

and expenses of administration, as set forth in "Schedule D—Deductions," to be subtracted only from the total value of Schedule A. The form, "Schedule of All Property," by not considering joint tenancies as being transfers by will, is not designed to allow such joint tenancies to be added to Schedule A before the subtraction of the total amount shown in Schedule D, representing the total allowable debts and expenses of administration. Therefore, in conformity with this opinion, total joint tenancies, to the extent taxable and as shown by Schedule B-3, should be inserted in "Schedule C—Recapitulation" in a line following the Total Value of Schedule A, and Schedule A and such joint tenancies should be combined and the debts and expenses of administration subtracted from such total. While this will necessitate a change in the use of the Schedule, or possibly an amendment to "Schedule C—Recapitulation," it would appear, as hereinbefore shown, that there is no reason for disallowing the deductions provided for transfers by will or intestate law in the case of transfers of jointly held property. Inasmuch as there are many estates where perhaps the major portion, if not all, of the decedent's property is transferred by reason of a joint property arrangement, there appears no reason in the statute or otherwise to disallow the deduction of court costs, attorneys' fees and the other deductions provided by Burns' 7-2404, *supra*, if otherwise allowable, since the Legislature has expressly stated that transfers of jointly held property shall be taxable in the same manner as if the decedent's interest therein were devised by will.

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OFFICIAL OPINION NO. 32

August 1, 1963

Mr. Peter A. Beczkiewicz, Member  
 State Board of Tax Commissioners  
 201 State Office Building  
 Indianapolis 4, Indiana

Dear Mr. Beczkiewicz:

I have your letter requesting an Official Opinion on the following question:

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“\* \* \* whether the Board of Park Commissioners or the Common Council is the proper body to hold hearings on and finally adopt the *annual* budget, to levy taxes, and to hold hearings on and make emergency, i.e. additional, appropriations for general, administrative and maintenance expenses in the case of a park special taxing district pursuant to Chapter 144 of the Acts of 1919, and the acts amendatory thereof and supplemental thereto (Sec. 48-5501 *et seq.* Burns Statutes, 1950 Replacement).” (Our emphasis)

Consideration of the Acts of 1919, Ch. 144, as amended and found in Burns' (1950 Repl.), Section 48-5501 *et seq.*, which governs the department of public parks in cities of the first class, reveals a seeming conflict between certain sections of the act in the method of providing for appropriations. In determining the legislative intent it is necessary to give meaning to and reconcile all parts of the act, if possible. In the case of *Cox et al. v. Timm* (1914), 182 Ind. 7, 105 N. E. 479, the court stated, in part, on page 13:

“\* \* \* Between a construction which would create conflict in the provisions of a law and one which would bring harmony, the choice is always to be, if practicable, the latter.”

Burns' 48-5507, *supra*, provides for minimum and maximum tax rates that may be established for such park district and that such tax “which shall be in addition to the other taxes of the city, shall be levied annually by the common council for park purposes.”

Burns' 48-5527, *supra*, concerns a special benefit tax for payment of bonds issued by the park department and states in part:

“For the purpose of raising money to pay all *bonds* issued as provided in section twenty-six of this act, and any interest thereon, *the board of park commissioners of any such city of the first class is hereby empowered to levy and shall levy, each year, a special tax* upon all of the property, both real and personal, on and lo-

cated within the territorial limits of such park district, in such manner as to meet and pay the principal of said bonds as they severally mature, together with all accruing interest thereon. *Such board shall cause such tax so levied each year to be certified to the county auditor of the county in which such park district is located, on or before the first day of October of each year \* \* \** (Our emphasis)

A third section, being Burns' 48-5528a, *supra*, which was added in 1961, relates to the establishment of a cumulative building and sinking fund to raise money for any of the purposes for which bonds may be issued and states, in part:

"The board of park commissioners of any such city, in order to raise money for any of the purposes for which bonds may be issued pursuant to sec. 25, is authorized to request the common council of such city to adopt an ordinance establishing a cumulative building and sinking fund in the manner hereinafter provided. *If the common council adopts such an ordinance establishing a cumulative building and sinking fund, the common council shall provide for and give notice thereof to the taxpayers affected thereby and provide for a public hearing before such proposed action shall be presented to the state board of tax commissioners for approval \* \* \** After approval by the state board of tax commissioners, *the common council of the city shall levy annually thereafter, for a period of 12 years, the amount of tax set forth in the ordinance and approved by the state board of tax commissioners \* \* \**" (Our emphasis)

The statute creating the department of public parks provides that it shall be one of the executive departments of the city, Burns' 48-5501, *supra*; that it shall have the exclusive government, management and control of all parks subject to the laws of the state, Burns' 48-5505, *supra*; that the territory within the jurisdiction of the park board shall "constitute a taxing district for the purpose of levying special benefit taxes for park purposes." Burns' 48-5504, *supra*.

