(60) days in such re-employment, is entitled to retirement benefits on subsequent retirement at age fifty (50) years or age sixty-five (65) years, respectively, under Ind. Acts of 1955, ch. 329, § 16, Burns IND. STAT. ANN., § 60-1927.

OFFICIAL OPINION NO. 38

September 17, 1965

Mr. Lewis B. Grafft
Assistant to Secretary-Treasurer
Indiana Port Commission
706 State Office Building
Indianapolis, Indiana

Dear Mr. Grafft:

Your letter of August 4, 1965, has been received requesting an Opinion specifically in regard to purchasing and contracting functions, as follows:

"There has been some question as to whether the purchasing and contracting functions of the Port Commission are to be carried on by the Department of Administration or by the Commission itself.

"In asking this question, the Commission is not attempting to divest itself of control by the Department of Administration, if such control does, in fact, exist by law. To the contrary, if the facilities and services of the Department of Administration are available to the Commission, by law or by election, the Commission desires to avail itself of these services at least until such time as its entire operation is located at the Port site and is involved only with the operation and maintenance of the Port and its facilities and the expenditure of other than State-appropriated funds."

part 3, §§ 68-1201—68-1230, the Indiana Port Commission was, by express provision, constituted "a body both corporate and politic in the State of Indiana," and was authorized and empowered, among other powers and duties, to adopt by-laws and a seal ("which shall not be the seal of the state of Indiana"), to sue and be sued in its own name, to make and enter into all contracts, undertakings and agreements, and to do all things necessary to the performance of its duties and execution of its powers expressly granted. (Emphasis added.)

The Indiana Port Commission Act, supra, and other acts of this state creating similar instrumentalities in the State of Indiana have been construed by the court as having created a separate public corporate entity which can be considered an instrumentality or agency of the state. However, they are separate from the State in its corporate sovereign capacity.


It is presumed that the Legislature acts with full knowledge and information as to the judicial decisions with respect to such prior and existing law and legislation. Hahn v. Moore, 127 Ind. App. 149, 133 N.E.2d 900 (1956). The Indiana Port
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Commission Act, supra, would then indicate that it was the express intention of the Legislature to create "a body both corporate and politic in the State of Indiana," separate and distinct from the state in its corporate sovereign capacity.

Your attention is specifically directed to the provision of the Indiana Port Commission Act, supra, Section 12, p. 14, which provides as follows:

"A special and distinct revolving fund is hereby created, to be known as the 'Indiana port fund.' . . . Said fund shall be held in the name of the Indiana port commission, shall be administered by the commission, and all expenditures therefrom shall be made by the commission, subject, however, to the approval by governor and the state budget committee of all expenditures of moneys advanced to said fund by the state of Indiana. Requests for such approval shall be made in such form as shall be prescribed by the budget committee. . . ."

Subsequent appropriations of monies to the fund for other purposes have required such executive and administrative approval of expenditures. The law thereby requires the Commission, even though it is a separate public corporate entity from the state in its corporate sovereign capacity, to first obtain approval of an expenditure of funds appropriated by the state, contractual or otherwise. The funds, appropriated by the state, are also, in some instances, required to be returned to the state general fund.

Pursuant to the provision of the Administrative Act of 1961, Acts of 1961, ch. 269, p. 610, as supplemented by Acts of 1965, ch. 250, p. 630, as found in Burns IND. STAT. ANN., (1961 Repl. and 1965 Supp.), §§ 60-101—60-122, the Indiana Department of Administration was, by express provision, created as a department of state government and granted specific powers and duties. The Act has been the subject of Official Opinions of the Attorney General.

1961 O.A.G., page 110, No. 24;
The Opinions recognized the necessity of ascertaining the legislative intent regarding the functioning of other departments, agencies, and commissions of the State new and old, with relation to the powers and duties of the Indiana Department of Administration. None of the departments, agencies, or commissions of the State of Indiana concerned in the opinions are "a body both corporate and politic in the State of Indiana," but were expressly created as a department, agency, or commission of the State of Indiana using similar wording as the Administrative Act of 1961, supra, which created the Indiana Department of Administration. (Emphasis added.)


