimate and incapable of performing any act. Projects cannot "qualify" in the sense of doing something, but they can qualify in the sense of *being* something. One definition of "qualify" is: "To be or become qualified or fit; meet the requirements, as for entering a race." Funk & Wagnalls Standard College Dictionary (1966), p. 1101.

The apparent sense of the language of the first paragraph of the statute, insofar as pertinent to the inquiry, may be paraphrased as follows:

> The State of Indiana is hereby authorized to make grants, [on and after July 1, 1967] . . . to assist . . . the construction of . . . projects which, [at the time of making the grant meet the requirements] . . . for federal aid under [the Federal Water Pollution Control Act].

Quite obviously the Stream Pollution Control Board of the State of Indiana and the State Board of Finance, when they order and direct the Auditor of State to make grants to municipalities under this Act, must have some means of knowing that the project (or portion thereof) qualifies, or meets the requirements, for federal aid under Public Law 660 of the 84th Congress, as amended. The most simple and practical proof of that fact would be evidence that an application for federal aid had been approved by the Federal Water Pollution Control Administration. And since it is highly unlikely that any municipality applying for state aid will not also apply for federal aid or that it would be able to use state funds unless it also received, or was assured of receiving, federal funds to help pay for the project, there seems to be no legal or practical reason for objecting to making state grants only for those projects which also receive federal approval. However, that does not mean to say

that a municipal water pollution control project *qualifies* for federal aid when, and only when, the federal government agrees, or declares, or states, by approving a federal grant-in-aid, that the project is qualified. So far as the state is concerned, federal approval is no more than evidence of the project's qualification. For the reasons already stated, this federal approval may be the only evidence of federal qualification the state board will accept and, for that reason, I can see that the date of federal approval might, therefore, appear to some to be the date on which the project qualified.

But were that so, it does not follow that the date on which projects qualify is the *only* date on which they are "projects which qualify." Having once attained the status of "projects which qualify," reason dictates that they retain that status until something happens (to them or to the requirements) to change that staus.

If, as in the case of Attica's water pollution control project, a project has already been approved for federal aid and a federal grant is now available but has not yet been paid by the federal government to the municipality, the payment of the grant would not change the status of the project from that of a project which qualifies for federal aid to the status of a project which does not qualify for federal aid.

To say that payment would disqualify a qualified project would be to attribute to "qualify" some of the attributes of the word "due" or of the word "payable." "Projects which qualify for federal aid" are not necessarily "projects for which federal aid is payable." If projects meet the requirements for federal aid they are "projects which qualify for federal aid" regardless of whether federal aid has ever been requested, applid for, or granted. Federal aid is not payable for such projects, however, unless and until proper application has been made and approved. Approving the application does not change the nature of the project. It is merely an official finding that the project does meet the requirements of the federal law. Such a finding (or approval) may be proof that the project qualifies but it is not the qualification. Consequently, when payment of the federal

grant is made the project is not changed. It is still the same project and it still meets the same requirements. The only change is that federal aid is no longer payable because it has already been paid. To the man in the street, the payment of federal aid might be more convincing proof that the project is qualified than merely the approval of the project as qualified.

For the reasons stated, the answer to your first question is this:

Acceptance of federal funds prior to July 1, 1967, by the City of Attica to aid the construction of a water pollution control project will not disqualify that project for state aid if the project now qualifies for federal aid and assistance under the provisions of Public Law 660 of the 84th Congress, known as the Federal Water Pollution Control Act, as now or as may hereafter be amended, including the Clean Water Restoration Act of 1966.

The time and manner of making application for state aid grants is not specifically stated in the Appropriation Act. The fourth above quoted paragraph of that statute, after naming the Stream Pollution Control Board of the State of Indiana (through the State Board of Finance) as the agency for administration of the funds, provides that such allocation and administration "shall be done in the same manner as the allocation and administration of federal funds." The sixth paragraph empowers the Control Board to adopt regulations necessary to effective administration, but none have yet been proposed. The Act itself became effective (by reason of section 16's emergency clause) when approved by the Governor March 9, 1967, but funds are not available until July 1, 1967.

I see no legal reason that an application for state funds cannot be made at any time between the effective date of the Act (March 9, 1967) and the time funds become available (July 1, 1967). Nothing in the wording of the Act suggests that the application should be made only after July 1, 1967.

It may well be that a federal grant under the law effective on and after July 1, 1967, must be made after that date,

and it may be that there are advantages or risks or both, involved in foregoing payment of a grant approved prior to July 1, 1967, and applying for a larger grant under federal law effective after that date. Those are questions beyond the scope of this opinion which is limited to Indiana law. But which ever decision the city makes, whether to accept the federal grant already approved or to apply for a new federal grant, cannot change the status of its project. If it now qualifies it will still qualify for federal aid under the named federal laws.

Nor does the fact that the statute requires allocation and administration of state grant funds to be done in the same manner as the allocation and administration of federal funds affect the date for applying for state funds. That requirement applies only to the "manner" of "allocation and administration" and not to the date of application for a grant.

The answer to your second question, then, is that it is not necessary for the city to apply after July 1, 1967, to be eligible for state aid.

The third question has been answered in the course of answering the first and second questions. State aid is not dependent upon federal grants made after July 1, 1967. It is dependent only on proof that the project qualifies for federal aid under the provisions of Public Law 660 of the 84th Congress, as amended, including the Clean Water Restoration Act of 1966. Proof of that qualification can be made by showing that a federal grant was approved for payment during the present fiscal year because, as we understand the federal law, the requirements the project must meet are the same whether the federal grant is made before or after July 1, 1967. The difference being that a large federal grant may be made after that date not because of any change in the project itself, but because (or *if*) the state agrees to pay 25% of the estimated reasonable costs and if the enforceable water quality standards have been established for the waters into which the project discharges. (But even if this higher percentage of federal aid is not payable because one of these two conditions do not apply, the project will still qualify after July 1, 1967, for some federal aid, if it

would qualify before July 1.) State aid, therefore, is not dependent on federal grants made after July 1, 1967.

Since this last answer depends in some degree on an interpretation, or at least a presumed understanding, of the provisions of the Clean Water Restoration Act of 1966, it is subject to a contrary interpretation by federal authorities. If the requirements which must be met by a water pollution control project to be qualified for some federal aid under the 1966 Act differ from the requirements of the Federal Water Pollution Control Act as it existed before its amendment by the 1966 Act, then a new application for federal aid and a new approval may be a prerequisite to state aid under the 1967 General Appropriation Act.

OFFICIAL OPINION NO. 64

December 29, 1967

OFFICERS, COUNTY—County Commissioners As Having Power To Promulgate County Air Pollution Ordinance.

Opinion Requested by Dr. A. C. Offutt, State Health Commissioner.

I am in receipt of your letter containing this request:

> "An official opinion is respectfully requested as to whether a county may promulgate an air pollution control ordinance."

Article 6, § 10, of the Indiana Constitution provides:

> "The General Assembly may confer upon the boards doing county business in the several counties, powers of a local, administrative character."