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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
may carry on its necessary governmental functions, the common council of such city may transfer such fund or funds or any part thereof to the general fund of such city to be used for the usual purposes thereof, as by ordinance provided. Such transfer shall be authorized only after the common council shall have given ten [10] days’ notice by posting written or printed notices thereof in at least three [3] public places in such city stating the time and place when and where such common council will meet to consider the proposed transfer.”

A Department of Aviation of a municipality is established as one of the executive departments of such municipality, pursuant to Acts of 1945, Ch. 190, Sec. 2, as amended, as found in Burns’ (1950 Repl.), Section 14-413, which reads, in part, as follows:

“Whenever the council of any municipality as now or hereafter defined by act of the general assembly of the state of Indiana shall after the taking effect of this act adopt an ordinance, an act or a resolution in favor of the acquisition, improvement, operation or maintenance of an airport or landing field for such political subdivision under the provisions of this act, and declaring a necessity for the same, then on the date of the taking effect of such ordinance, act or resolution, there shall be hereby established as one of the executive departments of such municipality a department of aviation, which shall be under the control of a board of four [4] members, to be known as the Board of Aviation Commissioners. * * *”

The fact that such Department of Aviation is a department of a city brings it within the terms of Burns’ 48-6917, supra.

The Aviation Fund to which you refer in your questions is created pursuant to Acts of 1945, Ch. 190, Sec. 7, as amended, as found in Burns’ (1950 Repl.), Section 14-419. This section provides that a tax may be levied annually by a city council for aviation purposes in addition to other taxes of the municipality and collected as other city taxes are collected. After collection, the proceeds are deposited in the treasury of the
municipality in a separate fund to be designated as the “Aviation Fund.” The city council may also appropriate and transfer to said Aviation Fund a sum out of the General Fund of the city in accordance with the law providing for the making of additional appropriations for municipalities. The city council may borrow money and issue bonds of the municipality and turn the proceeds into such Aviation Fund.

Burns’ 14-419, supra, further requires the Board of Aviation Commissioners to submit an annual budget to the chief executive officer of the municipality, which budget shall be a full and detailed estimate of the appropriations required for the maintenance and operation of the airport and landing field. All expenditures for airports or landing fields are limited to the extent of specific appropriations made by the city council. After providing for the creation of a rotary fund for the purchase of fuels and lubricants to be sold to the general public in the operation of the airport, and providing for a deposit of a certain excess of this rotary fund into the Aviation Fund, Burns’ 14-419, supra, reads as follows:

“* * * All money remaining in the treasury to the credit of the board of aviation commissioners at the end of the calendar year, shall still belong to the general aviation fund to be used by the board of aviation commissioners for aviation purposes. All funds received by the board of aviation commissioners from whatever source except funds received from the sale of fuels and lubricants purchased by funds from the said rotary fund shall be deposited in the treasury of the municipality to the credit of the aviation fund.”

By the provisions of the above section, the funds deposited in the “Aviation Fund” and remaining unexpended in said fund at the end of each calendar year do not revert to the General Fund of the city, but remain a separate fund for aviation purposes. However, it is from this special Aviation Fund that the city council makes an appropriation for the maintenance and operation of the Department of Aviation of the city.

Acts of 1957, Ch. 15, Sec. 1, added Section 17a to Acts of 1945, Ch. 190, which section is found in Burns’ (1959 Supp.), Section 14-430a. This new section permits the Board of Avia-
tion Commissioners to transfer certain funds of the Department of Aviation to the General Fund of the municipality. This section reads as follows:

"Whenever the board of aviation commissioners of any municipality accumulates funds which are derived from sources other than from the operation of the airport and which are not needed for the operation or maintenance of the airport, the board, upon a majority vote of its members, may without notice transfer all or any part of such funds to the general fund of the municipality: Provided, That such funds were not derived from taxation. The provisions of this section shall not apply to any funds derived from lands leased from the federal government."

In order to answer your questions, it is necessary to determine whether the city council may presently transfer funds from the Aviation Fund to the General Fund of the city pursuant to Burns' 48-6917, supra, or whether that authority is restricted by either the provisions of Acts of 1945, Ch. 190, which authorizes the creation of a Department of Aviation and the "Aviation Fund," or by Burns' 14-430a, supra, which was added to Acts of 1945, Ch. 190, supra, and which gives the Board of Aviation Commissioners a limited power to transfer certain funds from the Aviation Fund to the General Fund of the municipality.

It is a recognized rule of statutory construction that when specific provisions of a statute are irreconcilably inconsistent with general provisions of another statute with relation to the same subject matter, the specific provisions will prevail and this is true although the general provisions are passed subsequent to the act containing the specific provisions.

State of Indiana et al. v. LaRue's, Inc. et al. (1958), — Ind. —, 154 N. E. (2d) 708.

However, it is also settled in this state that repeals by implication are not favored and the repugnancy between two acts must be wholly irreconcilable in order for one act to affect a repeal of another act or a part thereof.

County Department of Public Welfare of Lake County et al. v. Nichols' Estate (1945), 223 Ind. 467, 62 N. E. (2d) 146;
Medias et al. v. City of Indianapolis et al. (1939), 216 Ind. 155, 23 N. E. (2d) 590, 125 A. L. R. 590.

The courts will, if possible, construe apparently conflicting statutes so as to give full force and effect to each.

Ross, Trustee et al. v. Chambers (1938), 214 Ind. 223, 14 N. E. (2d) 1012;


In Marks v. State (1942), 220 Ind. 9, 40 N. E. (2d) 108, the Court said, in part, as follows, at page 17:

“In Lewis’ Sutherland Statutory Construction, a long-recognized and respected authority, it is said (Vol. 1, § 267, pp. 510, 511): ‘If two statutes can be read together without contradiction, or repugnancy, or absurdity, or unreasonableness, they should be read together, and both will have effect. It is not enough to justify the inference of repeal that the later law is different; it must be contrary to the prior law. It is not sufficient that the subsequent statute covers some or even all the cases provided for by the former, for it may be merely affirmative, accumulative or auxiliary; there must be positive repugnancy; and even then the old law is repealed by implication only to the extent of the repugnancy. If, by fair and reasonable interpretation, acts which are seemingly incompatible or contradictory may be enforced and made to operate in harmony and without absurdity, both will be upheld, and the later one will not be regarded as repealing the others by construction or intendment. As laws are presumed to be passed with deliberation and with a full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable.’ * * *”

From an examination of the provisions concerning the transfer of funds both by the city council and by the Board
of Aviation Commissioners, it is my conclusion that such provisions are not so inconsistent that they cannot both be given effect. The provisions of Burns' 14-430a, supra, restrict the funds which the Board of Aviation Commissioners may transfer to the General Fund. Such funds do not include funds derived from the operation of the airport, funds derived from taxation, or funds derived from lands leased from the Federal Government. However, Burns' 48-6917, supra, permits the common council to transfer any part of the Aviation Fund, not being used for the purpose for which it was created, to the General Fund of such city.

In addition, an examination of Acts of 1945, Ch. 190, supra, does not reveal any expressed or implied prohibition against the transfer of any part of the Aviation Fund by the city council to the General Fund of the city.

However, I should like to point out that the authority of both the common council and the Board of Aviation Commissioners to transfer such funds is limited by the provisions of Acts of 1945, Ch. 190, Sec. 17, as amended, as found in Burns' (1950 Repl.), Section 14-430. This section authorizes the Board of Aviation Commissioners, on behalf of the municipality, to accept federal moneys and other moneys for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of its airport. The expenditure of federal moneys must be in accordance with the provisions of the laws of the United States and any rules and regulations made thereunder. In addition, this section gives the Board of Aviation Commissioners the exclusive power on behalf of the municipality to make application to the proper state and federal agencies for grants of funds for airport development. In so doing it may execute covenants and agreements with such federal or state agencies relative to the expenditure of such funds. Therefore, federal funds received pursuant to Burns' 14-430, supra, and paid into the Aviation Fund may be expended only pursuant to the laws of the United States and any rules and regulations made thereunder and, in addition, federal and state funds are subject to any representations, assurances, contracts, covenants, and agreements entered into between the Board of Aviation Commissioners and any state or federal agency.
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: