

stricted by law, with no intention to abandon his office, or cease to discharge the duties thereof, will not result in terminating his title. \* \* \*

In consideration of your Question No. 3 it would appear that since both members of the city board of health and part-time city health officers are "public officials," in the strict legal sense, and no distinction is otherwise made between them insofar as residency requirements are concerned, the discussion relative to Question No. 2 would be applicable to Question No. 3.

In view of the foregoing authority, I am of the opinion:

1. That a part-time city health officer is, in a legal sense, a public officer.

2. It is mandatory that a part-time health officer reside within the corporate limits of the city where he is appointed to serve.

3. It is mandatory that the members of a city board of health reside within the corporate limits of the city where appointed to serve.

4. It is my further opinion that if either a part-time city health officer or a member of the city board of health exercising sovereign powers, removes or absents himself temporarily from his place of appointment with no intention of changing his residence therefrom, may be considered a resident of such place and his status as a "public officer" would remain unaltered.

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OFFICIAL OPINION NO. 10

March 14, 1956

Honorable Donald M. Ream  
State Senator  
R. F. D. 14, Box 348  
Indianapolis, Indiana

Dear Senator Ream:

I am in receipt of your request for my Official Opinion in answer to a number of questions concerning the powers and

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authority of the Wilbur Wright Birthplace Commission as created by the Acts of 1955, Ch. 138. Before proceeding to the specific questions of which answer is requested by this opinion, a brief resumé of the statutory history of this enterprise is appropriate.

The Acts of 1929, Ch. 40, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-825 *et seq.* created the original Wilbur Wright Memorial Commission and appropriated the sum of \$3,500 out of money in the general fund of the State Treasury to purchase, in the name of the State of Indiana, certain real estate in Henry County upon which Wilbur Wright was born. This Act further authorized that Commission to set up and maintain in perpetuity, in the name of the State of Indiana, a memorial to be known as the Wilbur Wright Memorial. Section 6 of that Act, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-830, specifically authorized that Commission to accept any appropriations "which may be made by the federal government to assist in memorializing the achievements of Wilbur Wright and to expend the money so received in conformity with the provisions of this Act or the provisions of the federal law by which such appropriation shall be made."

The Acts of 1941, Ch. 92, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-831 *et seq.* abolished the original Wilbur Wright Memorial Commission, but continued in full force and effect all of its rights, powers and duties, transferred the same to the Department of Conservation and stated that "such park shall hereafter be known as the Wilbur Wright Birthplace."

The Acts of 1953, Ch. 287, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-825 is a House Joint Resolution which directed that the land and building site of the birth of Wilbur Wright, owned by the State of Indiana, should be designated as the Wilbur Wright Memorial. Said Joint Resolution further directed that said land and building site "be renovated and developed into a fitting Memorial in order that present and future generations may visit and appreciate such Memorial." Said Resolution further provided that the Governor appoint an appropriate committee to "plan and create a fitting Memorial to Wilbur Wright at his birthplace in Henry County, Indiana," and further provided that said

committee should cooperate with representatives of any town, city, county, state or federal agency, association or any person, group or groups whatsoever in the implementation and completion of the intent of said Resolution.

The Acts of 1955, Ch. 138, Sec. 1, created the present Commission to be known as the "Wilbur Wright Birthplace Commission," providing for its membership and the manner in which its members are appointed and Section 2 thereof empowered said Commission "to construct and establish a fitting memorial to the memory of Wilbur Wright on the land and building site of his birthplace, which land and site are owned by the State of Indiana." Section 3 of the latter 1955 Act appropriated out of the general fund of the State of Indiana the sum of \$10,000 "for the purpose of carrying out the provisions of this act."

Your first question is as follows:

1. "Does such commission, or any member thereof under resolve and direction of the commission, have the power or authority to solicit and receive donations and gifts of property, including money, to be received in the name of the State of Indiana, for the purposes of constructing and establishing a memorial to Wilbur Wright on the land and building site, which is owned by the State of Indiana, in Henry County."

Generally speaking, "it has been held that any person capable of holding title to property may be the recipient of a gift." 24 Am. Jur., Gifts, § 18. Of course, with respect to the State of Indiana, it not only has the power to hold title to property but is the owner of the land and building site in Henry County on which Wilbur Wright was born. The Acts of 1917, Ch. 20, Sec. 1, as found in Burns' Indiana Statutes (1950 Repl.), Section 22-513 provides as follows:

"Any state educational institution and any state charitable or benevolent institution or *the state of Indiana itself may receive gifts, bequests and devises of real or personal property, or both*, for the aid or maintenance of any such institution, or may receive gifts *for state parks or other state purposes*, and may agree to return to the donor or to any person named by him therein, in

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being, an annuity under the provisions and safeguards hereinafter provided." (Our emphasis)

Succeeding sections of the above 1917 Act make provision for the payment of annuities to donors, not to exceed the duration of the lifetime of the donor or the lifetime of persons in being at the time of the gift, named by the donor providing that any such annuity shall in no case exceed the actual income from the property donated. Other sections of the Act state that no *such* gift (where an annuity is involved) shall be accepted unless it be approved by the Governor and, as an inducement, the Act states that all annuities provided therein shall be free from all taxation for any and all purposes within the State of Indiana. Of course, it does not follow that annuities must be paid in all instances but only as an inducement to the donor; however, said Act specifically authorizes the State to accept gifts for State purposes.

Therefore, in answer to your first question, it is my opinion that so long as the donations are received *in the name of the State of Indiana* and if there are no unlawful obligations imposed upon the State in consideration for the transfer of the gift, then the Commission does have the power to receive donations and gifts of property, including money, for the purpose of constructing and establishing a memorial to Wilbur Wright.

Your second question reads as follows :

2. "If donations and gifts of money are received by such commission in the name of the State for the use of construction and establishment of such a memorial, should such money be held in the name of the commission, by the commission and for the commission's use, or should such money be delivered to the Auditor and Treasurer of the State under the general law pertaining to moneys belonging to the State for trust purposes?"

This question is answered specifically by the provisions of Acts of 1947, Ch. 279, Sec. 23, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1823, which provides as follows:

*"All receipts from any source coming into the possession of any state agency shall be deposited with the state treasurer each day or as soon as practicable after the same is received, unless otherwise provided by law, and at the end of each calendar month each agency shall file a report of all receipts deposited since the last previous report, which report shall show the disposition thereof. Said report shall be submitted to the director of auditing by the depositing agency. All moneys so received by the treasurer during any month shall be credited by him and by the director of auditing to the proper funds not later than the fifth day of the following month."* (Our emphasis)

It is clear from the provisions of the above quoted statute that any gifts of money received by the Wilbur Wright Birthplace Commission must be deposited with the State Treasurer and should be deposited to a separate trust fund for the purpose of constructing and establishing the memorial.

Your third question is as follows:

3. "If, any money is donated or given to the State of Indiana, or to such commission, for the purposes of constructing and establishing such memorial, can such commission expend such donated money without further legislative action and approval?"

This question doubtless is occasioned by reason of the provisions of the Indiana Constitution, Art. 10, Sec. 3, which provides as follows:

"No money shall be drawn from the Treasury but in pursuance of appropriations made by law."

If the donations are maintained in a separate trust fund by the State Treasurer, it would appear that when they are needed for use they will not be drawn from the general treasury as contemplated by the constitutional provision. It seems logical that the money is actually appropriated and authority given to expend it by the donor at the time such gift is transferred from the donor's possession and control. Therefore, it is my opinion that gifts donated for the specific purpose of

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constructing and establishing such memorial may be expended for that purpose without further legislative action or approval.

Your last question reads as follows:

4. "Has such commission, or any member thereof under resolve and direction of such commission, the right to travel out of the state, and a right to recoup or be reimbursed for necessary and reasonable expenses:

"From any moneys donated or given the State for the purposes of constructing and establishing such memorial?

"From funds appropriated in Section 3, Chapter 138, Acts 1955?

"From funds appropriated in Section 3, Chapter 303, Acts 1955?

"From funds appropriated in Section 14, Chapter 303, Acts 1955?"

This question may be answered solely by reference to the Acts of 1955, Ch. 303, Sec. 14, page 914, and Sec. 3, page 908. The Acts of 1955, Ch. 303, Sec. 14, *supra*, specifically authorizes the payment of a per diem allowance for expenses in the sum of \$15.00, plus mileage in the sum of 7¢ per mile to be paid to "any member of the General Assembly or any person, who is appointed either by the Governor, the Speaker of the House, the President of the Senate, or by the Indiana Legislative Advisory Commission to serve on *any* research, study or survey committee or commission" for attendance at any meeting of any such committee or commission. The language "any research, study or survey committee or commission" appears not to be directed to any specific committee or commission but is so general as to be applicable to the Wilbur Wright Birthplace Commission which, of necessity, must carry on research, study and surveys in order to carry out the purpose for which it was created. Further, each of the members of said Commission as provided by the Acts of 1955, Ch. 138, Sec. 1, *supra*, is either a member of the General Assembly or is appointed by the Governor or the Speaker of the House or the President of the Senate.

Reference is made to the Acts of 1955, Ch. 303, Sec. 3, which states in substance that all appropriations contained in that Act and all appropriations otherwise provided by statute for traveling and hotel expenses for any department, officer, agent, employee, person, trustee or commissioner "shall be construed to mean and are hereby intended to be confined to such traveling and hotel expenses *within the state of Indiana and not elsewhere*; this, however, shall not apply when such expenses are incurred in traveling outside the State of Indiana on trips *which have been previously approved by the Governor; \* \* \**" Section 3 contains certain exceptions to the foregoing, none of which are applicable to the Wilbur Wright Birthplace Commission.

Therefore, in answer to your fourth question and in conclusion, it is my opinion that the Wilbur Wright Birthplace Commission, upon receiving previous approval by the Governor, is authorized to make necessary trips out of the State for the purpose of carrying out its powers and duties and may be reimbursed for such necessary and reasonable expenses as provided by the Acts of 1955, Ch. 303, Sec. 14, *supra*.

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OFFICIAL OPINION NO. 11

March 16, 1956

Mr. R. R. Wickersham  
State Examiner  
State Board of Accounts  
304 State House  
Indianapolis, Indiana

Dear Mr. Wickersham:

I am in receipt of your letter of February 28, 1956, requesting my Official Opinion on the following questions:

"1. Do the officers of a civil township, which owns and operates a fire department for the purpose of extinguishing fires which may occur within the limits of such township outside of the limits of any incorporated city or town therein, have the authority to contract with a water utility for annual rental of fire hydrants that serve: