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in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by sections 41-46 and 47-58 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section. (Emphasis added.)

OFFICIAL OPINION NO 27

November 30, 1966

**COUNTY OFFICERS—County Highway Engineer—
Certification of Registered Employee to be
Full Time—Retroactivity of
Legislative Subsidy.**

Opinion Requested by Hon. Mark L. France, Auditor of State.

This is in response to your recent request for an Official Opinion of the following questions:

1. May the status of registered Professional Engineer be deemed retroactive to the beginning of the year when an engineer has been employed by the county since the beginning of the year but has not become licensed as a registered Professional Engineer until later in the year in order to allow full distribution of the grant-in-aid subsidy of Five Thousand Dollars (\$5,000.00) by the state to the county employing a highway engineer?

2. If this status is not retroactive, when may the county receive the grant-in-aid subsidy?

Acts 1963, ch. 131, as found in Burns IND. STAT. ANN., §§ 36-1122—1133, authorizes the employment of a county highway engineer by a board or boards of county commissioners. It makes further provisions regarding his qualifications, term of appointment, duties and salary. The purpose of the Act is to encourage counties to employ qualified persons to plan and supervise the planning, construction and maintenance of county highways and roads. In order to accomplish this end, the Legislature created a fund to be used exclusively to assist counties in paying the annual salaries of qualified full-time county highway engineers.

The sections of the Act pertinent to your questions are as follows:

“The board of county commissioners of any county or any two [2] counties, acting jointly, may employ a *full-time* county highway engineer who shall be responsible for the supervision of the design, construction, planning, traffic, and other engineering functions of the county highway department under the policies and directions established by the board, and who shall prepare or cause to be prepared all surveys, estimates, plans and specifications which are required.” (Emphasis added.) Burns § 36-1122.

“*The county highway engineer shall be a registered engineer, licensed by the Indiana State Board of Registration for Professional Engineers, experienced in highway engineering and constructions and be or be*

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come a resident of the state of Indiana during his employment. . . ." (Emphasis added.) Burns § 36-1123.

"There is hereby appropriated *each year* from the counties' share of the April distribution of the motor vehicle highway account, the sum of four hundred sixty thousand dollars [\$460,000] to be held by the state auditor in a special account known as the County Highway Engineer Fund, which shall be used exclusively in assisting the counties in the employment of a full-time county highway engineer." (Emphasis added.) Burns § 36-1129.

"The county auditor of the county units that employ a *full-time* county highway engineer, meeting the requirements of this act, shall *annually* certify the same to the state auditor; such certification shall show the name and address of the county highway engineer and the serial number of his certificate of registration issued by the Indiana State Board of Registration." (Emphasis added.) Burns § 36-1130.

"Upon receipt of said *annual* certification from the county auditor, the state auditor is hereby directed to distribute from the county highway engineer fund to said county units a grant-in-aid subsidy in the amount of five thousand dollars [\$5,000], which *total sum* is to be applied exclusively toward the engineers' *annual salary*: Provided, if such county highway engineer shall be employed by two [2] counties, acting jointly, the amount to be distributed to each such county unit shall be twenty-five hundred dollars [\$2500]." (Emphasis added.) Burns § 36-1131.

"All funds remaining in the county highway engineers fund at the end of each calendar year shall be returned to the counties' share of the motor vehicle highway account to be distributed in January of the following year." Burns § 36-1132.

It is axiomatic that the prime object of statutory construction is to ascertain and effectuate the intent of the Legislature.

In *Walgreen Co. v. Gross Income Tax Div.*, 225 Ind. 418, 421, 75 N.E. 2d 784, 785 (1947) the court said:

“In arriving at the meaning of a statute it must be considered as an entirety, each part being considered with reference to all the other parts. Statutes are not to be considered as isolated fragments of law, but as parts of one great system.”

