

statute, there can only be fifteen [15] "oral training units" in the State of Indiana established under the provisions of said statute and each such unit shall not consist of less than six [6] nor more than ten [10] children.

While we have units for the purpose of school distribution of the state's support to the public school system, which are based upon average daily attendance, those are provided for in separate statutes which do not apply to the specific provisions of the statute above quoted. Therefore, it is not possible to interpret an oral training unit in terms of the number of teachers involved rather than the number of children involved.

On your second question, I am of the opinion that said statute clearly authorizes the school corporations' establishing and maintaining instructional facilities for the instruction of handicapped children, in conjunction with the state, to pay their respective portions of the cost of such a program in the manner detailed in said statute. I do not find any objection to the payment of these costs under the basic law as, by such provisions of the statute, it becomes a matter of school expense which could be budgeted and paid for under the general statutes relating to the assessment and collection of taxes in support of the public school system.

Although we generally think of the public school system as being grades one to twelve, this belief exists only because the Legislature has so provided. However, the legislative power is not limited to such a classification by the Indiana Constitution, Art. 8.

OFFICIAL OPINION NO. 52

December 1, 1955

Honorable Warren Buchanan, Chairman
Public Service Commission of Indiana
401 State House
Indianapolis 4, Indiana

Dear Mr. Buchanan:

In respect to motor vehicle carriers operating upon Indiana toll roads under the jurisdiction of the Indiana Toll Road

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Commission, you have requested the following in your letter of October 21, 1955:

“An official opinion is respectfully requested as to whether or not the Public Service Commission of Indiana has the power under the Motor Vehicle Act of the State of Indiana, 1935, as amended (Burns’ Indiana Statutes Annotated 47-1211 *et seq.*), to require common and contract carriers to obtain certificates of public convenience and necessity, certificates of authority, or permits, as the case may be, as a condition precedent to the operation of motor vehicles for hire upon Indiana toll roads under the jurisdiction of the Indiana Toll Road Commission. Burns’ Indiana Statutes Annotated 36-3201, *et seq.*”

The Acts of 1935, Ch. 287, Secs. 6 and 11, as amended, as found in Burns’ Indiana Statutes (1952 Repl.), Sections 47-1216 and 47-1221, provide in part as follows:

“No *common carrier*, except as herein provided, shall operate motor vehicles upon any *public highway* of the state of Indiana for the purpose of transporting passengers or property for compensation as a common carrier until after there shall have been obtained from the public service commission a certificate as defined herein * * *.” (Our emphasis)

* * *

“No person shall hereafter operate motor vehicles as a *contract carrier* over the *public highways* of this state for the transportation of persons and property for compensation without first having obtained from the commission a contract carrier permit * * *.” (Our emphasis)

The answer to your question depends upon the meaning of the words “public highway” as used in this Act, *supra*, and the nature of the toll roads constructed under the Acts of 1951, Ch. 281, as found in Burns’ Indiana Statutes (1949 Repl., 1955 Supp.), Section 36-3201 *et seq.* The definition, as contained in the Acts of 1935, Ch. 287, Sec. 2, as amended, as found in

Burns' Indiana Statutes (1952 Repl.), Section 47-1212, subsection (d), is as follows:

* * *

“(d) The term ‘public highway’ shall mean any street, alley, road, highway and/or thoroughfare in this state used by the public.”

The Toll Road Commission is a commission of the State of Indiana created for a public purpose, and the operation and maintenance of toll road projects is an essential governmental function of the State of Indiana.

Ennis v. State Highway Commission of Indiana
et al. (1952), 231 Ind. 311, 324, 108 N. E. (2d) 687
(Other pertinent authorities cited therein).

The Acts of 1951, Ch. 281, Sec. 12, as found in Burns' Indiana Statutes (1949 Repl., 1955 Supp.), Section 36-3212, provides in part as follows:

“The exercise of the powers granted by this act will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions * * *.”

It has been held that all property involved in the Toll Road Act is property of the State of Indiana; see Ennis v. State Highway Commission of Indiana, *supra*, p. 329.

The Supreme Court of Indiana in the Ennis case, *supra*, not only held the purposes of the Act to be public in character, but directly inferred that the highways to be constructed under the Act would be public highways. The appellant had in part contended that state funds from the Highway Commission were being expended for a private purpose. The Court answered this argument in the Ennis case, *supra*, on page 332, as follows:

“* * * The state is charged with the duty of providing and maintaining highways. Harmon v. Gephart (1910), 173 Ind. 391, 393, 90 N. E. 890, 891. In the last-cited case, this court said:

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“The legislature, by virtue of the inherent police power of the State, is clothed with authority to provide for the repair, improvement and maintenance of *public highways*, in any manner in its discretion deemed expedient, subject only to constitutional restrictions.’” (Our emphasis)

Any toll roads so constructed by the Toll Road Commission will be open to all members of the public, subject, of course, to the payment of tolls as prescribed by the Commission to be applied to the cost of the toll road project and subject to all valid rules and regulations adopted by the Commission concerning the use of such toll roads.

Therefore, in my opinion, the Public Service Commission of Indiana has the power to require common and contract carriers to obtain the specified certificates and permits as a condition precedent to the operation of motor vehicles for hire upon Indiana toll roads under the jurisdiction of the Indiana Toll Road Commission.

OFFICIAL OPINION NO. 53

December 1, 1955

Miss Ruth V. Kirk, Executive Secretary
State Board of Medical Registration and Examination
538 K. of P. Building
Indianapolis 4, Indiana

Dear Miss Kirk:

Your letter of November 22, 1955, has been received and reads as follows:

“The Board of Medical Registration and Examination of Indiana in executive session on November 16, 1955 directed me to write you as follows:

“The Acts of 1955, Chapter 42, makes provision for the licensing of chiropractors by the Board of Medical Registration and Examination of Indiana. Section 2A provides for educational qualifications and other de-