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the date of the display. After such privilege shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable."

Further sections of the act, as found in Burns' (1950 Repl.), Section 20-1103 *et seq.*, govern the granting of permits, exceptions to the act and powers and duties granted the state fire marshal.

In summary hereof, it is my opinion:

1. That manufacture and shipment in interstate commerce of fireworks in Indiana is lawful but subject to the rules and regulations adopted by the state fire marshal pursuant to the provisions of Burns' 20-807, *supra*.

2. That ownership or transportation of fireworks for use in Indiana is prohibited except in those cases where the state fire marshal has issued a permit for supervised public displays pursuant to proper application made and approved.

OFFICIAL OPINION NO. 61

December 9, 1963

Mr. B. B. McDonald, State Examiner
State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in reply to your letter requesting an Official Opinion regarding the employment of county highway engineers. Your letter reads as follows:

"When Chapter 131 of the Acts of 1963 becomes effective the boards of county commissioners throughout the state will have the authority to employ a highway engineer, a part of whose salary will be reimbursed from the state highway distribution. The statute is clear on the term of appointment, the procedure

of certification, the amount to be received from the state and the distribution from which the engineer fund arises. However, several counties have already employed such engineer, have certified same to the Auditor of State and the question arises as to what period must be served before the auditor sends to the respective counties the payment to which each is entitled by reason of such employment.

“We respectfully request your opinion as to whether the statute contemplates the beginning date as January 1, 1964, and if the engineer must serve a full year before the county becomes entitled to the grant-in-aid subsidy.”

The Acts of 1963, Ch. 131, as found in Burns' (1963 Supp.), Section 36-1122 *et seq.*, as indicated in your letter provides for the employment by the board of county commissioners of a county highway engineer. It makes further provision as to his qualifications, duties and salary and authorizes the State Auditor to distribute from a special fund created out of the motor vehicle highway account the sum of \$5,000.00 as a grant-in-aid subsidy to be used to pay, in part, or in full, the salary of such county highway engineer.

Section 1 of said act, as found in Burns' (1963 Supp.), Section 36-1122, authorizes the board of county commissioners to employ such engineer and reads as follows:

“The board of county commissioners of any county or any two [2] counties, acting jointly, may employ a full-time county highway engineer who shall be responsible for the supervision of the design, construction, planning, traffic, and other engineering functions of the county highway department under the policies and directions established by the board, and who shall prepare or cause to be prepared all surveys, estimates, plans and specifications which are required.”

The act was approved on March 6, 1963, but did not include an emergency provision, and therefore, did not become effective until August 12, 1963, when the Acts of the 1963 General Assembly were promulgated. Therefore, after said date,

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the above section became effective and the board of county commissioners had the power to employ a county highway engineer, subject to funds being made available to pay his salary.

The board of county commissioners, subject to restrictive provisions concerning qualifications, term and duties of the county highway engineer, have discretionary powers as to the contract of employment and the amount of salary to be paid.

The Acts of 1963, Ch. 131, Secs. 8, 9, 10 and 11, as found in Burns' (1963 Supp.), Sections 36-1129 to 36-1132, inclusive, reads as follows:

36-1129

"There is hereby appropriated each year from the counties' share of the April distribution of the motor vehicle highway account, the sum of four hundred sixty thousand dollars [\$460,000] to be held by the state auditor in a special account known as the County Highway Engineer Fund, which shall be used exclusively in assisting the counties in the employment of a full-time county highway engineer."

36-1130

"The county auditor of the county units that employ a full-time county highway engineer, meeting the requirements of this act, shall annually certify the same to the state auditor; such certification shall show the name and address of the county highway engineer and the serial number of his certificate of registration issued by the Indiana State Board of Registration."

36-1131

"Upon receipt of said annual certification from the county auditor, the state auditor is hereby directed to distribute from the county highway engineer fund to said county units a grant-in-aid subsidy in the amount of five thousand dollars [\$5,000], which total sum is to be applied exclusively toward the engineers' annual salary: Provided, if such county highway engineer shall

be employed by two [2] counties, acting jointly, the amount to be distributed to each such county unit shall be twenty-five hundred dollars [\$2500].”

36-1132

“All funds remaining in the county highway engineers fund at the end of each calendar year shall be returned to the counties’ share of the motor vehicle highway account to be distributed in January of the following year.”

