

they are not subject to be dismissed from the service except for cause, and then after a hearing on proper notice.' *Shira v. State ex rel.*, 187 Ind. 441, 445, 119 N. E. 833, 834."

State ex rel. Felthoff v. Richards et al. (1932), 203 Ind. 637, 180 N. E. 596.

Inasmuch as there are no provisions for the retirement benefits for the police officer in question, his retirement must be deemed the same as a dismissal. The Acts of 1905, Ch. 129, Sec. 160, *supra*, provides that dismissal must be justified and may only be effected for cause.

In view of the foregoing, it is my opinion that the common council of a fifth class city may not fix an arbitrary age at which all policemen who are not members of a police pension fund will be retired from the police force. However, if a policeman is, because of age, incapable of fully performing his duties, then he could be removed under and pursuant to the provisions of Burns' 48-6105, *supra*.

OFFICIAL OPINION NO. 18

April 17, 1956

Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Wickersham:

This is in reply to your letter of March 14, 1956, in which you inquire as follows:

"Chapter 99, Acts of 1945, as amended, is a general statute providing for the methods to be followed in making purchases of materials, equipment, goods and supplies with public funds of the state, county, township, cities and towns.

"Section 65-319 Burns is Section 9, Chapter 105, Acts of 1899, which statute is commonly referred to as the

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Township Reform Law of 1899. This particular section has reference to the letting of contracts for the erection of new school buildings and for the purchase of 'school furniture, fixtures, maps, charts, or other school supplies.'

"A question has been submitted to this office regarding the responsibility or authority of a township advisory board in the purchase of equipment such as school busses or school bus bodies. You will observe that there is a provision in Section 65-319 that, 'the advisory board shall attend lettings,' also, 'and said board is hereby empowered to reject any and all bids.'

"We would like your official opinion on the following question:

"Does a township advisory board have any authority or responsibility in the receiving of bids or the awarding of contracts for school equipment such as school busses and school furniture or school supplies?"

The Acts of 1899, Ch. 105, Sec. 9, as found in Burns' Indiana Statutes (1951 Repl.), Section 65-319, provides as follows:

"If a trustee finds it necessary to erect a new schoolhouse, he shall procure suitable specifications therefor, to be used by the bidders in bidding and in the construction of such house. *If he desires to purchase any school furniture, fixtures, maps, charts, or other school supplies, excepting fuel and literary periodicals in such amounts as may be authorized by the advisory board in any year,* he shall make an estimate of the kinds and amounts, itemized particularly, to be used by bidders therefor. If it is necessary to make repairs on or about the schoolhouses, other than current or incidental repairs, he shall likewise make an itemized statement of the nature and character of the work to be made, for the use of bidders. He shall, in like manner, make a schedule of such work as may be necessary in the repair or construction of bridges in his township for any one [1] year. All contracts shall be let, after notice given, by posting for three [3] weeks in five [5] of the most public places in the township, and also at or near the

door of each post-office therein, stating briefly the buildings, repairs or supplies sought to be let and when and where bids will be received and opened therefor; and if the contemplated expenditures in any one [1] class shall be five hundred dollars [\$500] or more, he shall post notices as aforesaid, and also publish notice thereof for one [1] time in two [2] leading newspapers published in the county representing the two [2] political parties casting the highest number of votes in such county at the last preceding general election. Provided, That one [1] of such publications shall be made in a newspaper published in the township interested, if there be a newspaper published therein. The advisory board shall attend the letting. At the letting, all the work or supplies in any one [1] class shall be included and let in a single contract. All bids shall be in writing and be opened and read publicly at the time and place fixed in the notice. The trustee may take time to examine and satisfy himself as to which is the lowest and best bid, and shall advise with the advisory board thereon; and said board is hereby empowered to reject any and all bids. The trustee shall indorse on the bids whether rejected or accepted and preserve the same. When a bid is accepted, a proper contract shall then be reduced to writing for such building, repairs or supplies, as the case may be, and be signed by the successful bidder and the trustee, who shall require the bidder to give bond with security, to be approved by him, for the faithful execution of such contract." (Our emphasis)

In the first instance, it must be determined whether the purchase of school busses, school furniture and school supplies by township trustee is within the purview of this Act. It is clear that the purchase of school furniture and school supplies is included within this Act since there is specific reference to these items therein.

It has also been held that the words "other supplies," as used in a statute relating to public school purchases, were sufficiently comprehensive to include a motor truck purchased for school purposes; see *Commonwealth v. Zang* (1941), 142 Pa. Super. 573, 16 A. (2d) 745.

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Burns' 65-319, *supra*, is a part of the original Township Reform Law of 1899 and it has been held that the purpose of this law was to prevent unwise and unnecessary expenditure of the public funds and that the Legislature in its wisdom has seen fit to provide for the election of advisory boards in the various townships of the State that are alone authorized by law to allow the contracting of debts against such townships and then only in the manner allowed by statute; see *Mitchel-tree School Township v. Baker* (1913), 53 Ind. App. 472, 101 N. E. 1037. It has also been held in *State ex rel. Hitchcock et al. v. Farris et al.* (1925), 197 Ind. 128, 135, 150 N. E. 18 that:

“* * * The purpose of the Township Advisory Law was to protect the township and the taxpayers from the expenditure of public money for purposes not authorized by law, and from paying more than a fair price for what might be lawfully purchased to supply the needs of the township. * * *”

In view of the purposes and intent of the Township Reform Law, as set out above, I am of the opinion that school supplies such as school busses are also included within the meaning of Burns' 65-319, *supra*, and that, to the extent hereinafter stated, purchases of school busses should be made under and pursuant to the provisions thereof. It is also my understanding that this has been the practical administrative interpretation of this Act throughout the State for many years.

Your letter also mentions the Acts of 1945, Ch. 99, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 53-501 *et seq.*, and Burns' 1955 Pocket Supplement, Section 53-501. This is a general act dealing with the procedure and methods involved in the making of public purchases. It specifically repealed all laws in conflict therewith and, under Section 8 thereof, Burns' 53-508, *supra*, is to be deemed as supplemental to all existing laws concerning the purchase of material, equipment, goods and supplies by the State, counties, *townships*, cities, or towns, payment for which is to be made from appropriation of public funds made under the provisions of the budget laws. This latter act, in my opinion, supersedes Burns' 65-319, *supra*, in several particulars, including but not by way of limitation, the provisions relating to

the notice and advertisement required; the authority to purchase on the open market without further advertisement in the event no valid bids are received after invitation therefor; the requirement that purchases be made upon forms prescribed by the State Board of Accounts and the authority to purchase on the open market without notice in certain cases where the purchase does not exceed the sum of \$1,000. Insofar as Acts of 1945, Ch. 99, *supra*, are in conflict with the provisions of Burns' 65-319, *supra*, then the procedure under Acts of 1945, Ch. 99, *supra*, should be followed. This, however, would not deprive the township advisory board of any authority granted under Burns' 65-319, *supra*, which requires the township trustee, after having examined and satisfied himself as to which is the lowest and best bid, to consult with the advisory board thereon, and gives the board the power to reject any and all bids.

In considering the respective duties and powers of the trustee and the advisory board under this statute, the Court has said, in *Temple et al. v. State of Indiana ex rel. Limbach* (1916), 185 Ind. 139, 113 N. E. 233, that:

“* * * the statute requires the trustee, and not the members of the advisory board, to execute the contract. Conceding that the law requires the trustee to advise with the board and confers on the latter negative power of rejecting any or all of the offered bids, it authorizes the trustee to determine what bid, not rejected by the board, he may accept. * * *”

In view of the foregoing, my answer to your question is as follows:

(1) School busses, school furniture and school supplies should be purchased by the township trustee under and pursuant to the provisions of Burns' 65-319, *supra*, and Burns' 53-501 *et seq.*, *supra*.

(2) Under Burns' 65-319, *supra*, the township advisory board has the following duties and authority:

- (a) The advisory board shall attend the letting.
- (b) The advisory board shall advise with the trustee as to

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which is the lowest and best bid and is empowered to reject any and all bids.

(3) The trustee may not accept any bids which have been rejected by the advisory board. However, the trustee may determine which, if any, of the bids not rejected by the advisory board are to be accepted by him and he need not accept any bid if, in his opinion, it is not the lowest and best.

I hope the foregoing has fully answered your question.

OFFICIAL OPINION NO. 19

April 26, 1956

Mr. W. Rowland Allen, Chairman
Commission on Alcoholism
1315 West 10th Street
Indianapolis 7, Indiana

Dear Mr. Allen:

This is in reply to your request for an Official Opinion which reads as follows:

"An official opinion is requested as to an interpretation of Chapter 335, Acts of 1955 as is found in Burns', 12-816 C. P. S. (1942 Repl.), and Section 15, Chapter 194, Acts of 1953 as is found in Burns', 24-4415 relating to the following:

"1. In the absence of a repealing section in Chapter 335, Acts of 1955, is Section 15 of Chapter 194, Acts of 1953, repealed by implication?

"2. Must deposits of monies, received pursuant to the terms of Chapter 335, Acts of 1955, when deposited in the enforcement fund of the Alcoholic Beverage Commission, be earmarked solely for use by the Commission on Alcoholism for the purpose of Administering the provisions of Chapter 194 of the Acts of 1953?

"3. If the answer to question No. 2 is 'yes,' does the Commission on Alcoholism have the right to draw upon funds, collected under the provisions of Chapter 335, of the Acts of 1955 and available under and pursuant to