statute means "after the effective date of the act." See 1933 O.A.G. 139; 1942 O.A.G. 115. See also *Miller v. Barton School Township,* 215 Ind. 510, 20 N.E.2d 967 (1939), decided under the original 1927 Teachers' Tenure Law.

Therefore, in view of the effective date of July 1, 1967, for the application of the Teachers' Tenure Law to teachers under regular contract in public schools which are not those of a school town or school city, and in view of the use of the words "hereafter enter into" concerning contracts under the Teachers' Tenure Law, it is my opinion that any teacher who has served in a public school corporation for five (5) or more successive years before July 1, 1967, under a regular contract, and who after that date enters into his sixth or more year regular teaching contract with that corporation for services to be rendered during 1967-68, will become a permanent teacher within the meaning of the Teachers' Tenure Law. If the sixth or more regular teaching contract of such a teacher and school corporation for 1967-68 is entered into before July 1, 1967, the teacher will not become a permanent teacher under the Teachers' Tenure Law unless and until he enters into a regular and definite contract after that date. See 1942 O.A.G. 115.

OFFICIAL OPINION NO. 32

August 18, 1965

Mr. Richard L. Worley, State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. Worley:

This is in response to the request of your predecessor for an Official Opinion in answer to the question presented by his letter, which reads as follows:

> "Chapter 225, Acts of 1965, H.B. 1660, which became effective May 1, 1965, requires each city and town to create a 'Cumulative Capital Improvement Fund' into which the proceeds of the cigarette tax distribution allotted to such city or town in accordance

with the provisions of subsection 27c (1) (c) and 27 (d) shall be deposited in lieu of being deposited in the General Fund of each city or town.

"This department respectfully requests your Official Opinion on the following question:

" 'Does the term "capital improvement" as defined in the act contemplate the purchase of "major movable equipment"?' "

As noted in the letter of request, both sections 27d and 27c (1) (c) of the Cigarette Tax Act (Acts 1947, ch. 222, Burns IND. STAT. ANN. [1961 Repl.], §§ 64-2901 to 64-2929), as added by the Acts of 1965, ch. 225, §§ 5 and 4, provide for the distribution of a portion of the cigarette tax fund of the State of Indiana to the "Cumulative Capital Improvement Fund" of cities or towns, which distribution is to be in the proportion that the population of each city or town "bears to the total population of all cities and towns of the state, as determined by the last preceding United States decennial census." Because the question presented relates solely to the purpose for which cities and towns may expend such monies, it is deemed unnecessary, in this Opinion, to quote either of said subsections. The fact that such monies are not to be distributed to the general fund, but rather to another specific fund of such cities and towns, would indicate that the Legislature intended such monies to be used for some purpose other than the general purposes for which general fund monies are used. Also, the fact that the fund referred to in said subsections is a "capital" fund immediately raises the presumption that the monies in this fund, rather than being intended to be used for ordinary and necessary business expenses, were intended to be used for capital disbursement or investment purposes for acquiring something in the nature of an asset of the city or town for its permanent betterment. While the term "capital improvement" is one which, in the field of accounting and federal taxation, has a well-recognized meaning which refers to new buildings, permanent improvements or betterments (See: *Russell Box Co. v. Commissioner of Internal Revenue,* 208 F.2d 452, 454 [1953], and *Henderson, Administrator, Office of Price Administration v. Morgan,* 54 F. Supp. 441, 444 [1943]), § 8 of the Acts of

1965, ch. 225, adds a new and additional section to the cigarette tax law to be designated as § 27f, providing a statutory definition of the term "capital improvement," which reads as follows:

> "Sec. 27 (f). The common council of any city or the board of trustees of any town shall by ordinance create a Cumulative Capital Improvement Fund into which all of the proceeds allotted to such city or town, *in accordance with the provisions of subsections 27c (1) (c) and 27d* of this Act shall be deposited in lieu of being deposited into the General fund of such city or town.
>
> "Any such Cumulative Capital Improvement Fund created pursuant to this Act, shall be a cumulative fund and no part of the funds deposited therein shall revert to the General fund of the city or town and all funds deposited therein shall be appropriated and *used solely for capital improvements* of the city or town.
>
> "The term 'capital improvement' as used herein shall mean the *construction* or *improvement* of any city-owned property, *including but not limited to streets, thoroughfares and sewers,* but shall not include salaries of any public officials or employees, except that directly chargeable to such improvements. Said funds may also be used to retire any general obligation bonds of said city or town issued for the purpose of *construction of improvements* which would qualify for use of such funds." (Emphasis added.)