From the above sections it becomes apparent that the grant-in-aid subsidy funds will not become available until the time of the April distribution from the motor vehicle highway account in 1964, and that when such funds are available they are thereafter paid to a qualifying county in a lump sum of \$5,000.00 or \$2,500.00, depending upon whether it is a one or two county project. Such payment is then earmarked by the county to be paid out of the fund appropriated by the county for the payment of the annual salary of the county highway engineer.

In partial answer to your question, it becomes evident that none of such grant-in-aid subsidy will be available for use by the counties during the calendar year 1963. Nor will the counties have any funds available out of appropriations for the year 1963 made in 1962 since such office was not in existence at the time such appropriations were made, and could only secure such funds by an additional appropriation in the event they wish to make an appointment for that part of the year 1963 subsequent to the time the act became effective.

For the calendar year 1964 the county would make an appropriation for the full amount of the annual salary of a county highway engineer, if they decided to employ one. Of the amount appropriated, either \$5,000.00 if an engineer served only one county or \$2,500.00 if he served two counties, would be realized from the distribution authorized by this act. The balance of his salary, if any, would be made up of other proper funds of the county.

Since the engineer would be paid on a monthly basis, he would receive such salary in equal monthly payments, as other

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county officers are paid, upon the completion of each month's service. He would be paid out of a commingled fund obtained from the two sources above set forth.

There is no provision in the act for a refund, by the county to the state, of any unexpended funds received as a result of the distribution provided for in this act. This situation would only arise when the employment of the engineer was terminated during a calendar year and not replaced by another engineer. On the state level, Burns' 36-1132, *supra*, provides that funds remaining in the county highway engineer fund at the end of the calendar year in which appropriated, shall revert to the motor vehicle highway account.

Generally, on the county level, unexpended highway funds revert to the county highway general fund and are reappropriated for highway purposes. In this particular case, there may exist unexpended funds which are part of a commingled account created from county highway funds and payments by the state out of the county highway engineer fund. Although commingled, the ratio of funds remaining from each source could easily be determined on the basis of the ratio that each source contributed to the original appropriation. That proportion which was contributed by county highway funds would revert to the county highway general fund. That proportion which was contributed by the state out of the county highway engineer fund is earmarked for the sole purpose of paying the annual salary of a county highway engineer by the provision of Burns' 36-1131, *supra*, and would not revert to the county highway general fund.

Since the act is silent on this point, it would be incumbent on the officers responsible for the administration of the act, by adopting administrative procedures, to implement the act and to carry out the expressed intent of the Legislature. It is noted that the auditor is required by the provision of the act as found in Burns' 36-1130, *supra*, to certify annually as to qualifications and, without attempting to direct that such be done, it is feasible that an accounting be made for the prior year at this time. Other, or more practical administrative decisions, to implement the act in this area, could be made by administrative ruling, if within the expressed intent of the Legislature.

Although there is no provision for making pro rata distribution to a county which did not qualify by employing a county highway engineer at the first of a calendar year, but did qualify at a later date, it is the apparent intent of the Legislature that the distribution of either the \$5,000.00 or \$2,500.00 is on an annual basis. It is noted that the funds appropriated for the county highway engineer fund out of the motor vehicle highway account, are a continuing fund which is available for distribution until the end of the calendar year when it reverts to the motor vehicle highway account. This is governed by Burns' 36-1132, *supra*. Reconciling all provisions of the statute, the Legislature's intent would appear to be that the fund or a pro rata share could be distributed in 1964 and subsequent years in the event a county qualified to receive distribution after the first of January. There is no provision requiring the county to employ and pay an engineer a full year before distribution could be made to that county, and, in fact, by the money being made available in April and reverting on December 31 if not used, a contrary intent is expressed.

In summary thereof, it is my opinion that a county highway engineer may be employed at any time subsequent to August 12, 1963, but the State of Indiana will not contribute towards the payment of any of his salary until after January 1, 1964. The payments made by way of a grant-in-aid subsidy are to be made available for use by the county in paying his annual salary during the same year in which the services are performed.

OFFICIAL OPINION NO. 62

December 10, 1963

Hon. William C. Christy
State Senator
7106 Grand Avenue
Hammond, Indiana

Dear Senator Christy:

Your recent letter requesting an Official Opinion from this office has been received and reads, in pertinent part, as follows: