OPINION 35

semiannual withholding be in "an amount of money that could be raised by a tax levy of not less than seventy-five cents (75c) on the adjusted valuation of the school corporation" would necessarily apply. (Our emphasis)

OFFICIAL OPINION NO. 35

July 9, 1964

Hon. Dorothy Gardner
Auditor of State
238 State House
Indianapolis, Indiana

Dear Mrs. Gardner:

This is in response to your letter of July 2, 1964, wherein you request an Official Opinion relative to the distribution of funds from the Motor Vehicle Highway Account Fund. In your letter you cite the Acts of 1941, Ch. 168, Sec. 3, as last amended in 1949, and found in Burns' (1949 Repl.), Section 36-2817, and State Appropriation Acts for the legislative sessions of 1957, 1959, 1961 and 1963.

Your specific question is stated as follows:

"In arriving at the net amount of funds to be distributed between cities, towns, counties and the State Highway Commission in accordance with the above mentioned statute, should I deduct 50% of the amount appropriated for the state police from the total amount available in the Motor Vehicle Highway Account or 75% of such amount?"

The point of law raised by your letter is whether the Appropriation Acts, supra, supersede the statutory provisions found in Burns' 36-2817, supra. The pertinent parts of these citations read as follows:

36-2817 "The money collected for the motor vehicle highway account fund and remaining after refunds and the payment of all expenses incurred in the collection thereof, and after the deduction of any amount ap-
appropriated by the general assembly for the division of public safety and one-half [1/2] of the amount appropriated for the state police department shall be allocated to and distributed among the commission and subdivisions herein designated as follows:" (Our emphasis)

1963 Appropriation Act

The Acts of 1963 (Spec. Sess.), Ch. 35, page 132, under the caption "FOR THE INDIANA STATE POLICE DEPARTMENT AND MOTOR CARRIER INSPECTION," reads as follows:

"PROVIDED, That the net expenditures made from the appropriations herein made for the Indiana State Police for Personal Service, Other Operating Expense, Equipment and Automobiles, shall be charged to and paid twenty-five per cent (25%) from the General Fund of the State Treasury and seventy-five per cent (75%) deducted from the Motor Vehicle Highway Fund * * *" (Our emphasis)

The formula, providing for a seventy-five per cent (75%) deduction from the Motor Vehicle Highway Fund, is also contained in the Acts of 1957, Ch. 285, Sec. 2b, page 700; the Acts of 1959, Ch. 114, Sec. 2, page 266; and the Acts of 1961, Ch. 298, Sec. 2, page 765.

In the instant case we have a 50% deduction formula contained in the Acts of 1941, Ch. 168, Sec. 3, as last amended in 1949, and in direct conflict therewith, we have a 75% deduction formula contained in the Appropriation Acts of 1957, 1959, 1961 and 1963, supra. Unquestionably, these two provisions are in irreconcilable conflict.

In my 1959 O. A. G., pages 72, 77, No. 15, I considered a conflict between statutes in a matter of procedure. A rule of statutory construction and statements made therein are particularly in point in a consideration of your question. These read as follows:

"When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by
any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict.’


* * *

“It is well settled within the State of Indiana that where later legislation is, (1) inconsistent and irreconcilable with prior legislation, and (2) covers the entire subject matter the later legislation impliedly repeals the prior statute providing the later legislation has the same object and purpose.

“Where there is a conflict in the provisions of some act or between two acts or statutes passed at different times, the earliest in position or enactment is repealed by the later.

“Stiers v. Mundy (1910), 174 Ind. 651, 92 N. E. 374. Though repeals by implication are not favored, a statute is repealed by a new act embracing or repugnant to the entire subject matter of the old one.”

An examination of the Appropriation Acts of 1957 to 1963, supra, inclusive, shows that each such act contains a general repeal section, which reads as follows:

“All laws and parts of laws inconsistent with the provisions of this Act are hereby repealed.”

The Indiana Constitution, Art. 10, Sec. 3, provides as follows:

“No money shall be drawn from the Treasury, but in pursuance of appropriations made by law.”

The Supreme Court in the case of Orbison v. Welsh, Governor, et al. (1962), 242 Ind. 385, 403, 179 N. E. (2d) 727, stated:

198
“This Court has heretofore stated that no particular form need be followed in the making of an appropriation nor is it necessary that any particular language or words be used. The Legislature must merely indicate the purpose for which the money is to be used, the source from which it is to come, and indicate in some manner either the sum to be used or a method of ascertaining a maximum that may be used * * *” (Our emphasis)

Each successive Legislature, commencing with that of 1957, in their respective Appropriation Acts, has clearly indicated the purpose for which the money, herein in question, was and is to be used, the source from which it is to come and the method or formula for ascertaining the maximum amount that may be used.

Therefore, it is my opinion that the Appropriation Acts, 1957 to 1963, supra, have both impliedly and by means of the general repeal section contained, in each act, repealed that provision of the Acts of 1941, Ch. 168, Sec. 3, as last amended in 1949 and found in Burns’ 36-2817, supra. Thus, it is my further opinion that the Auditor of State should deduct seventy-five per cent (75%) of the amount appropriated for the Indiana State Police Department from the total amount available in the Motor Vehicle Highway Account.

OFFICIAL OPINION NO. 36

July 13, 1964

Hon. Allan E. Bloom
State Senator
2915 Charlotte Avenue
Fort Wayne, Indiana

Dear Senator Bloom:

You have requested my Official Opinion upon the following question:

"* * * Is the Board of a County Welfare Department required to allow attendance at its Board meetings of