

Under these circumstances the transfer of such funds is limited by the above laws and agreements, and this Opinion should not be construed as concluding that either the common council or the Board of Aviation Commissioners may transfer any of the funds so limited.

Therefore, my answers to your questions are as follows:

1. There can be a lawful transfer of funds from the Aviation Fund to the General Fund of the municipality.

2. With the exception of funds received pursuant to Burns' 14-430, *supra*, as noted above, such transfer can be made by the common council of a municipality under the procedure in Burns' 48-6917, *supra*, without the approval or consent of the Board of Aviation Commissioners. The Board of Aviation Commissioners may transfer certain funds from the Aviation Fund to the General Fund of the municipality, but the transfer of such funds is limited by Burns' 14-430a, *supra*, according to the source from which said funds are derived.

My answers to your questions should not be construed as applying to any other special fund of a municipality created pursuant to law. Limitations on the control and expenditure of a special fund must necessarily be determined by the language creating the special fund and such language may either expressly or impliedly prohibit or restrict the diversion or transfer of moneys from such fund.

OFFICIAL OPINION NO. 59

October 27, 1959

Mr. James M. Trimble
State Service Officer
Veterans' State Service Department
431 North Meridian Street
Indianapolis, Indiana

Dear Mr. Trimble:

This is in answer to your recent letter wherein you request my Official Opinion on the following questions:

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“In the issuance of peddlers’ licenses, for veterans, the following questions have arisen :

- “1. In a town or city in the State of Indiana where a city ordinance has been passed, specifically setting out that peddlers’ licenses will not be issued, does the State Law supersede the City Ordinance, or vice versa?
- “2. Where a County Auditor issues a free peddler’s permit, and a town or city within the county where this permit was issued has passed an ordinance covering non-issuance of peddlers’ licenses, is the permit valid in said town or city?”

Historically, the first statute authorizing free licenses to peddle for honorably discharged veterans is found in the Acts of 1895, Ch. 121 as amended and found in Burns’ (1952 Repl.), Section 42-510, Section 1 of which reads as follows :

“Any ex-Union soldier or sailor of the United States who served honorably in the military or marine service of the United States during the War of the Rebellion, or any soldier or sailor of the Spanish-American War, *and who holds an honorable discharge from such service issued by the proper authorities, shall be entitled to a license to vend, hawk and peddle goods, wares, fruits and merchandise in any county, city or town within this state without the payment of any fee therefor.* Upon the presentation of his certificate and papers of discharge, properly executed, to the auditor of any county in this state, and proving his identity as the person named in his said certificate of honorable discharge, *said auditor shall issue to such ex-soldier or sailor a license to vend, hawk, and peddle goods, wares, fruits and merchandise within said county, and in all cities and towns therein situate, which license shall be free, and no fee shall be charged to the holder of such license by such auditor, nor by the authorities of any city or town in such county, nor by any other officer, but such license shall be full and complete authority to vend, hawk and peddle as aforesaid without the payment of any sum of money, any municipal ordinance or by-law to the contrary notwithstanding.*” (Our emphasis)

A reading of Burns' Section 42-510, *supra*, and particularly the emphasized portion thereof which is a basis for the answers to your questions shows that the Legislature has expressed itself with clarity and there is nothing ambiguous or equivocal in the plain and concise language used in the statute. Also, the repeated use of the mandatory term "*shall*" gives the county auditor no discretion in the matter; and the section repeats that the free license to which a qualified veteran *shall* be entitled pertains to the right to peddle goods etc., "in any county, city or town within this state" and that the free license which the county auditor *shall* issue applies to peddling goods "within said county, and in all cities and towns therein situate"; further that said license *shall* be "full and complete authority * * * any municipal ordinance or bylaw to the contrary notwithstanding." Therefore, there is no need to resort to rules of construction.

It will be noted that the Act of 1895, as amended in 1899, applied to soldiers and sailors who served honorably during the "War of the Rebellion * * * or the Spanish-American War." The Acts of 1935, Ch. 202, Sec. 1, as found in Burns' (1951 Repl.), Section 59-1007, provides as follows:

"The soldiers and sailors of the World War, the war with Spain, and the war in the Philippine Islands, the soldiers who were in service on the Mexican border during the years 1916 and 1917, the soldiers and sailors who are in the regular service of the United States, and who are residents of this state, together with their widows and orphans, shall have and are hereby given all of the rights and privileges now held and enjoyed by the soldiers and sailors and their widows and orphans, of the Civil War."

This gives veterans designated in Burns' 59-1007 identical rights and privileges with those authorized in Burns' 42-510, *supra*.

The Acts of 1943, Ch. 254, Sec. 1, as amended and found in Burns' (1951 Repl.), Section 59-1007a, provides as follows:

"All persons who have served, or are now serving, or who may hereafter serve as a part of the armed forces of the United States in the present war with

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Germany, Italy, Japan, or any of its allies, and any person who served in the active military or naval service on or after September 16, 1940 and prior to the termination of the present war, and any persons who have served or are serving or who may hereafter serve as a part of the armed forces of the United States during the Korean crisis on or after June 25, 1950, and who have sustained injury or disease received in line of duty either (1) as a direct result of armed conflict, (2) while engaged in extra hazardous service including such service under conditions simulating war or (3) while the United States is engaged in war, and who shall have been discharged or released therefrom under conditions other than dishonorable, and the wives, widows, and children of such persons heretofore mentioned, who are residents of the State of Indiana, shall have and are hereby given all the rights and privileges now held and enjoyed by soldiers, sailors, nurses and/or other veterans, their wives, widows, and children, of the first world war, under existing statutes or under any statute which may hereafter be enacted.”
(Our emphasis)

However, with respect to veterans of World War II and the Korean Crisis please note the additional requirements as emphasized above.

Your letter indicates an apparent conflict of jurisdiction between the state and the municipality involved in certain instances resulting in qualified veterans who are residents of the State of Indiana having been denied the privileges granted them by the Legislature.

The authority for the regulatory powers of municipal corporations in regard to the licensing of peddlers is found in the following statutes:

(a) *For towns*:—The Acts of 1905, Ch. 129, Sec. 31, as amended and found in Burns' (1959 Supp.), Section 48-301, clause 7 which reads, in part, as follows:

“Seventh. To license, regulate or restrain auction establishments, street auctions, transient salesmen, merchants and itinerant vendors

of goods, wares and merchandise, of whatever nature * * * and likewise * * * traveling peddlers * * *.”

(b) *For cities*:—The Acts of 1905, Ch. 129, Sec. 53, as found in Burns' (1950 Repl.), Section 48-1407, which reads, in part, as follows:

“Thirty-seventh. To license, tax, regulate, suppress and prohibit hawkers and itinerant dealers, peddlers and pawnbrokers, and to revoke any such license. * * *”

However, notwithstanding the authority granted cities and towns as shown above, such powers are subject to the statutory exemption for qualified veterans as found in Burns' 42-510, *supra*.

The law is well settled in Indiana where conflicts exist or arise between statutes and municipal ordinances. Any municipal ordinance is void insofar as it may conflict with the statute law.

It is stated in Indiana Law Encyclopedia, Vol. 20, Municipal Corporations, Sec. 56, p. 380, that: “An ordinance is void as far as it conflicts with the Constitution or statutes, but a municipal corporation may validly legislate within the powers delegated to it by the state.”

In *Frank v. City of Decatur* (1910), 174 Ind. 388, 392, 92 N. E. 173, our Supreme Court said:

“* * * Cities and towns cannot, under their incidental or implied powers, or under general grants of authority, adopt by-laws or ordinances which infringe upon the spirit, or are repugnant to the policy of the state as declared in its general legislation. * * *”
(Our emphasis)

It is said in *State ex rel. Hunter v. Winterrowd* (1910), 174 Ind. 592, 596, 91 N. E. 596 that:

“Conceding that the terms of the building ordinance of the city of Indianapolis required appellee to approve the plans submitted, the complaint discloses that a statute of this State prohibits the erection of a building

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in accordance with such plans. *The statute is paramount, and it is elementary that a municipal ordinance, so far as it conflicts with the statute law is void. * * **
(Our emphasis)

Therefore, my answers to your questions are as follows:

Question No. 1.—In any city or town in the State of Indiana where an ordinance has been passed, specifically setting out that peddlers' licenses will not be issued, the provisions of Burns' 42-510, *supra*, are not nullified or lessened in any degree but remain paramount to such municipal ordinance on the matter of peddlers' licenses.

Question No. 2.—Where a county auditor issues a free peddler's license to a qualified veteran, that license shall be full and complete authority to vend, hawk and peddle in that county, and cities or towns therein situate, any municipal ordinance to the contrary notwithstanding.

OFFICIAL OPINION NO. 60

November 30, 1959

Mr. T. M. Hindman
State Examiner
State Board of Accounts
Room 304, State House
Indianapolis 4, Indiana

Dear Mr. Hindman:

I am in receipt of your recent letter requesting my Official Opinion as to the disposition of surplus funds received at a sale of land for delinquent real estate taxes and assessments. Your letter reads, in part, as follows:

“Pursuant to the provisions of Section 1, Chapter 92, Acts of 1949, Burns' 64-2101, the county treasurer is required to register all payments received in excess of the taxes and assessments due, which amounts constitute a special fund known as the 'Surplus Tax Fund.' This statute also provides a procedure for the refund of such excess or surplus payments, and further pro-