Honorable Albert A. Steinwedel
Auditor of State
238 State House
Indianapolis 4, Indiana

Dear Mr. Steinwedel:

I am in receipt of your recent letter requesting my Official Opinion with respect to certain questions hereinafter set forth. Due to the length of your letter I have taken the liberty of quoting only certain portions which are directly pertinent to the questions to be answered. These portions read as follows:

"I am setting out examples of transactions which my office is holding and request an official opinion as to what authority we have to expend funds. * * *"

"QUESTION NO. 1:

"1. Gasoline was delivered to a State Highway Garage in the fiscal year 1956-57 at various times throughout the year. A purchase order had been issued at the beginning of that year for the estimated year's requirements of gasoline at that location. Payments were made to the vendor from time to time until the full amount provided in the purchase order had been paid. Deliveries, however, were continued in excess of the quantity and amount authorized by the purchase order. The vendor now claims payment for such excesses delivered, but no unliquidated encumbrances of prior year funds are available. Similar excess deliveries of gasoline and other petroleum products were made in the 1957-58 and 1958-59 fiscal years.

"Official Opinion Number 2, dated April 1, 1959, issued to the Auditor of State by Edwin K. Steers, Attorney General, states in part: 'The fact that a so-called "supplementary purchase order" is received would not permit you to draw against current appropriations and the payment must be from the original appropriation provided the order does not exceed the amount appropriated originally.'
"The word 'appropriation' is not clear. This office requests that you clarify whether the term 'appropriation' means the appropriation which was enacted by the Legislature, or whether the word 'appropriation' represents the amount of funds which was encumbered for the specific purchase order * * *"

"QUESTION NO. 2:

"The last sentence of the opinion states that: 'the subsequent orders will not be charged against current appropriations but will be paid for out of the fund available in the state highway fund account which can be transferred to the specific account originally designated for the purchase order in question.'

"Does this mean that this office has authority to reestablish funds in an unlimited amount from the unappropriated surplus accounts of the Highway Department to pay bills submitted in subsequent years for deliveries in previous years regardless of time involved or subsequent disposition of the operating appropriations for such prior years?'

"QUESTION NO. 3:

"Would your answer be the same with respect to all other types of state funds?

"If there are exceptions to this, please designate."

"QUESTION NO. 4:

"2. Prior to July 1, 1959, gasoline and other petroleum products were supplied to all state institutions and agencies (except the State Highway Department) on the basis of Quantity Purchase Awards. These awards are price agreements between the State and the vendors, providing for the purchase of certain items at set prices. * * * deliveries were made as requested by the state agencies, and payments were made on the direct basis, that is, without previous encumbrance of appropriations or allotments. Unlike purchase orders, quantity purchase awards are not recorded as encumbrances, nor can they be so recorded, since they are not firm commitments. When unpaid
deliveries of this nature are discovered after the end of the fiscal year in which they were made, no funds are available to pay them, since the appropriations will have been reverted.

"We have billings which date back to the 1956-57, 1957-58 and 1958-59 fiscal year.

"When the Quantity Purchase award billings of the prior year are presented for payment, does this office have the authority to pay them, and, if so, from what source?"

"QUESTION NO. 5:

"Would your answer be the same for the general fund, dedicated, revolving and trust and agency funds?"

"QUESTION NO. 6:

"3. In December 1958, a purchase order was issued for constructing parking lots at Central State Hospital. On July 13, 1959, an 'Advice of Change in Purchase Order' was issued increasing the purchase order in the amount of $850.00, due to error in estimating the quantities of paving materials needed for the project. We have withheld recording of this instrument, because unencumbered balances of General Fund appropriations for the fiscal year 1958-59 were reverted to unappropriated surplus on June 30, 1959 * * * payment has been withheld due to lack of available unencumbered prior year funds.

"In July 1959, three purchase orders were issued for dairy products delivered to Indiana Women's Prison in January, February, and April, 1959. Payment of these claims would result in charging prior year's expense to a current year's appropriation * * *

"Does this office have the authority to pay them and if so, from what source? * * *"

"QUESTION NO. 7:

"* * * Would your answer be the same for general fund, dedicated, revolving and trust and agency funds?"
"QUESTION NO. 8:

"4. Deliveries of some products frequently exceed the quantities set out in purchase orders, due in some part to trade practices (packaging, etc.). Examples are meat, cloth, and printing. In the case of printing, a 5% overrun is provided for in the agreements, but this amount is not included in the purchase order issued * * * Prior year overruns, however, present a problem, in that the encumbered funds brought forward are fixed by the original amounts of the purchase orders.

"1. From what funds does this office have authority to pay for overruns on prior year purchase orders in which deliveries are made in the prior year?

"2. If the final delivery of the prior year purchase order, which includes the overruns of the order, is received in the current fiscal year, is it possible for this portion of the overrun to be paid from current year appropriations?"

"QUESTION NO. 9:

"Does this office have the authority to pay them, and if so, from what source? * * *"

"QUESTION NO. 10:

"* * * Would your answer be the same for general, dedicated, revolving and trust and agency funds?"

A survey of the problems presented by your request indicates that the focal point rests, in part at least, within the purview of the "Financial Reorganization Act of 1947." Basically two main sections of that act are involved at this point. Acts of 1947, Ch. 279, Sec. 15, as found in Burns' (1951 Repl.), Section 60-1815, reads, in part, as follows:

"(a) Except as otherwise herein provided, every contract shall be signed in behalf of the state by the head of the interested state agency and all contracts having to do with the central management of the state's real estate shall also be signed by the governor, and
no purchase order or contracts shall be valid without
the approval and signature of the director of public
works and supply and the certification of the director
d of auditing, that the appropriation or allotment has
been encumbered for the full amount of the obligation
incurred thereby. * * *" (Our emphasis)

Section 21 of the above act, as found in Burns’ (1951 Repl.),
Section 60-1821, reads as follows:

“(a) Except as specifically provided for in appro-
priation acts, every appropriation or part thereof re-
main ing unexpended and unencumbered at the close
of any fiscal year shall lapse and be returned to the
general revenue fund; provided, that an appropriation
for purchase of real estate or for construction or other
permanent improvement shall not lapse until the pur-
poses for which the appropriation was made shall have
been accomplished or abandoned, unless such appro-
priation has remained during an entire fiscal biennium
without any expenditure therefrom or encumbrance
thereon. (b) Except as otherwise expressly provided
by law, the provisions of this section shall apply to
every appropriation of a stated sum for a specified
purpose or purposes heretofore or hereafter made from
the general revenue fund, but shall not, unless ex-
pressly so provided by law, apply to any fund or balance
of a fund derived wholly or partly from special taxes,
fees, earnings, fines, federal grants, or other sources
which are by law appropriated for special purposes by
standing, continuing, rotary or revolving appro-
priations.” (Our emphasis)

Your first question involves the interpretation of the word
“appropriation” as it was used in my Official Opinion No. 2
of 1959. Without attempting specifically to redefine the term
“appropriation,” which has already been thoroughly discussed
and defined in 1945 O. A. G., page 499, No. 116, I will state
that, as the term was used, it was directed to the amount of
money allocated for certain expenditures or classifications and
does not mean the specific over-all legislative appropriation
for an entire department or agency.

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Question No. 2 is also based upon the interpretation of Official Opinion No. 2, supra. In this instance you have asked whether or not the concluding language of the Opinion gives you authority to re-establish funds in an unlimited amount from the unappropriated surplus in the State Highway Account Fund. Certainly such a construction was not intended nor would it be legally permissible. Acts of 1933, Ch. 18, Sec. 25, as found in Burns’ (1949 Repl.), Section 36-125(g), provides that the unexpended portion of the highway fund remains intact from year to year and is available for future use. This provision prevents reversion of this money to the general fund. Moreover, it provides, with certain limitations, a source of funds available in a succeeding fiscal year for the payment of expenses previously incurred yet unpaid at the end of the fiscal year. Superimposed over this status of the fund is the proposition that no expenditure can exceed the appropriation originally established by the Legislature. This latter proposition provides the limitation for the expenditure and any amount needed in excess of the original appropriation and allocation would be subject to the special authority prescribed in the Financial Reorganization Act of 1947 relating to the transfer of funds.

With respect to Question No. 3, I can state that the answer would not be the same for all other types of state funds. Without specifically enumerating certain exceptions which might exist, I think the guiding principle in a case of this kind can be found in either the statute which controls the type of fund considered or the actual legislative appropriation which prescribes the use and continuing or limited existence of the appropriation. If, for example, the statute creating the special fund provides for a continuing existence without reversion to the general fund, as in Burns’ 36-125(g), supra, then expenditures can be made from said fund regardless of the fiscal year concerned as long as the fiscal appropriation of the Legislature for the year concerned is not exceeded. It is conceivable that the legislative appropriation itself will specifically “open the doors” on a certain fund and not limit the expenditure as to time or amount insofar as a specific purpose, account or project is concerned. A fund of this type would be created on the theory that the expense of the purpose or project involved is not subject to any precise estimate and that some liberality must exist if the state is to accomplish the purpose
and stand good for the obligations incurred. Therefore, in any given case the Auditor must be controlled by these factors as they evidence the intent of the Legislature and the mere satisfaction of the state's obligation is not the prime consideration. It must be remembered too that the reversionary provisions of Burns' 60-1821, supra, apply only to general fund money.

1948 O. A. G., page 61, No. 14;

Your Question No. 4 concerns the handling of and the payment of so-called Quantity Purchase Awards. In these cases, as well as in others, the Auditor is faced with the problem of claims presented in subsequent years after the unexpended appropriations of the prior fiscal year have reverted. You have stated that these awards are merely price agreements and do not constitute a contract for which an encumbrance can be made.

The Legislature has provided the method for handling contracts and purchase orders connected with the purchase of services, materials, etc., by the state and its agencies. Within the Financial Reorganization Act of 1947, Burns' (1951 Repl.), Section 60-1805, requires the Director of Public Works and Supply to supervise and control all purchases and contract services except for public highways and bridges. Burns' 60-1815, supra, states, except as otherwise provided, that all contracts and purchase orders shall be approved by the Director of Public Works and Supply as well as certified to by the Director of Auditing as to the encumbrance of the appropriation or allotment for the full amount of the contract or purchase order. Nowhere in the procedure prescribed by the Financial Reorganization Act of 1947 is there a provision for the handling of Quantity Purchase Awards. Undoubtedly this type of contract arose in instances where it was thought to be impossible to predict even the estimated quantity of services or supplies for a fiscal year or a given period within the fiscal year. Certainly it would be desirable to require some type of estimated quantity based upon the experience of past needs in order to provide a more specific amount for the Auditor to encumber against the allotment or appropriation concerned. However, in the absence of any specific amount to be encumbered, it would seem that the notification provided
by the Quantity Purchase Award would be sufficient to enable the Auditor to encumber the total funds carried in the account against said Quantity Purchase Award. Obviously, the Quantity Purchase Award represents a meeting of the minds which would be a binding contract on the parties for a given amount to be ascertained some time in the future. Therefore, at the time the Quantity Purchase Award contract becomes binding upon one party to deliver such quantity as needed, and the other party to pay for the quantity so delivered, there is a contract in existence sufficient to require an encumbrance to be placed against the total amount of the fund in question.

The statute dealing with encumbering appropriations does not specify with any particularity the procedural methods or formalities required before the encumbrance is valid. In 1945 O. A. G., page 554, No. 128, it was stated that the contract itself may be written or oral so long as there is notice sufficient to enable the Auditor to encumber the funds available for the payment of the obligation. Thus, the funds become encumbered when the contract becomes binding on the parties.

In a Kentucky case, Norman, Auditor v. Central Kentucky Lunatic Asylum (1891), 92 Ky. 10, 17 S. W. 150, the facts showed that the Auditor was to deduct encumbered amounts from the institution’s next fiscal appropriation allowance. The institution was to certify as to its encumbrances to enable the Auditor to make these deductions. In the reported case no certification had been made and the institution contended that without this no deduction from the appropriation allowance could be made. However, the Court stated that the intent of the act was to give the Auditor knowledge of the balance of the fund and he was not limited to the formal notice set forth in the statute.

In view of these holdings it would seem that the Quantity Purchase Award is, in fact, sufficient notice to the Auditor to encumber available funds, and that if this was not in fact done, the entries reflecting the reversion of these funds under Burns’ 60-1821, supra, were premature and erroneous, and any outstanding obligations might be paid from the unexpended balance of the original appropriation if said erroneous entries were corrected.

In conjunction with Question No. 4 you asked a fifth question as to whether the answer above would be the same with
respect to the "general fund, dedicated, revolving and trust and agency funds." Prior to completing this phase of the answer relative to Quantity Purchase Awards and these various funds I think it necessary to define or explain the funds involved.

The "general fund" has been defined as all public moneys and revenue coming into the State Treasury, not specifically authorized by the Constitution or statutes to be placed in a separate fund, and not given or paid over in trust for a particular purpose.

81 C. J. S. States § 158;
See also: 1 R. S. 1852, Ch. 43, Sec. 1, as found in Burns' (1951 Repl.), Section 61-201.

A "dedicated fund" may be defined as that fund which is derived wholly or partially from special taxes or other designated sources and which is set aside for a special purpose.

A "revolving fund" has been defined by the Legislature in the last several appropriation acts. In substance a revolving fund is any designated part of a fund set aside as working capital and devoted to a specific purpose and it will not be used for any other purpose nor will it revert to any other fund at any time except the excess over any prescribed amount will revert to the general fund at the end of the fiscal year if the excess is not encumbered. Acts of 1959, Ch. 114, Sec. 1.

The term "trust fund" is defined partially by Acts of 1941, Ch. 27, Sec. 6, as found in Burns' (1951 Repl.), Section 60-315, and consists of those funds held by the state for teachers' retirement, common school fund, and other special funds which the state holds inviolate as a trustee for a specific purpose.

An "agency fund" is similar in nature to a trust fund and consists of money given to the state for a specific purpose such as endowments and the state operates only as a paying agent subject to the terms and conditions under which the money was received.

By definition these funds are different in nature from the general revenue fund. The source of the money making up the fund and the purpose or purposes for which such a fund
may exist requires a consideration of different rules than those that prescribe the handling of appropriations made from the general fund.

In prior Opinions of this office it has been held that Burns' 60-1821(a) applies only to appropriations from the general fund.

1948 O. A. G., page 61, No. 14;

This rule still prevails and therefore with respect to appropriations from the general fund the Opinion stated above would apply. However, in relation to funds appropriated or received from other sources the burden is upon the Auditor to check the appropriation act, or the conditions under which the money was received, to ascertain what limitation, if any, is placed on the use of said fund and also to ascertain whether or not the claim as presented exceeds the amount originally appropriated. I cannot be more specific with respect to the other types of funds involved because each case must stand on its own facts in relation to the specific provisions of the appropriation act or the terms and conditions of the trust or agency trust under which the state exercises controlling authority.

The answer given here, pertaining to funds other than the general fund, is also applicable to your Questions Numbered 7 and 10.

Question No. 6 concerns the general situation where the final claim for services or material is in excess of the original encumbrance and either the claim itself or the "Advice of Change" on the purchase order is received subsequent to the close of the fiscal year. In this particular area there are two factors which surround the whole problem of the state's financial policies.

First of all it must be remembered that many contracts for the purchase of services or materials are based upon an estimate of the governmental needs during any given period or for any specified project. The operation of our government constitutes one of the largest business enterprises in the state and the need for such services and/or materials is constantly
fluctuating so as to make precise estimates hardly within the realm of practicality. Certainly the Legislature was aware of this at the time it considered and passed the Financial Reorganization Act of 1947.

Secondly, the Legislature must also have realized that administratively, at least, the end of the fiscal year billings and contract adjustments presented and still present some very difficult problems. Normal operating expenses incurred up to the end of the fiscal year must necessarily be submitted subsequent to the end of that fiscal year. Contracts completed just prior to the close of the fiscal period would have to be figured and claims submitted subsequent to the end of the period. Most of these matters are beyond precise control and to say that there is a cut-off at the end of the fiscal year is to adopt an interpretation with such absurd results that it cannot be attributed to the legislative mind. Similar thinking is expressed by the Court in People ex rel. John J. Brinkerhoff v. Charles P. Swigert et al. (1883), 107 Ill. 494, at page 500:

"* * * By the term 'unexpended balance,' we understand the legislature to mean whatever may remain of the fund after the payment of all proper and just claims against it which accrued during the year ending on and including the whole of the 30th day of June, and the fact that a part of these claims have not been actually paid before the first day of July will make no difference in this respect. It will be sufficient if they are adjusted and paid at any time before the fund lapses under the provision of the constitution hereafter referred to; but all such claims against the fund paid after the first of July must be adjusted and paid with reference to the state of the accounts on and including the last day of June, and this, we think, is all that was intended by the fourth section of the act of 1883. We fail to perceive anything in that section which fixes the exact time when the actual transfer of this 'unexpended balance' on the books of the Auditor and Treasurer must be made. Judging from the analogies of the law upon like questions, we think we are warranted in saying the legislature must have intended a reasonable time should be allowed for ascertaining such unexpended balance * * *" (Our emphasis)
Another case lending some light on this problem is Kirby et al. v. Nolte, City Controller et al. (1942), 349 Mo. 1015, 164 S. W. (2d) 1. This was an action by members of the civil service commission to construe certain provisions of the city charter and particularly to interpret certain appropriation allowances. A minimum appropriation was made with a proviso for the reversion of the unexpended balance at the end of the fiscal year. The defendant controller maintained that all funds not in fact expended at the close of the fiscal year reverted. On the other hand the commissioners contended that they could obligate the appropriations up to the full amount of the minimum appropriation and that it would not revert in any case. In striking a balance between these opposing theories the court examined the provisions of the appropriation ordinance and stated, at page 11:

"* * * This certainly evidences a clear intent that the Department can count on that much money and commit itself accordingly, although some part of the money may not have been actually paid out by the end of the fiscal year. And, of course, if it has been appropriated by special ordinance for a specific purpose it will not revert."

In the case of Norman, Auditor v. Central Kentucky Lunatic Asylum (1891), 92 Ky. 10, 17 S. W. 150, the Court regarded the nature of an unexpended balance which would constitute an amount to be deducted from the appropriations due the institution for the next fiscal period. At page 152 the Court stated:

"* * * There is money enough on hand to make the necessary repairs, and they are actually commenced, but the end of the quarter arrives with the 1st of January following and the money has not then been paid out, although bona fide set apart to make the repairs, nor have liabilities been created to consume it. In such a case, looking to the spirit and meaning of the statute, is the money to be regarded as an unexpended balance, to be deducted from what is then due the asylum, resulting in a cessation of the work? We do not think so * * * The construction contended for requires that no repairs can be undertaken, however necessary, and
although the money may be on hand to make them, *unless* they can be paid for, or *all the liabilities attending them be created*, before the time for the next quarterly report from the officers of the institution * * *”
(Our emphasis)

There is one case which represents judicial thinking on the problem of paying obligations incurred in prior years out of current year appropriations. This case, In re Taxpayers and Freeholders of Village of Plattsburgh (1898), 157 N. Y. 78, 51 N. E. 512, the Court was dealing with a petition to enjoin the payment of money on a contract in excess of prior year appropriations by the use of funds from current appropriations.

At page 514, the Court used this language to express its view of the problem:

“* * * There is no prohibition in the charter against paying an honest debt incurred during previous years, from the proper fund, when there is money in the treasury, although the debt was not contracted during the year when the payment was made * * * that is to say * * * there is an excess over and above the necessities of the current year in the general fund, or any other fund, of that amount, arising from these miscellaneous sources, it is, we think, perfectly competent for the trustees to use that excess to construct sewers, or for any other purpose that, in their judgment and discretion, is for the best interests of the village.”

In the search for an answer to Question No. 6, I have examined many cases and materials but I fail to find any Indiana cases which would shed light on the thinking of our own Court with respect to the Financial Reorganization Act of 1947 as it might be applied to the facts suggested by your letter. Several Official Opinions of the Attorney General have touched upon various phases of the act but none of them have actually construed the act in the manner necessitated by your question.

Looking only to the judicial expressions of other jurisdictions on similar problems I feel that a rule of reasonableness must be extended to our own Financial Reorganization Act.
In terms of Question No. 6, it is my opinion that the Legislature did not, in fact, intend to cut off payment of valid obligations where the contract estimates were erroneous when originally made and therefore it would be reasonable to permit you to pay said obligation within the limitation of the unexpended surplus of the original appropriation allotment which reverted to the general fund at the end of the prior fiscal year. In support of this conclusion I call your attention to the following provision which has been substantially the same in the general appropriation acts for the last several years:

"Direct appropriations shall be subject to withdrawal from the State Treasury and for expenditure for such purpose or purposes at such times and in such manner as may be designated or prescribed pursuant to law and when once withdrawn shall not be subject to return and to the rewithdrawal from the State Treasury, except for the correction of an error which may have occurred in any transaction or for reimbursement of expenditures which have occurred in the same fiscal year."

Acts of 1959, Ch. 114, Sec. 1.

It is my understanding that the word "error" in the above provision has not received a definition broad enough to include a situation or situations illustrated by the examples set forth in your letter. Certainly too liberal construction of that term would have the effect of nullifying the basic dictates of the Financial Reorganization Act. On the other hand it is evidence that the Legislature recognized the need for adjustments due to human error in the field of estimating contractual needs in advance. I do not purport to define the word "error" as used in the above quote but only to allude to the proposition that as it is used there it would support payment of obligations within the limitations set forth above.

Question No. 7 requests an application of the answer given to various other types of funds. It is my opinion that the answer to Question No. 5 is also applicable here and therefore I will not attempt further discussion of this problem.

The first part of Question No. 8 concerns the source and legality of payments for overrun deliveries made within the fiscal year for which appropriations have been encumbered.
in an amount less than the total amount of the final claim. You have also indicated that the contract or purchase order in some instances provides for a 5% overrun.

As was stated in the case of Norman, Auditor v. Central Kentucky Lunatic Asylum, supra, the method of notifying the Auditor of the unexpended balance of an appropriation is not exclusive. Here, too, the procedure for encumbering funds is not exclusive and knowledge by the Auditor of the need for a greater amount than that represented by the purchase order would be sufficient reason to encumber the greater amount within the fiscal year to prevent reversion to the general fund prior to actual payment of the claim. A fortiori, a contract expressly anticipating a 5% overrun, would constitute notice sufficient to require an encumbrance to the extent of the 5% excess.

Beyond this the problem is more complex and the burden begins to shift to the individual or company contracting with the state. Two principles of law arise which do in fact shift the burden. First of all, it is a cardinal principle of state financial policy that every contract made in the absence of an appropriation is void. Secondly, it is well established that an individual contracting with a state officer is bound to know the limitations upon the officer's authority. These rules are discussed in 1955 O. A. G., page 1, No. 1.

A contractor or vendor dealing with the state has obligations beyond the confines of performance of the contract. He is required to follow statutory provisions not often present in contracts with private individuals. For example, he is required to submit bids; he is, in effect, required to know the nature and extent of the powers of the official with whom he is dealing; he is, in effect, charged with knowledge of the existence or non-existence of an appropriation upon which the validity of his contract depends and it behooves him to submit notice of a change in the amount of the contract prior to the end of the fiscal year in which it is made if the funds involved are subject to reversion if not encumbered.

These factors must be measured against the concept of fair dealing and equity under circumstances where the state has received the benefits of the contract without legal liability to pay for the benefits received.
If the contractor is able to perform fully within the same fiscal year in which the contract is made and he submits a claim, in that same year, in excess of the appropriation encumbered for his contract, it would seem that the law would allow a transfer from other unexpended appropriations within the same general purpose to pay this contract in full.

The Financial Reorganization Act itself contains a provision for the transfer of appropriations from one specific purpose to another. Acts of 1947, Ch. 279, Sec. 27, as found in Burns' (1951 Repl.), Section 60-1827, reads, in part, as follows:

“(a) The state board of finance may transfer, assign, or reassign any appropriation, appropriations or part thereof for one [1] specific use or purpose to another use or purpose of any officer or agency so long as the use and purpose to which it is transferred, assigned or reassigned is a use or purpose which the officer or agency is required or authorized to perform. For the purposes of this section all appropriations heretofore or hereafter made to any officer or agency shall be deemed and taken as appropriations to that officer or agency for the use of such officer or agency for any purpose or duty said officer or agency is required to or may perform by law. No transfer under this subsection shall be made except upon the request of or with the consent of such officer or agency.”

This 1947 Act is repetitious of the power given said board by Acts of 1941, Ch. 27, Sec. 5, as found in Burns' (1951 Repl.), Section 60-314. Several Opinions have also been issued dealing with the subject of a transfer of funds. 1924 O. A. G., page 499; 1936 O. A. G., page 255; and 1945 O. A. G., page 557, all have considered the problem of transferring funds from one purpose to another and the conclusion was that the Board of Finance did have such power. In each instance the statute allowing the transfer was read in conjunction with the provisions of the appropriation act which created the funds under consideration. Obviously a specific limitation on transfers in an appropriation act would prevail over the general transfer authority given the Board of Finance by Burns’ 60-1827 and Burns’ 60-314, supra.
The Legislature has made specific provision for a transfer of funds between classifications in the highway appropriations for 1955, 1957 and 1959. This transfer is subject to the approval of the Budget Committee.

From the foregoing discussion it would seem evident that the Legislature contemplated the occasional necessity for the transfer of funds between departments of government as well as between budget classifications within the same department of government. If the transfer is from one agency or department to another then it is my opinion that proper procedure requires the approval of the Board of Finance and if the transfer is between classifications in the same agency then the approval of the Budget Committee is necessary.

Therefore, in answer to the first part of Question No. 8, it is my opinion that in each instance the provision of the appropriation act itself is controlling and in the absence of a limitation or prohibition therein a transfer can be made in accordance with the above procedure in order to supplement an appropriation to satisfy a fair and honest obligation of the state so long as the claim is submitted in the same fiscal year for which the contract was made. If, however, the excessive delivery or work is performed in the same fiscal year but the claim is not submitted until the subsequent fiscal year the payment can be made only from a transfer of funds from another unexpended appropriation which has been brought forward and then not used. The Auditor cannot disturb current appropriations to pay any claim based upon a prior year contract. If there is no unused portion of funds carried forward in similar classifications or from other departments so that a transfer can be made then payment cannot be made out of any existing fund, except perhaps the emergency contingency fund as hereinafter discussed, unless you determine that the excess amount arose by virtue of an error in the transaction. If such an error is found there, insofar as the general fund is concerned, payment may be made in accordance with the principles established in the answer to Question No. 6 above.

The second part of Question No. 8 involves a similar situation where there are overruns and claims in excess of encumbrances but carries the additional problem of final delivery,
including the overrun or excess, occurring in a subsequent fiscal year.

What has already been said with respect to the duties of contractors is equally applicable to this problem. If they anticipate overruns or a claim in excess of the original contract and this performance will be in a subsequent fiscal year they must take steps to notify the Auditor of this fact so that additional funds can be encumbered. They are charged with the knowledge that unencumbered appropriations could revert to the general fund at the close of the fiscal year and they cannot complain when their own lack of diligence prevents them from collecting the excess of the contract price over the original encumbrance.

In answer to the second part of Question No. 8, it is my opinion that if a contractor or vendor completes his contract after the close of a fiscal year and there is a claim in excess of the encumbrance for the prior year then there are no funds available for the payment of the amount in excess of the original contract because it would be improper to use funds from current appropriations.

The State ex rel. Martin et al. v. Porter, Governor, et al. (1883), 89 Ind. 260;

Question No. 9 asks what source can be used to pay such claims if current appropriations cannot be used. I know of no source from which you can draw money currently appropriated to pay such a claim unless it would be from the general emergency contingency fund in accordance with the procedure established in Acts of 1947, Ch. 279, Sec. 24, as found in Burns' (1951 Repl.), Section 60-1824. The liberal use of this fund for the public interest and the interpretation of such use is discussed in 1945 O. A. G., page 241, No. 53.

Question No. 10 is repetitious of Question No. 5 and the answer given before applies equally well to this question. Inasmuch as this type of question has followed a different set of factual circumstances in each instance I might add here that it is my opinion that the answer to Question No. 5 would apply to any conceivable factual situation and not just the ones contained in your letter.
Throughout the research and consideration of the many problems raised by your letter I note that neither the Auditor's office nor the Board of Public Works and Supply has issued any rules and regulations under Burns' 60-1501 et seq. with respect to the administrative handling of matters such as the method of encumbering funds. Perhaps many of these problems could be resolved by adopting a comprehensive set of rules and regulations involving the encumbrance and disbursement of funds from the Auditor's office.

The length of this Opinion coupled with the complexities of the questions and answers thereto prompts me to attempt a brief summarization of the answer to each question in order to provide an easy reference for you.

1. The word "appropriation" as used in the context referred to by you in my Official Opinion No. 2 for 1959, applies to the money set aside for a particular purpose or classification within the confines of the over-all general legislative appropriation for the agency or department of state government.

2. The concluding language in my Official Opinion No. 2, supra, does not give the Auditor authority to re-establish unlimited funds from the unexpended balance of an appropriation but means only that for the particular fund discussed therein he has authority to pay valid obligations not exceeding the total appropriation for the classification which existed in the prior fiscal year.

3. The answer given immediately above would not apply to all other types of state funds but would apply only in those instances where the statute and/or the appropriation act establishing such fund contains provisions allowing continued expenditures from said fund without specifically prohibiting a re-establishment within the limitation of the original appropriation.

4. While it is more desirable to require the various state agencies using Quantity Purchase Awards to estimate a quantity of supplies needed on the basis of past experience, such agreements are binding contracts sufficient to enable the Auditor to encumber the funds allotted to the purpose in question and the reversion of such funds for lack of an entry reflecting the encumbrance is an error which can be corrected. The obligation could then be paid up to the limit of the original appropriation.

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5. Burns' 60-1821(a) applies only to the general fund and since the unexpended and unencumbered surplus of other funds would not necessarily revert to the general fund at the end of a fiscal year the burden is upon the Auditor to ascertain how the Legislature intended the fund to be used in accordance with the statute and/or appropriation act creating said fund.

6. A valid obligation of the state may be paid out of the general fund even though prior fiscal year appropriations have reverted but only in situations where the original contract was necessarily based upon estimates which prove to be erroneous after completion of the contract or where the practical difficulties of billing at the end of a fiscal year are obviously due to services being rendered up to and including the last day of said fiscal year.

7. Same as No. 5 above.

8. (a) Contractors dealing with the state are under certain obligations which include the duty to see that sufficient funds are encumbered during the fiscal year to allow payment of their claim. Contracts containing an overrun or excess percentage should be the basis for encumbering an amount sufficient to include the overrun or excess amount. Claims in excess of the appropriation in a classification presented in the same fiscal year may be paid by a transfer of funds from another classification in the same general classification on approval of Budget Committee or a transfer between departments or agencies on approval of the Finance Board. If the claim is not submitted during the same fiscal year then there can be no payment out of existing appropriations unless a transfer can be made from unused portions of appropriations carried forward from the prior year or unless it is determined that an error was made which would justify using the general fund to supplement the encumbered appropriation which was carried forward.

(b) Claims for excesses or overruns over the amount of a prior year's appropriation and which are not based on a percentage overrun or excess provision in the original contract cannot be paid.

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9. Claims which cannot be paid from any other source or fund may be paid from the general emergency contingency fund under proper procedure.

10. Same as No. 5 above.

OFFICIAL OPINION NO. 58

October 22, 1959

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

Dear Mr. Hindman:

Your recent letter in which you request an Official Opinion of this office reads, in part, as follows:

"We have been requested by the Indianapolis Board of Aviation Commissioners to secure your official opinion on the following questions:

1. Under the law as it now exists, can there be a lawful transfer of funds from the Aviation Fund to the General Fund of the City?

2. If the answer is in the affirmative, under what conditions can such transfer be made and would such transfer have to be made with the approval and/or consent of the Board of Aviation Commissioners?"

Research has disclosed that there are two statutes which have an effect on the transfer of funds from the Aviation Fund to the General Fund of the City. The first of these is Acts of 1933, Ch. 129, Sec. 1, as found in Burns' (1950 Repl.), Section 48-6917. This section reads as follows:

"Where there is a public fund or funds in the custody of any department of any city, and where any such fund, or any part thereof, is not being used for the purpose for which it was created, and where there is actual need for all or any part of the money in such fund for use in some other fund in order that such city