

1957 O. A. G.

OFFICIAL OPINION NO. 2

January 30, 1957

Hon. Wilbur Young
State Superintendent of Public Instruction
Room 227, State House
Indianapolis, Indiana

Dear Mr. Young:

Your letter of January 10, 1957, has been received and reads as follows:

“Recently the United States Department of Health, Education and Welfare has questioned the authority of the State Department of Vocational Education (General Commission) to establish ‘public or non-profit rehabilitation facilities’ as provided for by Section II (f) (2) of Public Law 565, 83rd Congress, Chapter 655, 2nd Session S. 2729 and Section 401.1 (e) of the regulation made pursuant to this act.

“May I have your official opinion on the following question:

“Does Chapter 204 of the 1921 Acts, same being Burns’ Indiana Statutes, Section 28-4920 *et seq.* authorize the State Board of Vocational Education (General Commission) to establish the above mentioned facilities in accordance with the federal statute and regulations.”

The above-referred to Federal statute is found in 29 U. S. C. A. § 31 *et seq.* It was originally adopted June 2, 1920, and was accepted by the State of Indiana by an enabling act, same being Acts of 1921, Ch. 204, as found in Burns’ (1948 Repl.), Section 28-4920 *et seq.*, Section 1 of said enabling Act reading as follows:

“The State of Indiana does hereby, through its general assembly, accept the provisions and benefits of the act of congress, entitled ‘An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment,’ approved June 2, 1920, and will observe and comply with all requirements of such act.”

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Section 2 of said enabling Act, as found in Burns' (1948 Repl.), Section 28-4921, provides as follows:

"The treasurer of state is hereby designated as custodian of all moneys received by the state of Indiana from appropriations made by the congress of the United States for the vocational rehabilitation of persons disabled in industry or otherwise, and is authorized to receive and provide for the proper custody of the same and to make disbursements therefrom, upon the order of the state board herein designated, and upon warrant of the auditor of state."

Section 3 of said Act, as found in Burns' (1948 Repl.), Section 28-4922, in detailing specific authority of said State Agency in administering such statute, further authorizes it to:

"* * * direct the disbursement and administer the use of all funds provided by the federal government and this state for the vocational rehabilitation of such persons."

Under Section 6 of said Act, as found in Burns' (1948 Repl.), Section 28-4925, appropriation was made as follows:

"There is hereby appropriated a sum of money, to be available for each fiscal year, of not less than the maximum sum which may be allotted to the state for the purposes set forth in said federal act, and there is hereby appropriated for such purposes out of any moneys in the treasury not otherwise appropriated for the fiscal year ending September 30, 1921, the sum of eleven thousand fifty-two dollars and eleven cents [\$11,052.11]."

Specific appropriation on a state level has been consistently increased until the appropriation for the year 1955-56 was \$230,000 and for the year 1956-57, \$240,000. (Acts of 1955, Ch. 303, Sec. 2(a), page 890.)

Section 11 of the above Federal Act, as found in 29 U. S. C. A. § 41, was added July 6, 1943, by Chapter 190, Sec. 1 (57 Stat. 379), and amended August 3, 1954, by Chapter 655, Sec. 2 (68 Stat. 659). As originally enacted, the scope of operations was less extensive than in the statute as later

amended. Originally it primarily provided for classes and teaching and instruction; under the 1943 amendment, medical and other services for physical improvement was provided, which was further extended by the 1954 amendment. However, the general purpose of the statute, as originally enacted, was the same, the rehabilitation of the handicapped.

In 1944 O. A. G., page 35, No. 10, after noting the Federal amendatory Act of 1943, it was concluded:

“My conclusion is that the State Board of Education, acting as a State Board for Vocational Rehabilitation, has exclusive authority to direct the disbursement and administer the use of all Federal funds provided by the Federal Government for vocational rehabilitation in Indiana.”

Section 11(a) (8) of the above Federal statute, as found in 29 U. S. C. A. § 41, provides:

“(8) the establishment of public and other non-profit rehabilitation facilities to provide services for physically handicapped individuals and the establishment of public and other nonprofit workshops for the severely handicapped.”

Section 11(f) (2) of said Act, as found in 29 U. S. C. A. § 41, referred to in your letter, reads as follows:

“(2) in the case of a rehabilitation facility, the expansion, remodeling, or alteration of existing buildings, and initial equipment of such buildings, necessary to adapt such buildings to rehabilitation facility purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may by regulations prescribe in order to prevent impairment of the objectives of, or duplication of, other Federal laws providing Federal assistance to States in the construction of such facilities) and initial staffing thereof (for a period not exceeding one year).”

Section 401.1(e) of the Rules and Regulations of the Office of Vocational Rehabilitation, Department of Health, Education, and Welfare, of the Federal Government, referred to in your question, is as follows:

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“(e) ‘Establishment of a rehabilitation facility’ means (1) the expansion, remodeling, or alteration of existing buildings, necessary to adapt or to increase the effectiveness of such buildings for rehabilitation facility purposes; (2) the acquisition of initial equipment for such purposes; or (3) the initial staffing of a rehabilitation facility, for a period not exceeding one year.”

In addition to the foregoing authorities, general authority is given the State Agency by statute to cooperate with the Federal Government on the acceptance of benefits conferred by the Acts of Congress, same being Acts of 1947, Ch. 178, Sec. 1, as found in Burns' (1951 Repl.), Section 61-1301, which provides as follows:

“The state, or any political subdivision thereof, are each hereby authorized and empowered to the full extent authorized by the Constitution of Indiana and not prohibited by law, to accept the provisions of any law of the Congress of the United States of America, or any rule, regulation, order or finding made pursuant thereto, now or hereafter in force, which, upon acceptance, authorizes the state, or any political subdivision thereof, to cooperate with the federal government, or to receive benefits for itself or any of its citizens; and the state, or any political subdivision thereof, is hereby authorized and empowered to do any and all acts, and to make any rule, regulation, order, or finding, that may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law.”

Under Section 4 of the last-referred to State statute, as found in Burns' (1951 Repl.), Section 61-1304, emergency contingent appropriations are made.

From the foregoing, I am of the opinion that due to the fact that the original purpose of the Federal Act is consistent with the later amendments and all being for the purpose of rehabilitation of the handicapped; the fact the 1943 amendments were recognized by the foregoing Official Opinion of this office; that the Legislature has consistently made larger appropriations to and including the present time, and is,

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therefore, unquestionably aware in making its budget of the enlarged scope of operations under the Federal Act, and due to the Legislature thereafter adopting Acts of 1947, Ch. 178, *supra*, to generally facilitate the cooperation of the State of Indiana in such program, I am of the opinion the General Commission of the State Board of Education, acting as the Board of Vocational Education, is authorized to establish the above-mentioned facilities in accordance with the Federal statute and regulations.

OFFICIAL OPINION NO. 3

February 18, 1957

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

Dear Governor Handley :

Pursuant to your request, I am hereby issuing to you an Official Opinion which was originally requested by Governor Craig under the date of January 3, 1957, on the following question:

“Can the State Board of Finance sell on the open market long term United States Government Bonds, originally bought at face value with money constituting the principal of the Indiana Common School Fund, and which bonds now have a market value of approximately 91% of the face value, for the purpose of investing the same in bonds of school house building corporations, the purchase of whose bonds are approved by the Indiana Common School Fund Building Commission, pursuant to the provisions of Acts of 1953, Ch. 141?”

Article 8 of the Constitution of Indiana creates the state common school system of public schools. Section 2 thereof creates a common school fund and specifies of what it shall consist.

Article 8, Sec. 3 of the Constitution of Indiana reads as follows: