OFFICIAL OPINION NO. 5

April 26, 1976

Honorable Mary Aikins Currie
Auditor of State
240 State House
Indianapolis, Indiana 46204

Dear Mrs. Currie:

This is in response to your request for my official opinion as to whether the constitutional debt limitation set forth in Article 13, Section 1 of the Constitution of Indiana applies to loans from the Flood Control Revolving Fund to conservancy districts.

ANALYSIS

Article 13, Section 1 of the Constitution of Indiana provides, in part, as follows:

> "No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; and all bonds or obligations, in excess of such amount, given by such corporations, shall be void * * *."

The application of this constitutional provision has been the subject of numerous decisions of the Indiana Supreme Court. One line of these cases has held that where two or more governmental units have boundaries which are coterminous, the two percent debt limitation imposed by Article 13, Section 1 applies separately to the indebtedness of each unit and not to the aggregate indebtedness of those units. *Lawson v. South Bend Public Transportation Corporation* (1971), 256 Ind. 552, 270 N.E. 2d 746; *Bailey v. Evansville-Vanderburgh Airport Authority District* (1960), 240 Ind. 401, 166 N.E. 2d 520; *City of Indianapolis v. Buckner* (1954), 223 Ind. 32, 116 N.E.

2d 507. The political subdivisions discussed in these cases are said to be "political or municipal corporation[s]" within the definition of Article 13, Section 1; but although the two percent limitation consequently applies to them, it applies separately. That line of cases, however, is of no assistance in answering the question you raise since the Board of Finance is considering making a loan to a political subdivision which, by incurring that debt, would exceed the two percent limitation.

The second line of cases has held that certain political subdivisions are created only to effect "local public improvement," as distinct from a general political or governmental purpose, and do not, therefore, fall within the Article 13, Section 1 definition of a "political or municipal corporation." Consequently, the two percent debt limitation is not applicable to them. *Dortch v. Lugar* (1971), 255 Ind. 545, 266 N.E. 2d 25; *Martin v. Ben Davis Conservancy District* (1958), 238 Ind. 502, 153 N.E. 2d 125; *Archer v. Indianapolis* (1954), 233 Ind. 640, 122 N.E. 2d 607. The political subdivisions discussed in these cases (a metropolitan thoroughfare district in *Dortch, supra*; a conservancy district in *Martin, supra*; and a sanitary district in *Archer, supra,*) are said to be merely "special taxing districts."

The *Martin* case directly controls the issue you raise since it, too, concerned the status of a conservancy district. The Supreme Court plainly stated, in that opinion, that "[t]he Ben Davis Conservancy District, as other special taxing districts created for local public improvement, is not a municipal corporation within the meaning of, and its indebtedness does not fall within the limits of, Article 13, Section 1 of the Indiana Constitution." 238 Ind. at 523, 153 N.E. 2d at 135.

In Official Opinion No. 8 of 1975, I concluded that a loan from the Industrial Development Fund to the civil town of Argos must be made within the civil town's constitutional debt limitation. However, the facts which gave rise to that opinion are distinguishable from those you have stated in your opinion request. The proposed loan there would have been made to the civil town of Argos, not to a separate municipal corporation or to a special taxing district.

Although the two percent limitation may be applied separately to governmental units having coterminous boundaries, the Founding Fathers probably intended debt limitations to apply to *all* governmental units. Nonetheless, the Indiana Supreme Court has held otherwise.

CONCLUSION

It is, therefore, my Official Opinion, based only on the clear holding of the Indiana Supreme Court in the case of *Martin v. Ben Davis Conservancy District*, that the two percent debt limitation provided in Article 13, Section 1 of the Constitution of Indiana does not apply to conservancy districts.