Mr. Richard L. Worley
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Worley:

This is in answer to your request for an Official Opinion as to whether or not expenditures may be made without prior appropriation from the “Special Non-reverting Fund” authorized by Ind. Acts of 1955, ch. 311, § 221. Acts of 1955, supra, as amended by Acts of 1965, ch. 404, is a comprehensive statute which enable cities, towns, and counties to establish park departments and make provisions for their government and operation by a board.

Pertinent parts of that law helpful to an understanding of the question propounded, as they appear in Ind. Acts of 1955, ch. 311, as last amended by Ind. Acts of 1965, ch. 404, and found in Burns IND. STAT. ANN., (1965 Supp.), §§ 48-5851—41-5858d, read as follows:


“As used in this act

“(1) ‘City’ means classified city or town;

“(2) ‘Common Council’ means the legislative body of a city or incorporated town;”


“(8) Engage in self-supporting activities as prescribed in section 221 of this act.”


“All the territory included within the corporate limits of any such city or county shall constitute a taxing district for the purpose of levying special benefit taxes for park and recreation purposes as provided in this act.
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"The common council or the county council as they might determine shall provide the revenues necessary for the operation of the department or for capital expenditures not provided by the issuance of bonds, or both, by a specific levy to be used for such purposes exclusively or by special appropriation, or both." (Emphasis added.)


"The common council or the county council shall at the request of the board by ordinance create a special non-reverting capital fund for the purposes of acquiring land or making specific capital improvements. The common council or the county council may include, from year to year, in the boards' budget an item and an appropriation for these specific purposes.

"Monies placed in the non-reverting capital fund shall not be withdrawn except for the purposes for which the fund was created, unless the common council or the county council repeals the ordinance. Such repeal may not be made under suspension of the rules." (Emphasis added.)


"Insofar as possible, park and recreation facilities and programs shall be available to the public free of charge; but where necessary in order to provide a particular activity, the board may charge a reasonable fee.

"Moneys procured from such activity shall be deposited at least once each month with the fiscal officer of the city or county. The fiscal officer shall deposit such moneys either in a special non-reverting fund or in the non-reverting capital fund as directed by the board. Moneys from either fund shall be disbursed only on a warrant of the board signed by the president and secretary."

Inasmuch as your question relates to the expenditures of city funds in cases involving city park and recreation boards,
town funds in other situations, and county funds in still other instances, the following statutes requiring appropriation before expenditure of the funds of these governmental units are pertinent. With respect to city funds Ind. Acts of 1905, as found in Burns IND. STAT. ANN., (1963), § 48-1411, provides:

"No order or warrant for any purpose shall be drawn against the funds of any city, in the hands of the treasurer or other officer, unless an appropriation has been made by ordinance for such purpose and such appropriation is not exhausted, or unless such order or warrant shall be for a salary fixed by statute or ordinance, or in payment of a judgment which such city is compelled to pay, or for interest due on city bonds."

With respect to the funds of towns, Ind. Acts of 1905 as found in Burns IND. STAT. ANN., (1963), § 48-6803 provides:

"All moneys, however derived, belonging to such corporation shall be appropriated only for such objects and the defraying of such expenses as accrue, or necessarily arise, in the exercise of powers granted by this act. No appropriation shall be made without an order to that effect entered upon a proper book, to be kept for that purpose by the board."

Effective January 1, 1966, the foregoing statute will be repealed by § 3, ch. 182, Ind. Acts of 1965. Section 1, ch. 182, Ind. Acts of 1965, will also become effective that date as § 48-6807, Burns IND. STAT. ANN., (1965 Supp.), and reads as follows:

"Funds, however derived, belonging to a town, shall be appropriated by the board of trustees of the town before expenditure. Appropriations shall be made only by ordinance, and all ordinances so made shall be entered in a book to be kept for that purpose by the board. Appropriations shall be made from each fund to defray expenses which accrue or arise pursuant to law against such funds." (Emphasis added.)
With respect to the funds of counties, Ind. Acts of 1899, ch. 154, § 15, as found in Burns IND. STAT. ANN., (1960), § 26-515, provides that:

"... The power of making appropriations of money to be paid out of the county treasury shall be vested exclusively in such council, and, except as in this act otherwise expressly provided, no money shall be drawn from such treasury but in pursuance of appropriations so made."

Indiana Acts of 1899, ch. 154, § 22, as amended Ind. Acts of 1935, ch. 110, § 1, as found in Burns IND. STAT. ANN., (1960), § 26-522, provides that:

"... Appropriations by the county council shall not be necessary to authorize a warrant drawn and payment made out of the county treasury in the following instances, namely:

"... or money which any statute expressly provides shall be paid for a purpose therein stated out of the county treasury without being first appropriated for such purpose by the county council. ..."

"... In all other instances, including all payments from any general or special fund to be used by any county or by the board of commissioners of any county in the construction, maintenance or repairs of any highways or bridges therein, or for any purpose other than as above stated no warrant shall be drawn upon, or money paid out of the county treasury, unless an appropriation by the county council therefor has been made, for the calendar year in which the payment is made, and which appropriation remains unexhausted: ...” (Emphasis added.)

In view of the foregoing prohibitions against expenditure of unappropriated funds, which prohibitions appear to be broad enough to include the fund in question, whether city, town, or county, it becomes relevant to consider whether The Park and Recreation Law of 1965 exempts the “Special Non-reverting Fund” from such prohibitions.

It will be noted that there are no words in any of the quoted sections of the Park Law which expressly authorize the
expenditure of the "Special Non-reverting Fund" without appropriation. Nor are there found therein any words of express appropriation by the General Assembly. The fact that funds are earmarked for the support of activities established by the park board is not enough to constitute an appropriation within the meaning of the statutes. In a 1955 opinion the Attorney General ruled, citing McCord v. Slavin, 143 Cal. 325 (1904), and Hunt v. Callaghan, 32 Ariz. 235 (1927), that "... the mere earmarking or allocation of public funds for a specific purpose is not the equivalent of an appropriation. ... With respect to public funds the term 'appropriation' means, not only that the funds are allocated for a specific purpose, but also that specific authority has been granted to expend such funds for said specific purpose." (Emphasis added.) The opinion continued in words particularly applicable to our situation: "It is important to note that, although the funds to be expended for the purposes of this act are not derived from a general fund, the act itself makes no specific appropriation of the proceeds from the sale of said bonds whereby a public officer is authorized to make expenditures therefrom solely by virtue of the provisions of said act." Under the Park and Recreation Law, although the "Special Non-reverting Fund" is separate from the general fund, there is no specific appropriation of the money so collected to be used in support of park activities. In other words, though the fees can be used only for that purpose, they must remain dormant until the county or common council authorizes their use by the park board. This position is reinforced by Burns IND. STAT. ANN., (1965 Supp.), § 48-5852q (quoted supra under that number) which expressly states that "[t]he common council or the county council ... shall provide the revenues necessary for the operation of the department ... by ... levy ... or by ... appropriation, or both." Furthermore, the fees charged for activities are not required to be deposited in the "Special Non-reverting Fund" but may, as the board directs, go into the "Special Non-reverting Capital Fund" by the express provisions of section 221 (quoted supra as § 48-5852t).

Almost precisely the point involved here has been previously decided by the Attorney General in 1931-32 O.A.G., p.
251. There the question presented was, may the fees received by the park board of a city of the second class in the operation of a municipal golf course and paid into the city treasury but which have not been budgeted and appropriated legally be drawn upon in the payment of the operating expenses of such golf course? Replying in the negative, the Opinion based its answer on an interpretation of Ind. Acts of 1923, ch. 67, § 6, as last amended Ind. Acts of 1949, ch. 231, § 1, as found in Burns IND. STAT. ANN., (1963), § 48-5607, and Ind. Acts of 1919, ch. 59, § 200, as last amended Ind. Acts of 1965, ch. 125, § 2, as found in Burns IND. STAT. ANN., (1965 Supp.), § 64-1914. Burns § 48-5607, supra, reads as follows:

"... The said board [park board] shall have full, complete and exclusive authority to expend for and on behalf of such city all sums of money thus realized from taxation, appropriation and the sale of bonds, and also that may be realized from the sale or lease of privileges in the parks, from gifts, donations, payments, or from any other source, for the acquisition, improvement, or maintenance of parks or park property or for any park purposes, but the said boards shall have no power to contract debts beyond the amounts which are or will be thus available: Provided, That warrants for such expenditures shall be drawn by the comptroller of such city for expenditures upon a voucher of such board, signed by the president or vice-president and secretary. All money remaining in the treasury to the credit of the board of park commissioners at the end of the calendar year shall still belong to the general park fund, to be used by the board of park commissioners for park purposes. . . ."

The section quoted above was construed by the 1931-32 O. A. G., supra, in the light of Ind. Acts of 1927, ch. 95, § 1, which section was last amended by Acts of 1965, ch. 125, § 2, as found in Burns IND. STAT. ANN., (1965 Supp.), § 64-1914, which states:

"... When such state board of tax commissioners in its order shall order a reduction in the levy it shall indicate the item or items in the budget affected by
such reduction, and the budget as set out by the municipal officers in the published statement or as modified on hearing by the state board shall limit the expenditure for the year, except in cases of casualty or accident or extraordinary emergency. . . .”

From a reading of the two statutes together the Attorney General concluded in his aforementioned Opinion, 1931-32 O.A.G., at p. 252:

“... it follows that the park board in such a case as the one set out by you is limited to the items of the budget except in case of casualty, accident or extraordinary emergency, in which latter case the statute provides the method for additional appropriation to meet the emergency. In other words, I think the park fund must be budgeted. That does not mean that any part of the park fund may be used for other purposes than for park purposes, neither does it mean that any other board has power to expend the fund. It does mean, however, that the park board in cities of the second class in their expenditures is governed by the budget law as amended in 1927 and is limited to the amount set out in the budget unless increased in accordance with the provision of section 14239 [Burns 64-1914] supra, to meet an emergency.”

The conclusion of the Attorney General in the 1931-32 Opinion seems to apply even more strongly to our situation in the light of Ind. Acts of 1965, ch. 404, § 6, as found in Burns IND. STAT. ANN., (1965 Supp.), § 48-5852o, which states:

“... the board [park board] shall have the general power to perform all acts necessary to acquire and develop sites and facilities and to conduct such programs as are generally understood to be park recreation functions. In addition to all other powers necessary to achieve the general objectives of the board, the board shall have, for park and recreation purposes, the power and duty to: . . . .

* * *

“(8) Engage in self-supporting activities as prescribed in section 221 of this act.
1965 O. A. G.

“(14) Prepare and submit an annual budget in the same manner as other departments of the city or county government as prescribed by the State Board of Accounts.”

The provisions regarding the preparation of a budget by a city department are Ind. Acts of 1905, ch. 129, § 84, as last amended Ind. Acts of 1933, ch. 60, § 1, as found in Burns IND. STAT. ANN., (1963), § 48-1506, which reads:

“It shall be the duty of each executive department, at the time provided by law, to submit to the joint meeting of the heads of the departments and of the various boards, an estimate of the amount of money required for their respective departments for the ensuing fiscal year, stating with as great particularity as possible each item thereof.... After such meeting... the city controller shall proceed to revise such estimates for the ensuing year, and shall then prepare a report to the mayor... The mayor shall at the next meeting of the common council present such report with such recommendations as he may see fit. It shall be the duty of the committee of finance of the common council thereupon to prepare an ordinance fixing the rate of taxation for the ensuing year, and also an ordinance making appropriations by items for the use of the various executive departments and other city purposes for the ensuing year.... Such appropriation ordinance shall thereafter be promptly acted upon by the common council....” (Emphasis added.)


In conclusion, it is apparent by an examination of the various statutes dealing with the formulation of the annual budget and the procedure for appropriating funds for the use of city, town, and county departments that it has been the usual policy of the Legislature that the budgets of such departments should be carefully controlled by the town boards, city councils and county councils and that every item of expenditure,
if possible, be separately considered and appropriation made therefor.

Thus, it is my opinion, that since there is no express authorization by the Legislature to the park board to expend the activity fees in the "Special Non-reverting Fund" without prior appropriation, such money cannot be disbursed without a prior appropriation ordinance having been adopted according to law by the city council, county council or town board of trustees.

OFFICIAL OPINION NO. 55
October 25, 1965

Mr. Earl M. Utterback
Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Utterback:

This is in answer to your recent letter in which you requested an Official Opinion on the following question.

"If a teacher retires prior to the Supplemental Benefits Act, Chapter 329 of the Acts of 1955, and returns to active service under that Act and earns sufficient quarters of Social Security coverage as a teacher, should the Social Security earned as a teacher be taken into consideration in determining the minimum benefit (State's guarantee) ?"

It is believed that a brief resume of the history of the Teachers' Retirement Act would aid in a better understanding of the problem presented by your question.

The Indiana Teachers' Retirement Fund was established by Acts of 1915, ch. 182, Burns IND. STAT. ANN., §§ 28-4501—28-4511, 28-4513—28-4514, which provided each teacher contribute an assessment of from $10.00 to $25.00 per year on a graduated scale depending on the number of years taught in the public schools. Each teacher was to receive an annuity