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to extend Social Security coverage to the members of the Sanitary Officers' Pension Fund; Section 7 of said Ch. 340, and the Federal Social Security Act, must be complied with to accomplish this result.

3. Until and unless the conditions and procedure stated in Acts of 1955, Ch. 340, Sec. 7 are met and complied with, the members of the Sanitary Officers' Pension Fund cannot be required to vote and cannot vote in any Social Security referendum and cannot be required to participate and cannot participate in Social Security coverage.

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### OFFICIAL OPINION NO. 41

October 4, 1955

Mr. Wilbur Young  
State Superintendent of Public Instruction  
227 State House  
Indianapolis 4, Indiana

Dear Sir:

Your letter of August 19, 1955 has been received and reads as follows:

"The question regarding the following local school policy in connection with Special Education classes has come to our attention in several cases and a clarification of the law is needed. May we have an Official Opinion regarding the following question:

"When school corporations that organize Special Education classes and make application for and receive excess cost payments, shall they accept transfer students from surrounding corporations who do not maintain Special Education programs \* \* \*.

"If in previous years a child has been accepted by transfer, can the school corporation refuse to continue the child in the program on the premise that the program is overcrowded?"

The Acts of 1947, Ch. 276, Sec. 3, as amended, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-3523, provides in part as follows:

“Every school corporation is empowered to establish and maintain instructional facilities for the instruction of handicapped children: \* \* \* The school corporation constructing and/or operating any such school shall pay the operating expense thereof for each pupil attending, in an amount equal to the average per capita pupil cost of educating normal children in the school corporation. Other school corporations sending handicapped children as students of such school shall pay tuition in a like amount. Any school corporation operating schools or classes for handicapped children shall at the end of each school term send to the office of the state superintendent of public instruction a certified statement of the average cost per pupil for maintaining the education of handicapped children, including pupils attending such school and residing in other school corporations, and the average cost per pupil for normal children based upon average daily attendance. The average cost for normal children shall include state aid, if any, and the state apportionment of school unit funds. The state board of education shall certify the amount of the excess spent for handicapped children to the auditor of state who shall reimburse each such school corporation in total excess of the cost of instruction of the same number of children in regular classes of the schools of such corporation from funds appropriated for such purposes.

\* \* \*

“\* \* \* Before any type of special class, organized or to be organized under the provisions of this act, is established, in any school corporation of this state, such type of special class shall be submitted to and shall be approved by the state board of education. The state board of education shall adopt and promulgate such rules and regulations as may be deemed necessary for the proper administration of this act.”

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Section 5 of said Act, *supra*, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-3525, provides in part as follows:

"The division of special education may, with approval of the Indiana state board of education, upon application by the governing body of a school corporation, together with proof of need thereof, authorize school corporations of the state to purchase, convert, remodel or construct rooms or buildings for special schools for handicapped children. In making such authorization the division shall consider the geographical location of any such previously authorized school in an effort to get such schools located near the homes of the handicapped children which it will serve."

Section 6 of said Act, *supra*, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-3526, authorizes such school corporations so establishing such special schools for classes of handicapped children to provide dormitories for handicapped children attending such school. Section 7 of said Act, *supra*, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-3527, authorizes the parent or guardian of any such handicapped child so attending said school, if unable to pay all or part of the cost of maintenance of such child in said school, to apply to the County Department of Public Welfare for assistance for such maintenance, if necessary, up to 100% of the cost thereof.

Section 9 of said Act, *supra*, as amended, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-3529, makes an appropriation for the state's share of such educational program and limits the state's expenses for participation therein to not to exceed 80% of the total claim or claims.

From the foregoing, it seems that any school corporation in the state, subject to the approval and in accordance with rules which have been or may be adopted by the State Department of Education relative to Special Education, may establish such a school for handicapped children. In one sense it is a school of that particular school corporation. On the other hand, due to the conditions imposed by the Legislature for the establishment of such a school, and the fact the state pays the cost thereof in

excess of the cost of educating children in regular classes, it appears such a school is not established for the sole or particular benefit of children residing in that particular school corporation so establishing such schools, but is intended to facilitate the education of children in the general area near such school corporation. This is shown by the provision requiring the Division of Special Education to consider the geographical location of any previously authorized school in an effort to get such schools located near the homes of the handicapped children which it will serve. It is further shown by the fact that the establishment of dormitories are authorized, intended to serve those children who are unable to commute to and from such school, and the fact that support from public welfare for their maintenance at such school in case the parents are unable to pay such expense is authorized.

Under the program outlined in said statute the school corporation establishing such a school pays only the normal expense for the education of its own children; school corporations transferring children into such school, likewise, through the regular process of transfer expense, pays the ordinary cost of educating children in such receiving school; and the State of Indiana reimburses the receiving school for all of the excess cost of the operation of such school, to the extent of not to exceed 80% of the total cost thereof.

Under Section 2 of said Act, *supra*, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-3522, the Division of Special Education, and its Director, are given general supervision of all classes in schools for handicapped children and the coordinating of these schools; it may adopt rules and regulations governing the curriculum and instruction and licensing of personnel in that field of education; it is authorized to inspect and rate all schools so established in order to maintain proper standards.

From the foregoing, I am of the opinion such statute does not contemplate that said school be primarily used for the children of the school corporation establishing the school, but for a general area contemplated to be served when it was approved by the Division of Special Education; that the coordination of said schools with their surrounding school corporations are administrative problems to be dealt with as they

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arise under the general supervision of the Division of Education and in accordance with its rules and regulations.

As to your last question as to the right to refuse a new transfer to a child who had attended the previous year, it is important to note that under the general transfer statutes a transfer is only for the one school year and a right to a transfer for each succeeding school year must be passed upon each year to determine if the child can be best accommodated and educated in that particular school. Further, the conditions and circumstances of each case should be determined by the local school authorities, subject, however, to review by the State Division of Special Education and subject to said Division's rules and regulations, and its action thereon, in its general supervision and coordination of such program.

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### OFFICIAL OPINION NO. 42

October 6, 1955

Mr. Warren Buchanan, Chairman  
Public Service Commission of Indiana  
401 State House  
Indianapolis, Indiana

Dear Mr. Buchanan:

In your letter concerning the Acts of 1937, Ch. 58, Sections 10 and 11, as found in Burns' Indiana Statutes (1951 Repl.), Sections 55-1335 and 55-1336, you asked the following questions directly relating to the enforcement of this "full crew" enactment:

"1. What means may the Commission use to obtain the facts?

"2. Does the Commission have the authority to entertain a petition, and if so, what procedure should be followed in respect to notice, subpoenas and hearings?

"3. Since your office has the authority to file the action, in the name of the State of Indiana, on relation of the public service commission of Indiana, under the provisions of § 55-1336, is it necessary for this Com-