

In arriving at this opinion, I am mindful of the fact that the Indiana Employment Security Act is social legislation which should be liberally construed in order to make effective the intent of the Legislature to alleviate economic insecurity due to unemployment. I am entirely in sympathy with such a program, however, I may not destroy the intent of the Legislature by an interpretation which would broaden the Act to include persons never intended to have been so included; see *News Publishing Company v. Verweire* (1943), 113 Ind. App. 451, 49 N. E. (2d) 163.

OFFICIAL OPINION NO. 22

May 24, 1956

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

Dear Mr. Young:

Your letter of May 14, 1956, in which you request an Official Opinion has been received and reads as follows:

“Recently, as State Superintendent of Public Instruction, I have been asked several times a question concerning the Veterans’ Memorial School Construction Fund. This fund was created by Chapter 312 of the 1955 Acts, and provides for the advancement of tuition support funds to school corporations who qualify in accordance with said Act.

“May I have your official opinion on the following question: ‘Does the advancement of funds made pursuant to this Act constitute a portion of the school corporation’s indebtedness within the meaning of Article 13, Section 1, of the Indiana Constitution?’ ”

The pertinent part of the Indiana Constitution, Art. 13, Sec. 1 is 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

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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 Acts of 1955, Ch. 312, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), is Section 28-175 *et seq.*

Section 8 of said Act, *supra*, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-182, provides as follows:

“Such advancement out of the state school tuition fund shall not be an obligation of the school corporation within the meaning of the constitutional limitation against indebtedness. Nothing therein shall relieve the board of school trustees or township trustee of any obligation under the laws of this state to qualify such school corporation for state school tuition; such board of school trustees or township trustee shall continue to perform all the acts necessary to obtain such funds. Any school corporation receiving an advancement under the provisions of this act shall agree to have the total amount of the money advanced plus one percent [1%] of the outstanding balance thereof deducted from the semi-annual distribution of state school tuition support for a period not to exceed twenty [20] years or until all of the money so advanced, plus one percent [1%] thereof, has been so deducted. The commission shall reduce the amount of each semi-annual distribution of state school tuition support to any school corporation which has received an advancement under the provisions of this act in an amount to be agreed upon by and between the commission and the school corporation which amount shall include one percent [1%] on the balance of such advancement.”

Section 9 of said Act, *supra*, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-183, reads as follows:

“Any school or school corporation receiving an ad-

vancement of state school tuition funds under the provisions of this act is hereby authorized to levy an annual tax on personal and real property located within the geographical limits of such school corporation for school purposes, which tax shall be in addition to any other tax authorized by law to be levied for school purposes, at such rates as will produce revenue in an amount equal to the annual amount it would otherwise have received from the state school tuition fund for tuition purposes had such school corporation not received an advancement from such fund under the provisions of this act. Such rate here authorized may be levied in addition to the maximum rates prescribed by law for each year during which state school tuition funds are authorized to be withheld from such school corporation.”

It is to be noted from the above quotation from said statute that the Legislature has declared its intent that any such advancement out of the state school tuition fund shall not be an obligation of the school corporation within the meaning of the constitutional limitation against indebtedness.

While such a declaration in and of itself does not conclude the question, it is entitled to some weight and consideration in determining the effect of an advancement made to a school corporation pursuant to the formula therein prescribed.

I do not find a decision of the Indiana Supreme Court specifically dealing with this exact question. However, the legal principles involved are somewhat synonymous with the decisions of said Court hereinafter referred to.

In the case of *Underwood et al. v. Fairbanks, Morse & Company* (1933), 205 Ind. 316, 185 N. E. 118, the Court determined that a contract by a town to purchase engines, pumps, and other equipment for installation in its light and water plant, for a cash payment to be made from funds derived from operation of the plant, and installments evidenced by pledge orders payable from its net revenue, does not create an indebtedness subject to constitutional limitation. On page 326 of said opinion the Court said:

“It has been held that ‘obligations payable out of a

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particular fund, and for which the fund only, and not the municipality is liable are not within the inhibition of Article 13' * * *."

In the case of Jefferson School Township v. Jefferson Township School Building Company (1937), 212 Ind. 542, 10 N. E. (2d) 608, the Court applies a well established principle of law in holding that a contract by a municipal corporation for services or goods to be supplied in the future, and to be paid out of current revenue, is valid despite the fact that the corporation was indebted to its constitutional limit at the time of making the contract.

When we analyze the statute under consideration, it is apparent there has been an advancement to the school corporation, by the State of Indiana of that revenue which the state ordinarily would thereafter, over a period of years, distribute to the school corporation as state support to the public school system of the state. It is more in the nature of an advancement, rather than a loan. It is to be liquidated by deductions from future tuition and school support over a period of years, in an amount somewhat dependent upon the amount of the advancement and the agreement of the parties. No direct taxes are to be levied by the local school corporation in payment of such installments; rather the school corporation is mandated by the statute to raise a sufficient additional amount of revenue currently to equalize the loss of revenue to it by virtue of the deductions thereafter made by the state from the amount of distribution which would ordinarily be made to such school corporation.

From the foregoing, among other things, we find: that the matters involve a particular fund; no payment is required, instead there is a deduction made by the state from monies to be subsequently distributed by it; and any replacement of such amount for the operation of the school system, under its budget, is currently raised each year by an additional tax rate for such purpose.

When we apply the general principles of law followed in the above-cited cases to the question presented, I am of the opinion an advancement of funds made pursuant to the Act in question

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does not constitute a portion of the school corporation's indebtedness within the meaning of the Indiana Constitution, Art. 13, Sec. 1.

OFFICIAL OPINION NO. 23

May 31, 1956

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

Dear Mr. Wickersham:

I have your request for an Official Opinion which reads as follows:

"Statutes as found in Section 48-1233 of Burns' Indiana Statutes, 1950 Repl., 1955 Supp., provide that certain city officers may receive additional compensation not exceeding the sum total of \$1,200 per year (\$1,500 per year in certain fifth class cities) from funds of a sewage disposal plant or other utility or utilities owned or operated by the city, if such additional compensation is authorized by ordinance of the common council.

"We respectfully request your official opinion on the following questions:

"1. Can any part of this additional compensation be paid to any of the officers named in such Section from the fund to which the proceeds of sewage disposal revenue bonds are receipted, during the period of construction of the sewage disposal works?

"2. Can payments of any part of this additional compensation be made from the sewage disposal plant operation and maintenance fund during the period of time after construction of the works has commenced and prior to the completion of the works if rates or charges are being collected during such period pursuant to the provisions of statute as found in Section 48-4337 of Burns' Indiana Statutes, 1950 Repl.?"