As previously indicated, the obvious purpose of this Act is to encourage counties to hire qualified county highway engineers. Although the statute specifies that the special fund created to further the purpose of the Act is to be appropriated from each year's April disbursement of the motor vehicle highway account, and the county auditor is required to make an annual certification of the employment of a full-time county highway engineer, the date on which such annual certification is to be made is not specified. In addition, it is definitely specified that the special fund remains intact until the end of the calendar year in which it is appropriated, at which time it reverts to the motor vehicle highway account. Evidently the Legislature intended that a share of the fund be distributed to a county which becomes qualified at any time during the calendar year. Otherwise a continuing fund available for distribution at any time after April during a calendar year would not have been created, see 1963 O.A.G. 328, No. 61. It is therefore my opinion that the county in question is entitled to a distribution during the calendar year in which its engineer met the specifications of the statute.

One basic principle of statutory construction has been adopted by the Legislature. 2 R.S. 1852, ch. 17, § 1, as found in Burns IND. STAT. ANN., § 1-201, provides:

“The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

“First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words and phrases having a peculiar and appropriate

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meaning in law shall be understood according to their technical import.”

It is obvious that the words and phrases of the Act hereinbefore emphasized, namely, “full-time,” “each year,” “annual,” “total sum” and “annual salary,” are not “technical words and phrases having a peculiar and appropriate meaning in the law” and thus should be taken in their ordinary and usual sense.

Considering the statute as an entirety, the repeated use of these terms indicates that the enacting Legislature intended that the five thousand dollars (\$5,000.00) subsidy be paid to a county for its employment of a qualified county highway engineer for three hundred and sixty-five (365) days, and if a shorter period is involved, only a proportionate part of the annual subsidy should be distributed. To conclude otherwise would conceivably allow a county employing an engineer who qualified on December 30 of any given year, for example, to receive the annual subsidy for one day of such employment. Such a conclusion would result in an absurdity and should be avoided. The following passage from *Words and Phrases* was quoted with approval by the court in *Marks v. State*, 220 Ind. 9, 18, 40 N.E. 2d 108, 111 (1942) :

“It is presumed that the Legislature does not intend an absurdity, and such a result will be avoided if the terms of the act admit of it by a reasonable construction; and “absurdity” meaning anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion.’”

Furthermore, the Act is explicit regarding qualifications of the engineer; that is, the county highway engineer, to qualify under this Act, must be registered and licensed by the Indiana State Board of Registration for Professional Engineers. There is no provision in the Act allowing the attainment of the status of registered engineer during the year to be made retroactive to the beginning of the year.

Therefore, in the absence of such a provision and recognizing that distribution of the subsidy is dependent upon qualifi-

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cation of the engineer as a registered Professional Engineer, it is my opinion, in answer to your first question, that the status of registered Professional Engineer is effective on the day of licensing by the Indiana State Board of Registration for Professional Engineers and is not retroactive. Consequently, distribution of the *full* grant-in-aid subsidy of five thousand dollars (\$5,000.00) should not be allowed when the highway engineer has not been qualified for the entire year.

In answer to your second question, it is my opinion that the county becomes eligible for a share of the total subsidy based on the proportionate relationship existing between the number of days from the date of qualification of the engineer to the end of the year and the number of days in an entire year. The obvious intention of the Legislature to assist in providing qualified county highway engineers as quickly as possible would be frustrated if the counties were unable to receive the subsidy until the beginning of the following year. The county becomes eligible for the benefits of this statute when the engineer attains the requisite qualifications. Upon the county auditor's certifying the same to you, you should distribute the county's pro rata share for the current year.

OFFICIAL OPINION NO. 28

December 1, 1966

**STATE TOLL BRIDGE COMMISSION—Duty of Treasurer
of State—Exception as to Public Monies with
Respect to Commission.**

Opinion Requested by Hon. Jack L. New, Treasurer of State.

I am in receipt of your request for an opinion concerning whether toll bridge receipts and moneys comprising the Trus-