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By the Acts of 1929, Ch. 199, Sec. 1, as found in Burns' (1950 Repl.), Section 48-5601, cities of the second class are permitted to adopt the provisions of the law by action of the common council in passing an ordinance providing that their park system shall be governed by such law as it applies to cities of the first class.

The procedure to be followed in appropriating funds for cities generally is provided in the following statutes which are quoted in part:

“In the formulation of a budget by the proper legal officers of any county, city, town or school corporation, such officers shall prepare as accurate an estimate as can be obtained of the probable amount of revenue which such county, city, town or school corporation will receive from the state for and during the year for which such budget is being formulated and for which appropriations are to be made \* \* \*”

Acts of 1935, Ch. 173, Sec. 1, as amended and as found in Burns' (1961 Repl.), Section 64-1902.

“The several tax levies and rates shall be established by the proper legal officers of any municipal corporation after the formulation and publication by them of a budget on forms prescribed by the state board of accounts showing in detail the money proposed to be expended during the succeeding year, the valuation of all taxable property within the jurisdiction and the rate of taxation which it is proposed to establish, and after a public hearing within the jurisdiction at which any taxpayer shall have a right to be heard thereon \* \* \*”

Acts of 1919, Ch. 59, Sec. 200, as amended and as found in Burns' (1961 Repl.), Section 64-1914.

“The phrase ‘municipal corporation’ as used in the five preceding sections shall be deemed to include a county, township, city, incorporated town, school corpo-

ration, or any person, persons, or organized body authorized by law to establish tax levies for any purpose.”

Acts of 1919, Ch. 59, Sec. 202, as amended and as found in Burns' (1961 Repl.), Section 64-1916.

“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. The controller shall at the same time submit an itemized statement or estimate of city expenditures for other purposes, for the ensuing year, over and above the money proposed to be used by the various executive departments. After such meeting, and reports and consultation, the city controller shall proceed to revise such estimates for the ensuing year, and shall then prepare a report to the mayor of the various estimated amounts required, in such controller's opinion, for each executive department, and for other city expenses, together with an estimate of the necessary per cent of taxes to be levied. 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 ordinance may reduce any estimated item for any executive department, from the figure submitted in the report of the city controller, but shall not increase the same unless recommended by the mayor. Such appropriation ordinance shall thereafter be promptly acted upon by the common council \* \* \*”

Acts of 1905, Ch. 129, Sec. 84, as amended and found in Burns' (1950 Repl.), Section 48-1506.

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Reading all of these sections together, it is my opinion that the Legislature has intended that the park board exercises different authority dependent upon the nature of the tax to be levied. Prior to issuance of bonds, specific procedures are set forth to be followed which include public hearings. After such bonds are issued the determination of the necessary budget to retire such bonds becomes merely a matter of mechanical calculation of the amount of revenue necessary to meet interest payments and bond retirements during the succeeding calendar year. In this area the Legislature has provided that the park board shall act as an organized body under the terms of the definitions in Burns' 64-1916, *supra*, and prepare their own bond budget and forward the same directly to the county auditor.

In the other two areas, wherein the establishing of the annual budget requires the exercise of judgment in consideration and determination of needs and requirements, the Legislature has treated the park board purely as another executive department of the city. Consideration has been given to 1953 O. A. G., page 376, No. 75, and there is no conflict between such Opinion and the present Opinion. The prior Opinion concerns sanitary districts and the statutes governing such districts specifically grant authority to levy taxes to such districts. This authority compares to the authority given park districts to levy taxes for bond payment purposes, but is not equivalent to the levying of taxes for park district purposes generally, which are to be levied by the common council.

For the purpose of these taxes the Legislature has not given the park board those powers which would bring it within the definition of "municipal corporation" as found in Burns 64-1916, *supra*.

Therefore, in answer to your question, it is my opinion that the common council is the proper body to hold hearings on and finally adopt the *annual* budget, to levy taxes, and to hold hearings on and make emergency or additional appropriations for general, administrative and maintenance expenses in the case of a park special taxing district and in so doing will follow those procedures followed in connection with budgets generally for other executive departments of the city.