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it is my opinion that a county which has received fifty per cent (50%) of the cost of its probation services from the state for a period of two years can only receive an approved amount less than fifty per cent (50%) until the funds are exhausted.

OFFICIAL OPINION NO. 24

May 22, 1961

Honorable Matthew E. Welsh
Governor of Indiana
206 State House
Indianapolis, Indiana

Dear Governor Welsh:

I have heretofore acknowledged receipt of your request for my Official Opinion in answer to the following eight specific questions of statutory construction concerning certain 1961 legislation which provided for substantial changes in the functioning of the executive branch of our state government:

“1. Section 4a of the Department of Administration Act gives the Department of Administration the duty to ‘execute and administer all appropriations made by law.’ Sections 1b and 12 of the Budget Agency Act appear to give a similar duty to the State Budget Agency. Are these provisions conflicting and, if so, which agency has the duty to execute and administer all appropriations made by law?

“2. Section 4 j of the Department of Administration Act gives the Department of Administration control over the personnel function of the various state agencies. A similar function is given to the State Budget Agency by Section 13b of the Budget Agency Act. In view of the fact that the entire area of responsibility of the Budget Agency appears to be granted to the Department of Administration, which agency has the final responsibility for executing these powers?

“3. Section 6 of the Highway Commission Act gives the Highway Commission’s Division of Personnel the

power and duty to 'perform all functions pertaining to the establishment and administration of personnel policies and practices with respect to both professional and non-professional employees of the Highway Commission.' This appears to conflict with the duties assigned to the Department of Administration and the State Budget Agency as cited in question 2. Who has the final responsibility for personnel policies and practices with regard to Highway Commission employees?

"4. Does the authority given the Department of Administration over the purchase of state-owned motor vehicles, the operation of a motor pool, and travel regulations for state employees (Section 4f and g of the Department of Administration Act) conflict with elements of such authority given to the Budget Agency in Sections 2a and 11 of the Appropriations Act, and to the State Highway Commission in Sections 5 and 8 of the Highway Commission Act? If so, which agency has the ultimate authority in these three functions?

"5. Does the general purchasing authority given to the Highway Commission in Sections 5 and 8 of the Highway Commission Act conflict with similar general authority given to the Department of Administration over state agencies in Section 4 of the Department of Administration Act. If so, which agency has the authority to make such purchases?

"6. Do the provisions of Sections 3 and 4e of the Department of Administration Act supersede the whole of the Data Processing Act? If not, does the Department of Administration or the Budget Division have the responsibility for supervising and controlling the activities and functions of the Data Processing Department as provided in the Data Processing Act?

"7. In the context of the duties and functions assigned to the Department in the Department of Administration Act what is the meaning and significance of the phrase 'subject * * * to other laws not inconsistent therewith' in Section 4 of the Act?

"8. At the present time is there an existing Department of Administration; and, if so, can persons be

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employed by and for said agency prior to July 1, 1961, and can this agency perform any of the duties and functions provided in the Act prior to July 1, 1961?"

These questions deal with matters of great public concern and importance, and during our research and study I have already indicated to you some of the preliminary conclusions of my staff and some of the difficulties involved in relating the provisions and subject matter of the several statutes. Because there are a number of apparent conflicts and discrepancies between the Department of Administration Act (Senate Enrolled Act No. 278, which will be designated as Chapter 269 of the Acts of 1961 when published) and many other statutes, and because the ultimate purpose in all problems of statutory construction is the determination of legislative intent, all of your questions except No. 8 should be considered together and in the light of all of the provisions of the act. However, I shall set out hereinbelow only those provisions to which your questions are specifically directed, followed by the sections of the other acts which appear to conflict therewith.

Acts of 1961, Ch. 269, Section 4 (a) :

"SEC. 4. The department shall have the following duties and functions, subject to the other provisions of this act and to other laws not inconsistent therewith:

"(a) Execute and administer all appropriations made by law in the manner and according to the provisions therefor as provided by law, and execute and administer all provisions of law which impose duties and functions upon the executive department of government including particularly executive investigation of state agencies supported by appropriations, and the assembly of all required data and information for the use of this department, and the legislative division."

Acts of 1961, Ch. 123, Sections 1 and 12:

"SECTION 1. Short Title—Purposes of Act. (a) This act shall be known and may be cited as 'The Budget Agency Act'.

“(b) Its general purposes and policies may be perceived only from the entire act, but among them are four of particular significance, namely :

“First, vesting in the budget agency duties and functions and rights and powers which make the execution and administration of all appropriations made by law the exclusive prerogative and authority of that agency, and otherwise denying such prerogative and authority to the budget committee as such, and to its legislative division.

* * *

“SEC. 12. Execution and Administration of Budget Bills and of Other Appropriations * * *

“(d) The budget agency shall administer the allotment system provided in the Financial Reorganization Act of 1947, particularly as provided in section 20 thereof, as amended by Chapter 135, Acts 1953.

“(e) The budget agency may transfer, assign and reassign any appropriation or appropriations, or parts of them, made for one specific use or purpose to another use or purpose of the agency of state to which the appropriation is made, but only when the uses and purposes to which the funds transferred, assigned and reassigned are uses and purposes the agency of state is by law required or authorized to perform. No transfer may be made as in this subsection authorized unless upon the request of and with the consent of the agency of state whose appropriations are involved. Except to the extent otherwise specifically provided, every appropriation made and hereafter made and provided, for any specific use or purpose of an agency of the state is and shall be construed to be an appropriation to the agency, for all other necessary and lawful uses and purposes of the agency, subject to the aforesaid request and consent of the agency and concurrence of the budget agency.

“(f) Hereafter one or more emergency or contingency appropriations for each year of the biennial period may be made to the budget agency. Such appro-

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priations shall be in amounts definitely fixed by law, or ascertainable or determinable according to a formula, or according to appropriate provisions of law taking into account the revenues and income of the agency of state. No transfer shall be made from any such appropriation to the regular appropriation of an agency of the state except upon an order of the budget agency made pursuant to the authority vested in it hereby or otherwise vested in it by law."

It should be noted that when Chapter 269 was introduced in the General Assembly as Senate Bill 278, and prior to amendment, Section 4 (a) read as follows:

"(a) Execute and administer all appropriations made by law in the manner and according to the provisions therefor as provided by law, and execute and administer all provisions of law which impose duties and functions upon the executive department of government *in respect to the preparation of a budget report and of one or more budget bills*, including particularly executive investigation of state agencies supported by appropriations, and the assembly of all required data and information for the use of this department, *the budget director, the budget committee, and the legislative division thereof, necessary to the preparation of said budget report and budget bill or bills.*" (The portion in italics was deleted by amendment)

It should also be noted that Section 3 of the Bill as introduced provided for "a budget division," as one of the several separate divisions of the Department of Administration and this budget division also was deleted by amendment in the General Assembly.

The picture is further confused by the fact that Section 15 of this Act provides in part as follows:

"SEC. 15. * * * nor shall the provisions of this act, except section 4 (a), apply to the state colleges and universities."

It appears to me that when introduced the Bill assumed the existence of a budget committee and director, but provided for the function of study and preparation of the budget report and budget bills to be transferred to this new Department. If the first phrase of Section 4 (a) as originally and presently worded was intended to refer to the function of execution and administration by the new Department of all appropriations of *other* departments and agencies of the state, then the section was absurd to start with, because there would have been no major function whatsoever left to the budget director and committee. If we consider the first sentence of the section to refer to the execution and administration of all appropriations made to this new Department of Administration the only apparent inconsistency is the remaining provision in Section 15 which on first reading appears to recognize the authority of this Department to execute and administer the appropriations for state colleges and universities.

My conclusion that Section 4 (a) in regard to the execution and administration of "all appropriations" does *not* refer to the appropriations of other departments and agencies is strengthened by the additional amendment in the General Assembly of Section 14 (originally numbered 15) which required not only the approval of the Governor but the approval of the State Budget Agency for the expenditure by the Commissioner of the Department of Administration of all appropriations to agencies abolished by this act and for functions transferred by this act to the new Department.

The provisions in Section 15 were all added by amendment at the same time that the provisions as to study and preparation of the budget report and budget bills were deleted from Section 4 (a), and the provision for a budget division was deleted from Section 3. The only logical construction to place on these provisions in Section 15 as to state colleges and universities is that the General Assembly was referring to the provision in Section 4 (a) as to executive investigation of state agencies supported by appropriations (state colleges and universities are such supported agencies), rather than referring to the provision as to the execution and administration of appropriations by the Department of Administration.

Both the Department of Administration and the Budget Agency are within your control and supervision as Governor.

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The powers and duties of the Budget Agency in regard to the administration of appropriations for other state departments and agencies are specific, broad and extensive. It is my conclusion in regard to your first question that you may properly direct the Commissioner of the Department of Administration to leave the matter of executing and administering appropriations of other departments and agencies to the Budget Agency.

