OPINION 69
OFFICIAL OPINION NO. 69

December 29, 1965

Hon. Anna Maloney
Indiana State Representative
131 East 5th Avenue
Gary, Indiana

Dear Representative Maloney:

This is in response to your request for my Official Opinion upon the general query of whether and under what circumstances monies received by the School City of Gary from the state “Property Tax Relief Fund” may be transferred to the Cumulative Building Fund of such school city “when in dire need of Cumulative Building (construction) funds,” and further, if so transferred, whether such a transfer would automatically affect the locally-levied cumulative building fund tax. Your letter describes, at length, the general picture of the shortage of classrooms in such school city, the present circumstance that “almost every school building is tremendously overcrowded,” that children are taught or housed in halls and multipurpose rooms, that gyms have been converted into classroom space, and that the situation is such that the School City of Gary “has rented 69 classrooms outside and off of school premises.”

Your letter further explains that the Board of School Trustees of the School City of Gary has embarked upon “a $23,000,000 plus, 13 project school construction program,” has approved and levied the maximum cumulative building fund levy of $1.25, has authorized and advertised for bids for a $5,200,000 bond issue, the sale of which cannot now be effected on account of pending litigation, and that said board has already contracted with nine architects for design and construction bid purposes for such proposed new buildings in an effort “to alleviate this classroom shortage and overcrowding.”

The “Property Tax Relief Fund,” with which your inquiry is now concerned, was first created by Section 704 of the “Adjusted Gross Income Tax Act of 1963,” being the Acts of 1963 (Spec. Sess.), ch. 32, § 704, as found in Burns IND. 352
1965 O. A. G.

STAT. ANN. (1965 Supp.), § 64-3251, which section, as amended, provides as follows:

“All revenue derived from the imposition and collection of the tax on corporations imposed by this act [§§ 64-3201—64-3251] (in excess of the credit against tax allowed by section 302 [§ 64-3221]) shall be deposited in the general fund of the state in a special fund to be known as the ‘property tax relief fund.’

“All moneys so deposited in the property tax relief fund, on the first day of April of each year following the collection of the tax, shall be allocated and distributed to the various school corporations of the state in proportion to the average daily attendance of pupils, in grades one [1] through twelve [12], residing in each school corporation as such average daily attendance is certified to by the state superintendent of public instruction. Such certification by the state superintendent of public instruction shall be made on or before the first day of July of each year and shall be based on the average daily attendance of pupils in grades one [1] through twelve [12] in each school corporation in the immediately preceding school year. All such allocations shall be made by the auditor of state who shall issue warrants to the treasurer of state ordering payments to the respective school corporations of the amounts so allocated.

“All such allocations received by the respective school corporations pursuant to the provisions of this section shall be used by the school corporations in the following order and for the following purposes:

1. Payments to the common school fund;
2. Retirement of indebtedness currently falling due;
3. Payment of current debt service and lease rental obligations; and
4. Current operating expenses.

“All funds remaining in the property tax relief fund at the close of any fiscal year shall not revert to the
general fund but shall constitute a revolving fund to be used for the purposes as in this section prescribed.

“All other revenue derived from the imposition and collection of the tax imposed by this act shall be paid into the state treasury and credited to the general fund.”

Although Section 704 was amended by the Acts of 1965, ch. 233, § 29, which section was effective on March 10, 1965, the only amendment thereto by the 1965 Act was the inclusion of the words “in excess of the credit against tax allowed by section 302” contained within the parentheses in the above-quoted matter. Thus, both the 1963 and 1965 Legislatures have stated a priority according to which school corporations are to use such monies, such use being first for payments to the common school fund, second for the retirement of indebtedness “currently falling due,” third for the payment of “current debt service and lease rental obligations,” and lastly for “current operating expenses.” From the manner by which the Legislature has stated the priority of such uses, together with the fact that the name of such fund would seem to indicate that it is for the relief of property taxes, it would appear that the Legislature intended school corporations receiving such funds to use them in lieu of funds which would otherwise be received from tax levies so as thereby to reduce tax levies and afford the property taxpayer with some relief by way of a reduction in property tax rates.

However, it should be observed that property tax relief may be effected not only by a reduction in tax rates but also by deriving funds from other than property tax receipts, whenever the expenditure of additional funds is an absolute necessity which would require still higher tax rates were it not for the availability of additional funds from another source to supply such need.

The monies available for distribution from the Property Tax Relief Fund which are derived as provided in Burns 64-3251, supra, do not comprise the entire fund. The distribution of such part has been referred to—in the quarterly bulletin issued by the State Board of Accounts, entitled “The School Administrator,” being Volume 10, dated June, 1965—
as the distribution of the "Corporation Tax." This part of the Property Tax Relief Fund so derived is, of course, an indeterminate sum, the allocation of which to school corporations is governed by the procedure, formula and other provisions set forth in Burns 64-3251, *supra*.

However, in 1963, the Legislature (in Special Session) appropriated also a fixed sum ($25,000,000) "for the state Property Tax Relief Fund account" for the 1963-1964 fiscal year, and a like amount for the 1964-1965 fiscal year. The 1965 Legislature, likewise, appropriated the fixed sum of $27,500,000 for the 1965-1966 fiscal year, and a like amount for the 1966-1967 fiscal year, for the same purpose. These fixed sums also are a part of the state Property Tax Relief Fund, and, together with the indeterminate amount derived from Section 704 of the "Adjusted Gross Income Tax Act of 1963," (Burns 64-3251), *supra*, comprise the Property Tax Relief Fund. With respect to the latter fixed sums, their allocation to school corporations is governed by the procedures, formula and other provisions of the particular appropriation acts providing therefor.

With respect to the monies received from the fixed appropriations to the Property Tax Relief Fund as provided by the so-called budget bills or appropriation acts of both the 1963 and 1965 Legislatures, there are also certain requirements concerning the use of such monies by school corporations. Comparing such 1963 requirements concerning the use of these funds with those requirements enacted in 1965, discloses some variation in the language expressing the purpose for which such monies are to be used by such school corporations. The Acts of 1963 (Spec. Sess.), ch. 35, § 2F, p. 173, at p. 174, provides, in part:

"The various school corporations in each county and the proper officials and employees thereof shall receive the receipts so distributed by the county treasurer in the same manner as other tax receipts are received. The budgets of the various school corporations shall reflect the anticipated receipts from the said state property tax relief fund, and appropriation shall be made therefrom as other appropriations are made. Said distribution shall be first used for debt retire-
ment, lease rental and cumulative building funds and further, after said use is made then monies can be used in the Special School Account.”

The Acts of 1965, ch. 191, § 2F, p. 417, at p. 418, provides, in part, as follows:

“The various school corporations in each county and the proper officials and employees thereof shall receive the receipts so distributed by the county treasurer in the same manner as other tax receipts are received. The budgets of the various school corporations shall reflect the anticipated receipts from the said state property tax relief fund, and appropriation shall be made therefrom as other appropriations are made. Said distribution shall be first used for debt retirement, lease rental and cumulative building funds, and after the local levy for each of said funds is reduced to one cent or less per ($100) one hundred dollars of assessed valuation, then monies can be used in the Special School Account.”

The 1963 version of the appropriation act first above quoted requires that funds from said Property Tax Relief Fund “be first used for debt retirement, lease rental and cumulative building funds and further, after said use is made then monies can be used in the Special School Account.” The 1963 version does not state explicitly the percentage or how much of the distribution of property tax relief monies must be used for debt retirement, lease rental and cumulative building funds or what the status of such funds must be before receipts from the Property Tax Relief Fund may be used for the many purposes for which the Special School Account may be used. On the other hand, the 1965 version of the appropriation act last above quoted now requires not only that monies from said Property Tax Relief Fund “be first used for debt retirement, lease rental and cumulative building funds,” but also adds the restriction that such monies cannot be used for the many purposes for which the Special School Account may be used until the tax rate for each of said funds (debt retirement, lease rental and cumulative building) has been reduced to one cent or less per each one hundred dollars of assessed valuation. However, both the 1963 and 1965 versions of the ap-
appropriation acts above quoted were intended to provide restrictions against the transfer of receipts from the Property Tax Relief Fund to the Special School Account until some use thereof had been made of such receipts for debt retirement, lease rental and cumulative building fund purposes and the 1965 version prohibits the transfer of any monies from the Property Tax Relief Fund to the Special School Account until property tax relief has been effected by way of reductions in property tax rates for each of the funds, so that the levy for each such fund is not more than one cent. However, the language falls short of mandating that any particular tax levy must be reduced automatically on account of the receipt of monies from the Property Tax Relief Fund.

It is true that the budgets of the various school corporations must "reflect the anticipated receipts from the state property tax relief fund" and such school corporations obviously are expected to make frugal use of such funds in a sincere effort to effect a reduction in tax rates. This is indicated by the statutory elements which must be included in such budgets as provided in both the 1963 and 1965 appropriation acts. The Acts of 1965, ch. 191, § 2E, p. 417, provides as follows:

"E. The local school budget for the calendar year of 1966 shall be prepared in such a manner as to reveal the following facts:

   "(a) The estimated expenditures for the calendar year 1966 over and above revenues from state sources itemized in the 1965 budget.

   "(b) The local property tax rate that would be required to finance (a) above.

   "(c) The estimated expenditures for the calendar year 1966 over and above the estimated revenues from state sources itemized in the 1966 budget.

   "(d) The local property tax rate that will be required to finance (c) above.

   "(e) The reduction in tax rate that could result from the increased state distribution of funds.

   "(f) Explanation of any reduction in tax rates less than (e) above." (Emphasis added.)
The above statutory elements to be considered in the adoption of a school budget indicate in what manner the anticipated receipts from the distribution of state funds are to be reflected in such school budgets and also recognizes that a situation may exist wherein the actual reduction in tax rate resulting from the estimated receipts from the distribution of state funds may not be as great a reduction as potentially possible (such as in the case of absolute need and necessity). This is the reason for the explanation to be made in the case of any reduction in tax rates which is less than in subparagraph (e) above. Such an explanation would be for the ultimate consideration and final determination by the State Board of Tax Commissioners in its annual review of budgets as required by statute. Thus, the monies from this state fund are not to be considered merely as a bonanza which may be expended indiscriminately so as to afford no relief to the property taxpayer.

Moreover, there is some responsibility also upon the local level to see that receipts from the distribution of monies from the Property Tax Relief Fund are not unnecessarily expended and that levies for specific purposes are kept at the lowest possible level, taking such anticipated receipts from this state fund into consideration. Even in the case of the cumulative building fund tax levy, that act, itself, Acts of 1945, ch. 57, § 3, as last amended by the Acts of 1961, ch. 270, § 1, as found in Burns IND. STAT. ANN. (1965 Cumulative Supp.), § 28-1110, although providing for a fixed tax levy for cumulative building fund purposes of not to exceed $1.25 on each one hundred dollars of taxable personal and real property which may continue for any period not exceeding twelve years, also specifically provides the procedure by which either school officials or taxpayers may effect a rescission of or reduction in said fixed tax rate. This section (Burns 28-1110, supra) is the only statute providing a means for the reduction of the cumulative building fund levy and provides, in part, as follows:

"To provide for the said cumulative building or sinking fund, the township trustee, and advisory board, school board, board of school trustees or school commissioners of any school corporation shall have the power to levy a tax of not to exceed one dollar and
twenty-five cents [$1.25] on each one hundred dollars [$100] on all taxable personal and real property within such school township, school town or school city. Such tax rate, after having been approved by the state board of tax commissioners as provided in section 2 [§ 28-1109] of this act, may be levied annually beginning with the first annual tax levy thereafter and continuing for any period not exceeding twelve [12] years and shall be advertised as other tax levies, annually: Provided, however, That if the township trustee, school board, board of school trustees or school commissioners of any school corporation deem it advisable to do so, after such levy has been approved, they may reduce or rescind such annual levy, or ten [10] or more taxpayers, in any such taxing district, who will be affected by such tax, may file with the county auditor of the county in which such taxing district is located, not later than August first of any year, a petition for reduction or revision of said levy setting forth their objections to such levy. Such petition shall be certified to the state board of tax commissioners, and the same procedure for notice and hearing shall be followed as set out in section 2 [§ 28-1109] of this act. After such hearing the state board of tax commissioners may reduce or rescind such levy and such action shall be final and conclusive. Such tax, when collected, shall be held in a special fund to be known as the ‘building fund,’ and such fund shall not be expended for any purpose other than the purposes set forth in this act.” (Emphasis added.)

Thus, if neither the township trustee, school board, board of school trustees, school commissioners of any school corporation nor ten or more taxpayers filed a petition, as above provided, to either reduce or rescind the $1.25 cumulative building fund tax levy, then such levy would continue, since such a petition is the only statutory method for reducing or rescinding such levy. Moreover, such a petition may be filed prior to August 1 “of any year.” (Emphasis added.)

Thus, it is my Opinion that monies received from the distribution of the Property Tax Relief Fund may be used not
only for debt retirement, lease rental and cumulative building fund purposes, but that such distribution or any part thereof may be transferred to the Cumulative Building Fund without requiring any reduction to be made to the $1.25 cumulative building fund levy in the absence of a petition for such a reduction. The right to use such monies from the Cumulative Building Fund for the purposes for which such fund may be used would be subject to the same supervision by the State Board of Tax Commissioners as if the Cumulative Building Fund were wholly derived from the local cumulative building fund tax levy. There is no provision in the statutes requiring that the cumulative building fund tax levy must be reduced on account of the receipt into such fund of monies derived from the distribution of the Property Tax Relief Fund. When, in the 1965 appropriation act, it is provided that the tax levy for debt retirement, lease rental and cumulative building fund be reduced to one cent or less per one hundred dollars of assessed valuation for each of such funds, such provision is a prerequisite only to the authority to use any such monies in the Special School Account, but is not a restriction prohibiting the addition of such monies from the Property Tax Relief Fund or any part thereof to the local tax revenues which would otherwise be received in the cumulative building fund from the application of the total tax levy previously authorized, nor does such addition result in a mandated reduction in the cumulative building fund tax levy, when no petition for the reduction of such tax levy has been filed.

OFFICIAL OPINION NO. 70

December 29, 1965

Hon. Rodney Piper
Indiana State Senator
3207 West Jackson Boulevard
Muncie, Indiana

Dear Senator Piper:

This is in response to your request for my Official Opinion in answer to the question of whether the phrase “total gross income from all sources,” as used in the Acts of 1965, ch. 228,