From the above statutory definition of the term "capital improvement," it is apparent that the key words are "construction" and "improvement," and also "construction of improvements." Particularly noticeable, by absence from the definition, is the word "purchase," which, as the question presented by the letter of inquiry recognizes, would be the word most commonly used when referring to the acquisition of "major movable equipment." The fact that the statutory definition uses both the words "construction" and "improvement" and the term "construction of improvements"

would appear to indicate that the Legislature had in mind the use of the monies in such fund for the construction of a building or other permanent fixture upon lands of any such city or town, the improvement of any such structure or the improvement of the land itself.

Moreover, it would seem that the rule of *expressio unius est exclusio alterius* would apply, in that the statutory definition of "capital improvement," in referring to the type of "construction" or "improvement" intended, states "including but not limited to streets, thoroughfares and sewers. . . ."

In the case of *Shupe v. Bell,* 127 Ind. App. 292, 298, 141 N.E.2d 351 (1956), it is said:

> ". . . One of the oldest maxims of the law is, 'The express mention of one person or thing is the exclusion of another.' Wharton's Legal Maxims, p. 11. Otherwise stated, 'What is expressed makes what is silent to cease.' Coke Litt., 210a; *Woodford v. Hamilton* (1894), 139 Ind. 481, 39 N.E. 47. 'When the law is in the affirmative that a thing should be done by certain persons or in a certain manner, this affirmative manner contains a negative that it shall not be done by other persons or in another manner.' 26 Am. and Eng. Ency. Law, (2nd ed.), 605, and cases cited therein; *State ex rel. v. Home Brewing Co.* (1914), 182 Ind. 75, 95, 105 N.E. 909."

See also: 26 I.L.E. Statutes, § 119, p. 327; 82 C.J.S. Statutes, § 333, p. 666. Also, in the case of *Poyser v. Stangland,* 230 Ind. 685, 689, 106 N.E.2d 390 (1952), the Court said:

> " 'The general rule is that nothing may be read into a statute which is not within the manifest intention of the legislature as gathered from the act itself, and that a statute should not be construed any more broadly or given any greater effect than its terms require. Where the language of the statute is clear in limiting its application to a particular class of cases and leaves no room for doubt as to the intention of the legislature, there is no authority to transcend or add to the statute which may not be enlarged, stretched, or expanded, or extended to cognate or re-

> lated cases not falling within its provisions.' 50 Am. Jur. Statutes, § 229 pp. 214, 215, 216. See also 59 C.J. Statutes, § 569, pp. 953 to 958. Bettenbrock v. Miller (1916), 185 Ind. 600, 606, 112 N.E. 771."

Thus, the fact that the statutory definition of "capital improvement" specifically refers, though is not limited, to the construction or improvement of streets, thoroughfares and sewers, according to the rule of *expressio unius est exclusio alterius,* would seemingly require that said act should be construed as meaning that the class of "construction or improvement" to which the Legislature was referring is of the same class as streets, thoroughfares and sewers—in other words, construction upon and improvement of real estate. This interpretation, of course, excludes the concept that the Legislature intended a broad interpretation whereby such fund could be used for the acquisition of personal property.

Therefore, in conclusion, it is my opinion that the term "capital improvement," as used in §§ 27d, 27c (1) (c) and defined in § 27(f) of the Cigarette Tax Act, as amended by the Acts of 1965, ch. 225, does *not* contemplate the purchase of "major movable equipment" or any other personal property, and that the use of such fund for such purposes would be contrary to the express restrictive authority of the act.

OFFICIAL OPINION NO. 33

August 19, 1965

Mr. Richard L. Worley, State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. Worley:

I have your letter requesting an Official Opinion, as follows:

> "According to Chapter 307, Acts of 1965, Section 304, the treasurer of a school corporation shall give bond for the faithful performance of his duties written by an insurance company licensed to do business in