"SEC. 2. The following departments and divisions of the state government are each hereby created and established as follows: . . . (b) a Division of the Budget. . . ." Acts of 1947, ch. 279, § 2, p. 1138, being Burns IND. STAT. ANN., (1961 Repl.), § 60-1802.

". . . there is hereby created and established a department of the state government which shall be known as the Indiana library and historical department." Acts of 1925, ch. 58, § 1, p. 190, being Burns IND. STAT. ANN., (1961 Repl.), § 63-801.

". . . a commission is hereby created in the executive department of the state government which shall be known as the commission on public records. . . ." Acts
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In the case of Indiana State Toll-Bridge Commission, supra, the court held:

"Again, we must hold the term 'state' means the State of Indiana in its corporate sovereign capacity."

Recognizing again the presumption that the Legislature acts with full knowledge and information as to the judicial decisions with respect to such prior and existing law and legislation, Hahn v. Moore, supra, we must presume that the Legislature intended, by express provision in the Administrative Act of 1961, to create the Indiana Department of Administration within the corporate sovereign entity of the state with powers and duties with respect only to other state departments, agencies, commissions, board, and other instrumentalities not excepted. This intention is very evident when we read the provision in the act that, "The commissioner shall be well versed in administrative management and in affairs of state government . . ." and observe that the Legislature, when enumerating powers and duties, used the word "state" when referring to departments, institutions, agencies, and commissions. (Emphasis added.)

To answer your first question, it must be determined whether the Legislature intended to place a separate public corporate and political entity, created to accomplish a specific governmental purpose, under the control of "a department of state government, which shall be known as the Indiana Department of Administration." It would be absurd to answer the question in the affirmative because the Legislature previously used the terminology, "a body politic and corporate" in the Act with reference to civil towns. Acts of 1965, ch. 129, § 19, p. 219, being Burns IND. STAT. ANN., (1963 Repl.), § 48-120. Certainly it was not intended that the Department created was to perform its duties and exercise its powers with regard to all civil towns and other such governmental subdivisions of the State. The Legislature does not intend an absurdity. Marks v. State, 220 Ind. 9, 40 N.E.2d 108 (1942).
The Indiana Port Commission, and the Indiana Department of Administration were created by the Legislature granting to each specific powers, duties, and authority to carry out the purposes the Legislature intended. State agencies, such as the Department may act, only within the limits of the authority conferred on them. *Thomas v. Lauer*, 227 Ind. 432, 437, 86 N.E.2d 71 (1949).

Also, it would reasonably follow, separate public corporate entities, such as the Commission, may act only within the limits of the authority conferred on them. The courts of this state have held that such commissions created as separate corporate entities are agencies of the state to carry out public purposes. *Orbison v. Welsh* (1962), *supra*, p. 397.

I find no provision in either the Indiana Port Commission Act, *supra*, or the Administrative Act of 1961, *supra*, that would allow the Commission to use the facilities and services of the Department, nor do I find any provision allowing the Department to grant the use of its tax supported facilities and services to a public corporate entity separate from the state in its corporate sovereign capacity.

In view of the above, the Legislature intended that the Indiana Port Commission perform all the powers, duties, and authority specifically granted and necessarily implied to accomplish the purposes for which the Commission was created and did not intend that the Indiana Department of Administration perform services for or grant the use of its facilities to separate public corporate entity not a part of the state.

OFFICIAL OPINION NO. 39

Dr. A. C. Offutt  
State Health Commissioner  
Indiana State Board of Health  
1330 West Michigan Street  
Indianapolis 7, Indiana  

September 17, 1965

Dear Dr. Offutt:

I am in receipt of your letter of July 16th in which you advised me that the State Board of Health was considering