"The director, with the approval of the governor, may receive and expend all funds, grants, gifts, and bequests, including federal and state funds and other funds available for the purposes for which the department was created, and to contract with the United States and all other legal entities with respect thereto, including legally constituted regional, county, metropolitan, and municipal planning commissions or districts. The department may provide, within the limitations of its budget, matching funds wherever funds, grants, gifts, bequests, and contractual assistance are available on such basis. The department shall provide such information, reports, and services as may be necessary to secure such financial aid.”

As you know, this act, Act of 1965, ch. 262, became effective July 1, 1965.

It is my opinion that the Department of Commerce of the State of Indiana has the power by virtue of the Acts of 1965, ch. 262 and the sections of said chapter specifically set out herein to negotiate with political subdivisions of the State of Indiana, and to negotiate with the Federal Government or any agency thereof to secure a planning grant to develop a comprehensive plan for the town of Russiaville, Indiana, and to secure a planning grant for the initial phase of the development of a state-wide planning program.

OFFICIAL OPINION NO. 23

July 29, 1965

Mr. Philip E. Byron, Jr., President
Indiana Employment Security Board
437 Monger Building
Elkhart, Indiana 46514

Dear Mr. Byron:

This is in response to your request for an Official Opinion on the effect legislation enacted by the 1965 Legislature will have on interest earned by the Employment Security Trust

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Fund prior to the effective date of the legislation being credited to the experience account of individual employers.

Your questions were:

"1. Shall the interest earned and received upon these funds from June 30, 1964 through March 31, 1965 be credited to the experience accounts of employers?

"2. If your answer to the first question is in the affirmative, shall such crediting be on the basis of credit balances of those accounts as of March 31, 1965 or on the basis of credit balances of those accounts as of June 30, 1965, the computation date?"

The Employment Security Act, §1004, being Acts 1947, ch. 208, §1004, as amended by Acts 1951, ch. 307, §1, as found in Burns IND. STAT. ANN. (1964 Repl.), §52-1534c, provided:

"The board shall maintain within the fund a separate experience account for each employer and shall credit to such account all contributions paid by such employer on its own behalf except as otherwise provided in this act. The board also shall credit to the separate experience accounts of employers in the manner hereafter provided, interest heretofore and hereafter received upon funds of the state of Indiana deposited in the unemployment trust fund in the treasury of the United States; Provided, That the board shall prescribe by regulation the method and manner by which such interest or portion thereof shall be credited to the separate experience accounts of employers through application to any credit balance reflected by an employer's experience account upon each computation date of an interest rate equal to the average of interest rates announced by the treasurer of the United States upon funds of the state of Indiana deposited in the unemployment trust fund for the period that has intervened since the last preceding computation date; Provided further, That the total amount of interest so credited to separate experience accounts of employers on any computation date shall not exceed the total amount of interest credited to this state's account in
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the unemployment trust fund in the treasury of the United States for the period that has intervened since the last preceding computation date and the board shall adjust downward the average rate at which balances of employers' experience accounts are credited to the extent necessary to comply with this limitation; Provided, further, That such interest received for all periods prior to July 1, 1951, shall be credited to separate experience accounts of employers in the manner herein provided so that amounts so credited will be reflected in the balances of such accounts upon which are based the contribution rates of employers as computed by the board for the calendar year 1952. Such crediting of interest received to separate experience accounts of employers' as herein provided, shall not be construed under any circumstances to authorize the refunding to any employer of contributions previously paid by such employer.” (Emphasis added.)


The major import of the deleted portion is contained in the first clause of that portion:

"The board also shall credit to the separate experience accounts of employers, in the manner hereafter provided, interest heretofore and hereafter received upon funds of the state of Indiana deposited in the unemployment trust fund in the treasury of the United States. . . ."

The manifest intent of the 1951 Legislature was that interest received by the Employment Security Division upon funds deposited in the treasury of the United States be credited to the individual employers' experience accounts during the entire period of time the statute as amended by that Legislature be in effect. The words "shall credit" are mandatory on that point. The remainder of the deleted portion permits some degree of discretion on the part of the board, as witness
the provision "That the board shall prescribe by regulation the method and manner," and simply provides directions for implementing the previously expressed intent.

The mandatory language "shall credit" creates in employers as a class a property right in the interest received upon funds of the state of Indiana deposited in the unemployment trust fund in the treasury of the United States during the time the statute be in effect. In the case of *Niklaus v. Conkling*, 118 Ind. 289, 20 N.E. 797 (1888), the Indiana Supreme Court said, on page 292:

"... We can not, in such a case as this, omit the consideration of the important rule that statutes will not be given retrospective operation unless the language employed imperatively requires it. Courts will not give a statute a retroactive effect, so as to change existing rights, unless the language employed is such as to compel them to that course. ..."

The language used in the Acts of 1965, ch. 190, § 3, is not such that it would imperatively require a retrospective interpretation that would divest employers of their right in the interest collected between the last computation date prior to the effective date of the act, June 30, 1964, and the effective date of the act, April 1, 1965.

The immediate property right in interest received upon monies deposited in the United States treasury created by the 1951 Legislature is vested in employers as a class. The rights of individual employers are inchoate. However, the same Legislature specified the time and the manner in which the individual rights would become choate. On each computation date each individual employer having a credit balance in his experience account is vested with the right to have that balance credited with an interest rate that is the average of the interest rates that produced the monies to be credited, subject to the limitation that the sum of such credits to the individual accounts does not exceed the amount available for crediting. Prior to the computation date the individual employer does not and cannot have any choate right to the crediting of interest, nor is there any basis other than the
experience account as of the computation date provided for
the liquidation of that right when it does mature.

It is concluded first, that the interest earned from June
30, 1964, through March 31, 1965, should be credited to the
individual employers' experience accounts, and second, that
such crediting should be based on the experience accounts as
of the next succeeding computation date, June 30, 1965.

OFFICIAL OPINION NO. 24

July 30, 1965

Hon. Frank X. Kopinski
Judge, St. Joseph Probate Court
South Bend, Indiana

Dear Judge Kopinski:

This is in response to your request for an opinion. Your
letter reads in part as follows:

"I am presiding Judge of St. Joseph County Probate
Court, a court provided for by the Acts of 1945, Burns' Statute 4-3031.

"Under Statute 4-3055 the Judge is given the power
of appointment of probation officers. I should like your
official opinion as to whether or not I, as a Judge of
this court, have the right to fix salaries for said pro-
bation officers with the power of mandate to enforce
same."

The St. Joseph County Probate Court was created by Ind.
Acts 1945, ch. 333, as amended, Burns IND. STAT. ANN.,
§§ 4-3031—4-3055. Said court is a court of record and of gen-
eral jurisdiction, Ind. Acts 1945, ch. 333, § 18, Burns IND.
STAT. ANN., § 4-3047. See also State ex rel. Bradshaw v.
Probate Court of Marion County, 225 Ind. 268, 73 N.E.2d
769 (1947). The court has juvenile and probate jurisdiction,
but no criminal jurisdiction other than that conferred on juve-
nile courts by law, Ind. Acts 1945, ch. 333, § 10, as amended
by Ind. Acts 1959, ch. 260, § 1, Burns IND. STAT. ANN.,
§ 4-3040 (1964 Supp.); Acts 1959, ch. 260, § 11, Burns IND.
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