In respect to your questions numbered 2, 3, 4 and 5 the following statutes must be considered:

Acts of 1961, Ch. 269, Secs. 4 (b), (f), (g) and (j), 9, 10, 12:

“SEC. 4. The department shall have the following duties and functions, subject to the other provisions of this act and to other laws not inconsistent therewith:

* * *

“(b) Purchase or contract for the supplies, materials, articles, equipment, printing and utility services needed by state departments, institutions and agencies; prescribe standard specifications therefor and enforce compliance with such specifications; supervise and regulate the making of purchase contracts by state institutions; regulate the requisitioning and storage of purchased items, the disposal of surplus and salvage, and the transfer to or between state departments of needed supplies, equipment and materials, all in accordance with the free and open bidding, and in accordance with all present laws as to notices of purchase and bidding and all requirements presently applicable to the Division of Public Works and Supply of the State of Indiana * * *.”

“(f) Control and supervise the acquisition, operation, maintenance, repair and replacement of state-owned vehicles by all state agencies. The department may establish and operate, in the interest of economy and efficiency, a motor vehicle pool, and may finance same by a rotary fund of not to exceed two hundred fifty thousand dollars (\$250,000.00) * * *.”

“(g) Make, administer and enforce regulations relative to the travel of officers and employees of all state

departments, boards, commissions, institutions, and other agencies when engaged in the performance of state business and their reimbursement for travel expenses necessarily and actually incurred, but with the further provision that all travel and expense vouchers can only be approved where the state employee or employees have first procured approval for such travel by his department head and by the commissioner hereunder."

"(j) Develop personnel policies, methods, procedures and standards for all agencies of the State of Indiana; formulate, establish and administer position classifications plans and salary and wage schedules all subject to final approval by the Governor; allocate positions in the state service to their proper classification; formulate eligible lists; certify employees for transfer, demotion, promotion, suspension, layoff and dismissal; rate employees' services; arrange with agency heads for employee training; investigate the need for positions, existing and to be created in the state service; make, promulgate and enforce personnel rules and regulations; make and administer examinations for employment and for promotions; maintain personnel records and a roster of the personnel of all state agencies; render personnel services to the political subdivisions of Indiana; investigate the operation of personnel policies in all state agencies; assist state agencies in the improvement of their personnel procedures; conduct a vigorous program of recruitment of qualified and able persons for the state service * * *."

"SEC. 9. The Division of Public Works and Supply is hereby abolished and all its legal duties and powers, its records and property, and its personnel are hereby transferred to the Indiana Department of Administration * * *."

"SEC. 10. The State Personnel Bureau is hereby abolished and all of its legal duties and powers, its records and property, and its personnel are hereby transferred to the Indiana Department of Administration * * * The State Personnel Act shall be administered by the Personnel Division of the Indiana Department

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of Administration under the direction of the commissioner. The State Personnel Board shall continue to exercise the powers and duties imposed upon it by the State Personnel Act with respect to the merit system * * *.”

“SEC. 12. All authority vested by law in any officer or agency to dispose of or sell obsolete or surplus property is hereby transferred to the department.”

Acts of 1961, Ch. 123, Sec. 13 (b) (Budget Agency Act) :

“SEC. 13. Additional Powers and Duties of the Budget Agency * * *

“(b) Except as to officers and employees of Indiana University, Purdue University, Ball State Teachers’ College and Indiana State College, the executive secretary of the governor, the chief administrative assistant to the governor, the elected officials, and persons whose salaries or compensation are fixed by the governor pursuant to law, the annual compensation of all persons employed by agencies of the state shall be subject to the approval of the budget agency. Except as otherwise provided by the State Personnel Act, the budget agency shall establish classifications and schedules for fixing compensation, salaries and wages of all classes and types of employees of any state agency or state agencies, and any and all other such classifications affecting compensation as the budget agency shall deem necessary or desirable. The classifications and schedules thus established shall be filed in the offices of the budget agency. Requests by an appointing authority for salary and wage adjustments or personal service payments coming within such classifications and schedules shall become effective when approved by, and upon the terms of approval fixed by, the budget agency.”

Acts of 1961, Ch. 298, Secs. 2a, 3 and 11 (General Appropriations Act) :

“SEC. 2a. The State Budget Agency is authorized to fix and prescribe a per diem in lieu of traveling expenses other than transportation, for travel within the limits of the State of Indiana in an amount not to

exceed ten dollars (\$10.00) per day * * * PROVIDED, That with the approval of the Budget Agency and the Governor, per diem allowances for out-of-state travel expenses may be granted in any sum not to exceed fourteen dollars (\$14.00) for any twenty-four hour period * * * PROVIDED, FURTHER, That the per diem rates of ten dollars (\$10.00) and fourteen dollars (\$14.00) shall be paid in accordance with the travel regulations approved by the Budget Agency * * *.”

“SEC. 3. No payment for Personal Service shall be made by the Auditor of State unless such payment shall be approved by the State Budget Agency.”

“SEC. 11. The Director of the Division of Public Works & Supply or any other agency or person authorized to make purchases of equipment shall not honor any requisition for the purchase of an automobile which is to be paid for from any appropriation made by this act or any other act unless the following facts are shown to the satisfaction of the Director of the Budget and the Director of the Division of Public Works & Supply or any other agency or person authorized to make State purchases * * * in addition to the foregoing qualifications it must also be shown to the satisfaction of the Director of the Budget and the Director of the Division of Public Works and Supply that the department head or employee's work requires a substantial amount of on the job traveling over wide geographic areas * * * PROVIDED, FURTHER That the State Budget Agency may make other exceptions in cases where the affixing of insignia on state owned cars would hinder and handicap the persons driving such cars in the performance of their official duties.”

Acts of 1961, Ch. 201, Secs. 5, 8 and 10 (Highway Commission Act) :

“SEC. 5. Powers, Responsibilities and Duties of Commission. The Highway Commission shall have the following powers, responsibilities and duties:

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"3. To acquire, own and hold * * * personal property in the name of the State of Indiana and to sell, lease or otherwise dispose of or encumber the same in connection with and in furtherance of the purposes of this act."

"SEC. 8. Organization and Structure of Highway Commission. Subject to the powers vested in the members of the Highway Commission by this act, the Highway Commission shall initially include the following divisions:

* * *

"5. Division of Purchase, which shall perform all functions pertaining to the purchase or rental of equipment and the purchase of materials, and the advertising and letting of contracts for materials and services. No purchase or related series of purchases of equipment or supplies of the same or similar kind exceeding the total aggregate amount of one hundred thousand dollars (\$100,000.00) shall be made unless a proposal covering such purchase or purchases shall be first approved by the Highway Commission.

"6. Division of Personnel, which shall perform all functions pertaining to the establishment and administration of personnel policies and practices with respect to both professional and non-professional employees of the Highway Commission."

"SEC. 10. Budget Examiner. The director of the budget agency of the state shall appoint a senior budget examiner who shall be responsible to such director but shall serve within the Highway Commission. The senior budget examiner shall examine and review all budgetary and purchasing procedures in the Highway Commission and generally shall act to facilitate cooperation between the budget agency and the Highway Commission."

It is important to note that although many of the powers and duties of several of the major state agencies are apparently lodged in this Department of Administration, only two (2) of the existing agencies are abolished—the Division of

Public Works and Supply and the State Personnel Bureau (as of July 1, 1961). This is a clear indication that it was the intent of the General Assembly that the other agencies, new and old, should begin or continue to function subject to the provisions of the Department of Administration Act. We have many rules of statutory construction, but they are all aids to the determination of legislative intent. This does not mean that the intent that may have been expressed by a single or several members of the General Assembly is controlling, but rather that the intent of the General Assembly as a whole must be ascertained. In this regard, the Supreme Court of Indiana will have the last word, and its conclusions as to legislative intent, when expressed, will be as much a part of the several statutes as if they had been enacted therein. You and I, having been present during the recent session of the General Assembly, and having been consulted and informed by many members of the General Assembly, are well aware of the fact that when the Highway Commission Act, the Budget Agency Act, the General Appropriations Act and the Data Processing Act were being propelled on their own merits through the processes of legislative enactment, the several members of the General Assembly were not at all sure that the Department of Administration Act would be passed, and many of them were not aware of its tentative provisions. We are also well aware of the fact, apparent at this time even on initial reading of the Department of Administration Act, that no serious effort was made to co-ordinate and adjust the language of this act in the light of the successful passage of those other new acts. Such co-ordination and adjustment, which would have made this Opinion unnecessary, was made difficult if not impossible because of the urgent press of other important legislative business and the lack of working legislative time between the passage of the other separate acts and this unifying Administration Act. Therefore it may well be that the legislative intent which we seek, and which the court may at a later time declare, is what the collective membership of the General Assembly would have intended if they had been aware of these serious questions, with sufficient time in which to resolve them.

Laws passed at the same session of the Legislature, relating to the same subject matter, must be construed *in pari materia*,

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and if there is an apparent conflict between two or more such statutes, we must construe them in such manner as to give full force and effect to each.

Starr v. City of Gary (1934), 206 Ind. 196, 200, 188 N. E. 775;

Olszewski v. Stodola (1948), 226 Ind. 639, 643, 82 N. E. (2d) 256;

Ross, Trustee v. Chambers (1938), 214 Ind. 223, 226, 14 N. E. (2d) 2012;

New York Central R. R. Co. v. Public Service Comm. of Indiana (1958), 237 Ind. 544, 548, 549, 147 N. E. (2d) 547.

This is so even though, as here, a separate classification of "general" and "special" may be made. The so-called "special" act does not prevail over a "general" act merely because there is an apparent conflict between some of the provisions of the two acts. They must be harmonized if at all possible. If they cannot be harmonized it is said as a general rule that the "special" will control over the "general," but even this is further conditioned in that this rule is said to apply "unless it appears that the legislature intended to make the general act controlling."

Hagemann *et al.* v. City of Mount Vernon *et al.* (1958), 238 Ind. 613, 154 N. E. (2d) 33, and cases there cited.

The Supreme Court of Indiana has clearly indicated the flexibility with which it will use or reject rules or "doctrines" of statutory construction. In the case cited hereinbelow the court, dealing with what was admittedly a "typical" case for the application of the doctrine of *ejusdem generis*, declined to apply this rule, and stated as follows:

Woods v. State (1957), 236 Ind. 423, 428, 140 N. E. (2d) 752.

"It is trite to say, but still true that words, after all, are merely signs or symbols of meaning. The meaning of the same words varies with the person, the time, and

the place, not to mention other surrounding circumstances. In the expression of our ideas and meaning we strive with inexact tools to hue (sic) out works of refinement with precise lines, never able to reach perfection.

* * *

“In the process of interpretation the court’s main ‘rule’ should be to use all sources available and relevant to determine how the legislature intended the statute to operate, and not place itself in a straight-jacket under the guise of intrinsic limitations. 82 C. J. S., Statutes, § 332b, p. 662.”

In considering the intended relationships between the Department of Administration and the other mentioned state agencies it should also be noted that in some respects the powers and duties of the Department of Administration, except in regard to those two agencies abolished, are not as broad and far reaching as the powers and duties of the Budget Agency and Department of Data Processing in their own fields, i.e. in respect to several matters affecting agencies and departments under the jurisdiction and responsibility of the state elected officials.

Acts of 1961, Ch. 269, Sec. 2:

“SEC. 2. There is hereby created a department of state government which shall be known as the Indiana Department of Administration, hereinafter referred to as the department; and which shall consist of a commissioner as its executive head and of such officers and employees which shall be appointed or employed in such department * * * The commissioner shall be well versed in administrative management and in the affairs of state government which by law are the responsibility of the governor, and shall in no manner affect the separate departments of state government which by law or the Constitution of the State of Indiana are now under the jurisdiction and are the responsibility of other state elected officials * * *.”

It appears to me that these several acts may be harmonized and given maximum effect if it be concluded that the Depart-

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ment of Administration has the ultimate authority as to all matters of personnel, purchasing, operation of motor pool, and travel regulations for state employees, in respect to those agencies and departments which are not under the jurisdiction and responsibility of the other state elected officials. In stating this opinion, I am fully aware of the fact such a conclusion will not automatically answer all the many problems of relationship and functions as between the departments, but we need not anticipate that administrative solutions of such problems will necessarily or even frequently require judicial statutory construction.

As an aid to the members of the General Assembly a digest is presented in the first instance with each bill at the time it is introduced. This digest is informal and forms no part of the bill, but it does point out the material features of the bill, in the opinion of the author. Even as to a bill which is finally passed without amendment, the digest is in no sense controlling as to the intent of the General Assembly in respect to the provisions enacted into law, but it does give indication of what some members of the General Assembly were advised about the bill while it was under consideration. Senate Bill 278 was amended in many material respects. The provisions as to exception of the departments of state elected officials were added by amendment, and the provisions as to a budget division and the transfer of the budget agency to this new Department of Administration were, among other things, deleted by amendment. But it is still interesting to note the following description of this bill as contained in the digest which accompanied it when first introduced:

“This bill consolidates the key staff functions of the executive branch of state government into one agency to enable the Governor to handle the state’s financial, personnel and managerial activities in a coordinated manner. Instead of having to deal personally and individually with numerous agency heads and integrating their activities, the Governor will be able to depend upon his Commissioner of Administration to coordinate their functions and report to him directly.

“Specifically, this bill brings the budget agency, the personnel agency, public works and records manage-

