OFFICIAL OPINION NO. 29

July 22, 1959

Honorable Harold W. Handley
Governor of Indiana
206 State House
Indianapolis 4, Indiana

Dear Governor Handley:

I have your request of June 30, 1959, for an Official Opinion upon the following question as stated in your letter:

"Do Sections 6 and 7 of Chapter 36, page 95, Acts of 1959 (Senate Enrolled Act No. 217, 91st Indiana General Assembly) permit the Indiana Flood Control and Water Resources Commission to make allocations to the Corps of Engineers, U. S. Army, Department of Defense, of a part of the $1,000,000 appropriated in the Act, so that such part of the total fund may be used to assist in financing preparation by the Corps of final designs and specifications for Monroe dam and reservoir on Salt Creek in Monroe, Jackson and Brown Counties, Indiana, as well as land acquisitions, with the understanding that the Federal Government also will share in costs for preparing these final designs and specifications, and land acquisitions?"

Acts of 1959, Ch. 36, Sec. 6 reads as follows:

"The Indiana Flood Control and Water Resources Commission is hereby authorized and directed to cooperate with the federal government to pay a share of the construction costs of a reservoir for the control and regulation of the flood and low water flows of Salt Creek in Monroe, Jackson and Brown Counties and to enter into, on behalf of the State of Indiana and subject to the approval of the Governor, such agreements with the federal government as may be necessary for the purposes of this act. The state's share of the cost of such reservoir shall be that computed on the basis of the laws of the United States pertaining to such projects."
Acts of 1959, Ch. 36, Sec. 7 reads as follows:

“There is hereby appropriated to the Indiana Flood Control and Water Resources Commission out of the general fund the sum of one million dollars as an initial sum to start construction and to carry out the provisions of this act. Such funds are not to be used for any other purpose than for paying a share of the construction, operation, maintenance and other costs of such reservoir in accordance with an approved agreement as provided for in section 6 of this act, and shall be available to the commission until the project is completed or until the funds are expended.”

Section 6, first above quoted, not only authorizes the Indiana Flood Control and Water Resources Commission to co-operate with the Federal Government by paying a share of the construction costs of the multiple purpose reservoir in question, but directs the said Commission to do so.

Section 7, last above quoted, appropriates the sum of one million dollars as an initial sum to start construction and to carry out the provisions of the subject act. This section further limits the use of such appropriation for “construction, operation, maintenance and other costs of such reservoir in accordance with an approved agreement as provided for in section 6 of this act * * *.” (Our emphasis)

The legal question to be resolved is whether or not any part of the one million dollars appropriated by the act in question can be used by the Commission for the following purposes:

1. To assist in financing the preparation by the Corps of Army Engineers of final designs and specifications for the dam and reservoir in question.

2. To acquire land for the proposed dam and reservoir.

The title of the act in question reads:

“An Act to provide flood control, water supply and related water resources benefits and improvements for the State of Indiana, specifying projects’ construction and related benefits, determining methods for expenditure of such funds, including cooperation with the United States, and making an appropriation.”

148
It is a familiar rule of statutory construction that:

"Where the legislature has not defined words used in the act, the Court must then determine as best it can the meaning of the language in accordance with the legislative intent so as to prevent absurdities, and to advance justice."

Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4814, p. 359.

In State v. Rice (1955), 235 Ind. 423, 134 N. E. (2d) 219, the Court quoted with approval the following:

"Every statute is to be construed with reference to its intended scope and to the purpose of the legislature in enacting it; and where language is used which is ambiguous or admits of more than one meaning, it is to be taken in such a sense as will conform to the scope of the act and carry out the purpose of the statute."

By applying the foregoing rules of construction to the act under consideration it would appear that even if the term "construction costs" found therein is not, according to trade language, sufficiently generic to embrace the two items of expense in question, nevertheless, the provisions reading "and other costs" would clearly be sufficiently broad to include said items.

In my opinion, in order to carry out the mandate of the 1959 General Assembly as expressed in the act, the words "Construction * * * and other costs of such reservoir * * *" (our emphasis) would necessarily include costs involved in the preparation of final plans and specifications and the acquisition of land for the proposed dam and reservoir; otherwise the legislative mandate could not be carried out by the Commission and the clear intent of the act would be defeated.

Therefore, I conclude that a sufficient portion of the appropriation in question can be legally used by the Commission to share with the Federal Government the necessary costs in the preparation of final plans and specifications and for acquisition of necessary land to initiate and complete the subject project.