

1955 O. A. G.

OFFICIAL OPINION NO. 26

June 28, 1955

Mr. Donald Clark
Director of the Budget
302 State House
Indianapolis 4, Indiana

Dear Mr. Clark:

This is in reply to your letter of June 10, 1955, which is as follows:

“I request your opinion as to the legality of transferring the ten thousand dollar (\$10,000.00) appropriation, created by Chapter 312, Acts 1955, to the State Board of Education Account.”

The Acts of 1955, Ch. 312, is generally concerned with the creation and administration of the “Veterans Memorial School Construction Fund” which was established for the purpose of rendering emergency relief to the several school corporations of the State of Indiana according to their degree of need.

Section 12 of this Act provides as follows:

“For the purpose of administering the provisions of this act there is hereby appropriated to the commission from the funds not otherwise appropriated in the general fund the sum of ten thousand dollars for each year of the 1955-1957 biennium.”

It is my understanding that you have placed the \$10,000.00 appropriated to the Commission on General Education of the Indiana State Board of Education, by Section 12, *supra*, in a separate, special account; further, that you have been requested to transfer this \$10,000.00 to the account containing the general appropriation for the State Board of Education.

Under the law, the Indiana State Board of Education is divided into three commissions; namely, a commission on general education, a commission on textbook adoption and a commission on teacher training and licensing. Each of these commissions consists of the State Superintendent of Public Instruction who is the chairman of the Board of each commission, and six other members who are appointed by the Gover-

OPINION 26

nor. Each commission also elects one of its members as secretary-treasurer who has the custody of its records, papers and effects. See Acts of 1945, Ch. 330, as found in Burns' Indiana Statutes (1948 Repl.), Sections 28-405 and 28-406.

. Insofar as the transfer of funds by the State Board of Finance is concerned, I find the following statutes:

“The board is hereby given power and authority from time to time to transfer from one fund of the state to any other fund of the state any of the money thereof and said board is hereby given power and authority, from time to time, to transfer, assign or reassign from any board, department, commission, office, or benevolent and penal institution of the state any part of the appropriation or appropriations made therefor to any other board, department, commission, office, or benevolent and penal institution of the state, and when so made the same shall be available for the use of the board, department, commission, office, or benevolent and penal institution to which the same is transferred. When any such transfer is made the portion of the appropriation so transferred shall not thereafter be available to the board, department, commission, office, or benevolent and penal institution to which such appropriation was originally made, unless the same or any remaining portion of the same be re-transferred to such board, department, commission, office, or benevolent and penal institution, but such authority shall not apply to trust funds. Any such order of transfer when so made by such board shall be sufficient authority for the making of appropriate entries showing such transfer on the books of the auditor and treasurer of state.” [Acts of 1941, Ch. 27, § 5, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-314.]

“(a) The state board of finance may transfer, assign, or reassign any appropriation, appropriations or part thereof for one [1] specific use or purpose to another use or purpose of any officer or agency so long as the use and purpose to which it is transferred, assigned or reassigned, is a use or purpose which the officer or agency is required or authorized to perform. For the

1955 O. A. G.

purposes of this section all appropriations heretofore or hereafter made to any officer or agency shall be deemed and taken as appropriations to that officer or agency for the use of such officer or agency for any purpose or duty said officer or agency is required to or may perform by law. No transfer under this subsection shall be made except upon the request of or with the consent of such officer or agency.

“(b) All of the rights, powers and duties now and by law imposed upon and vested in the state board of finance which are in conflict with the provisions of this act or imposed on some other officer or agency are hereby eliminated from the powers and duties of the state board of finance.” [Acts 1947, Ch. 279, § 27, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1827.]

As previously shown, the Commission on General Education to whom the \$10,000.00 was appropriated by the Acts of 1955, Ch. 312, Sec. 12, is an integral part of the State Board of Education and, therefore, these funds would still be available to the commission even though they had been transferred to the State Board of Education account. It is my further understanding that these funds will all be used by said commission for the purpose of administering the provisions of the Acts of 1955, Ch. 312, which, of course, is required under the terms of the appropriation.

Under these circumstances, and in view of the statutory authority for transfers by the State Board of Finance, *supra*, I am of the opinion that the transfer about which you inquire may legally be accomplished so long as these funds remain available to and are used by the commission for the administration of the Acts of 1955, Ch. 312.