Parker v. Humfleet (1916), 63 Ind. App. 281, 286, 288, 112 N. E. 253.

I am therefore of the opinion podiatrists under the Indiana Podiatry Law are not authorized to administer penicillin or any other antibiotic by injection or by any other procedure other than local application in connection with treatment of diseases or injury of the foot. Such local application would not include permitting injection of such drugs into the foot, as that would treat the entire body and would not be local treatment.

From the tone of the restricted provisions of the Podiatry Act, I am of the opinion that any enlargement of its scope of authority, if desirable, to include the use of antibiotic injections for treating disease or injury of the foot, should not be made by judicial construction but would rather be a matter for consideration by the legislature.

OFFICIAL OPINION NO. 40

June 1, 1953.

Hon. Wilbur Young,
Supt. Public Instruction,
227 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter has been received and reads as follows:

"I wish to ask for an official opinion on the following questions:

"As we understand Chapter 273, Acts of 1953, the creditor corporation has two options in preparing a statement of per capita costs for transfer students.

"*Option I:* Per capita cost may be determined as provided in the 1951 and 1953 acts as follows: Total current expenditures as set out in the classified budget forms prescribed by the State Board of Accounts, excluding interest on bonded debt, capital outlay, debt services, and cost of transportation. To these costs

shall be added an amount equal to 5% of the fair value of the buildings (in case of a holding company 4% of the fair value of the school plant) not to exceed $25.00 per pupil in average daily attendance. In either case, appraisal is made by the county assessor.

"*Option II:* When the creditor corporation has school building bonded indebtedness or cumulative building fund tax, or school building sinking fund tax, the per capita cost may be determined as follows: Total current costs as set out in the classified budget forms prescribed by the State Board of Accounts, excluding capital outlay, payment of principal and interest on temporary loans, and cost of transportation, and specifically including payments of principal and interest on school building bonded indebtedness during the current year, and an amount equal to the total revenues from any school building tax in effect in the creditor corporation during the current school year. In case there is a lease rental contract, 4% of the appraisal value for insurance purposes shall be added to the total costs set out above.

"All amounts so added until Option I or Option II (5% of the fair valuation of school plants, bond and interest payments, and cumulative building fund tax receipts) shall be placed in the cumulative building fund or bond fund or sinking fund.

"Question 1: Is our interpretation of Chapter 273, Acts of 1953 correct?

"Question 2: If the answer to Question 1 is 'yes', and should a creditor corporation elect to use Option II, does the maximum limitation of $25.00 per pupil apply as stipulated in Section 1, Paragraph 2, line 17 (Option I)?

"Question 3: If the answer to Question 1 is 'yes', what disposal will be made of the collected amounts in case the creditor corporation does not have a bond fund, sinking fund or cumulative building fund in which to place them?

"Question 4: If the answer to Question 1 is 'yes', and should the creditor corporation have a cumulative building fund, a bond fund and a sinking fund, may the receipts be placed entirely in one of the aforementioned funds or must they be proportioned among the various funds?

"Question 5: If the answer to Question 1 is 'yes', and should the creditor corporation elect to use Option II of this Act, shall the transfer cost be computed for the complete school year of 1952-1953 or for that portion of the school year from and after the effective date of this Act?"

Chapter 273 of the Acts of 1953 amends Section 1, Chapter 254 of the Acts of 1951, same being Section 28-3717, Burns' Indiana Statutes Annotated (1951 Supp.) and reads in part as follows:

"Whenever children are transferred from one public school corporation in this state to another school corporation in this state under the provisions of any law authorizing or requiring such transfers, the corporation receiving such transfers, shall, on or before the thirty-first of July of each year, file with the debtor corporation a verified statement showing the name of the debtor corporation, the names of all children so transferred by the debtor corporation, the respective periods of attendance of such children during the school year, the kind of school attended by each child, the annual per capita cost of maintaining the school or schools of the creditor corporation attended by such transferred child or children, and the amounts claimed as owing from the debtor corporation to the creditor corporation on account of such transfers and attendance.

"The annual per capita cost shall be computed from the average daily attendance and the total expenditures of the current school year, as set out in the classified budget forms prescribed by the state board of accounts, excluding interest on bonded debt capital outlay, debt services, and costs of transportation; and there shall be added to all such expenditures, an amount

equal to 5% on the fair valuation of the school plant: Provided, That in the cases of creditor corporations that have heretofore entered into a contract for leasing a school house or school houses from voluntary associations under the provisions of the acts of the General Assembly of the state of Indiana, 1927, page 269, since repealed, and the acts of the General Assembly of the state of Indiana approved March 13, 1947, and all acts amendatory thereof or supplemental thereto, there shall be added an amount equal to 4% on the fair value of the school plant: Provided, That the amount so added shall not exceed $25.00 per pupil. It shall be the duty of the county assessor of each county in this state to evaluate and appraise each such school plant within his jurisdiction, annually, at any time between the first day of March, and the 15th day of May. In making such evaluation or appraisement such assessor shall comply in all respects with the provisions of the law of this state concerning the assessment of property for purposes of taxation and an appeal may be taken from such determination of the county assessor to the county board of review, or, in the event that no appeal be taken, the decision of the county assessor shall be final.

"And such per capita cost shall be separately computed for the (1) elementary schools, excluding kindergartens, and (2) senior high schools of the creditor corporation.

"The creditor corporation shall be entitled to charge and receive of the debtor corporation for each transferred child the creditor corporation's per capita cost for the class of school attended by such transferred child, but if any transferred child attends a school of the creditor corporation less than the school year, the tuition charged and paid shall be proportioned to the period of attendance.

"Whenever a creditor school corporation or creditor school administrative unit to which a child is transferred has a school building bonded indebtedness or a cumulative school building fund tax or school building sinking fund tax, such creditor school corporation or

such creditor school administrative unit may at its discretion compute the annual per capita cost from the average daily attendance and the total expenditures of the current school year, as set out in the classified budget forms prescribed by the state board of accounts excluding capital outlay, payments of principal and interest on temporary borrowings, and costs of transportation, and specifically including the cost of all payments of interest and principal on school building bonded indebtedness during the current school year, and an amount equal to the total revenues from any school building tax in effect in the creditor corporation or creditor school administrative unit during the current school year; provided, That in the cases of creditor corporations that have heretofore entered into a contract for leasing a school house or school houses from voluntary associations under the provisions of the acts of the General Assembly of the state of Indiana, 1927, page 269, since repealed, and the acts of the General Assembly of the state of Indiana approved March 13, 1947, and all acts amendatory thereof or supplemental thereto, there shall be added an amount equal to 4% on the fair value of the school plant: Provided, however, That the fair value of the school plant shall be determined by the appraisal of said school plant for insurance purposes.

* * *

"All transfer tuition funds received by a creditor corporation or creditor local administrative unit from a debtor corporation or debtor local administrative unit as a result of adding to all such expenditures an amount equal to said five (5) per cent of the fair valuation of the school plant or of including in the computation the cost of all payments of interest and principal on school building bonded indebtedness during the current school year, and an amount equal to the total revenues from any school building tax in effect in the creditor corporation or creditor school administrative unit during the current school year shall be placed in the cumulative school building fund or school building sinking fund, or the bond fund of the creditor corporation and shall be expended only for such purposes as are lawful

in accordance with acts which control the expenditures of such funds."

Section 2 of said Act repeals all laws in conflict and Section 3 declares an emergency and said statute is now in full force and effect.

It is pertinent to observe that except for certain minor changes said statute to the end of the fourth rhetorical paragraph thereof is identical with the old statute. All of the statute thereafter is new added material.

1. In answer to your first question I am of the opinion your interpretation set out in your letter of the above statute, as amended, is correct. I am of such opinion for the reason that examination of said statute shows one manner of computation of transfer tuition cost is provided in rhetorical paragraph 2 of said statute and another manner of computation of such transfer costs is set up under rhetorical paragraph 5 of said statute. The latter paragraph states "Such creditor school corporation or such creditor school administrative unit *may at its discretion* compute the annual per capita costs * * *," which is followed by the second formula for computation of such costs.

It is also to be observed the operation prescribed in rhetorical paragraph 2 of said statute is applicable to any school corporation while the operation contained in rhetorical paragraph 5 of said statute is applicable only to school corporations having a school building fund tax or a school building sinking fund tax.

2. In answer to your second question I am of the opinion the second optional plan, as contained in rhetorical paragraph 5 of said statute, does not place a maximum limitation of $25.00 per pupil on any computation made thereunder. The $25.00 per pupil limitation would only apply to a computation made under rhetorical paragraph 2 of said statute.

The aforesaid answer is based upon the fact that the limitation of $25.00 per pupil appears in said statute only as a proviso to rhetorical paragraph 2 of said statute. The purpose of a proviso is to qualify or limit what has preceded (State v. Barrett (1909), 172 Ind. 169, 175, 87 N. E. 7). In 1945 Ind. O. A. G., page 421, Official Opinion No. 107, the Attorney Gen-

eral was required to construe the effect of a somewhat similar limitation appearing in Section 3 (m) of the Acts of 1945, being the State Teachers' Retirement Statute, which provided in part:

> "(m) Any teacher may be given a leave of absence for study, professional improvement, temporary disability, or for United States military, naval or allied service, not exceeding one (1) year in seven (7), and in such instances and for exchange teaching and other educational employment as defined and approved in each case by the Board such teacher shall be regarded as a teacher and entitled to the benefits of this act, * * *."

On page 423 of said opinion is stated:

> "Generally, an exception is considered as a limitation only upon the matter which precedes it, but if it is clear from the legislative intent that it is considered a general limitation on the entire act, it will operate to restrict all provisions of the Act.
>
> "Sutherland Statutory Construction (3d Ed.) v. 2, Sec. 4936, p. 474;
>
> "Crawford Statutory Construction, Sec. 91, p. 130; Sec. 297, pp. 605 and 606;
>
> "Morrison v. State (1914), 181 Ind. 544, 550;
>
> "Board of Commissioners v. Millikan (1934), 207 Ind. 142, 151;
>
> "U. S. v. Bernays (1908), 158 F. 792.
>
> "Also, it is a rule of statutory construction that a change of phraseology from that of the original act will raise the presumption that a change of meaning was also intended.
>
> "Chism v. State (1932), 203 Ind. 241, 244;
>
> "State *ex rel.* v. Deal (1916), 185 Ind. 192, 197."

On page 424 of said opinion it was pointed out that the words "for exchange teaching and other educational employ-

ment" was a new ground for the giving of a leave of absence which was added by the 1945 amendment. That since such language was inserted after the limiting provision of "not exceeding one (1) year in seven (7)," that it was not subject to such conditions of limitation and that such words of limitation apply only to those specific grounds for a leave of absence which preceded such words of limitation.

In the present case we have the words of limitation of $25.00 per pupil appearing by way of proviso in the middle of rhetorical paragraph 1 of the statute which provides for what you have referred to as Option I of the statute; rhetorical paragraph 5 of the statute provides for what you refer to as Option II, which appears later in the section of the statute, in a separate paragraph, and with nothing in the act indicating any legislative intention that the $25.00 limitation should apply to both situations.

3. In answer to your third question it is to be noted that the 5% of the fair valuation of the school plant, or the cost of all payments of interest and principal on the school building bonded indebtedness for the current year, or an amount equal to the total revenues from any school building tax, is included in such computation of costs, the same "shall be placed in the cumulative school building fund or school building sinking fund or the bond fund of the creditor corporation and shall be expended only for such purposes as are lawful in accordance with acts which control the expenditures of such funds." No provision is made as to what happens to such money when so collected in the event such creditor corporation does not have a bond fund, sinking fund or cumulative building fund in which to place such funds. In such a case the creditor corporation would still be entitled to make such charge. Having no such specific fund created which if in existence would be governed by the particular laws applicable thereto as to expenditures to be made therefrom, I am of the opinion such funds could be paid into any general school fund and used for the operation and maintenance of such school system upon appropriation being duly made.

4. In answer to your fourth question it is to be noted the above provision of the statute in referring to any such three funds, uses the word "or." If the creditor school corporation

has more than one of such funds it may be placed entirely in any one of them, or deposited among such various named funds, in the discretion of the school corporation. If the legislature intended any further limitation it has not made the same evident by the language used.

5. In answer to your fifth question, if the creditor corporation decides to use Option II in making such computation of transfer costs, such transfer costs should be computed for the complete school year 1952-1953. My opinion in this respect is based upon the fact that such portion of the statute requires it to "compute the annual per capita costs from the average daily attendance and the total expenditures *of the current school year.*" My answer to your fifth question is further influenced by the fact that such computation is to be made "on or before the thirty-first of July of each year." At that time the school year will have ended and no provision is made in the law for separating into various portions the school year's expenditures. Any attempt to make a computation under Option I for that part of the year from the beginning of the school year to the effective date of the foregoing amendment, and thereafter computing the remainder of the school year under Option II of the amendment, would require adding terms to the statute which the legislature has not seen fit to provide. Since Option II is new legislation which requires the computation to be made on the expenses of the "current school year," I am of the opinion any such computation of transfer costs made under Option II of the act should be computed for the complete school year of 1952-1953.

OFFICIAL OPINION NO. 41

June 2, 1953.

Mr. Joe McCord, Director,
Department of Financial Institutions,
410 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of May 1, 1953, has been received requesting an official opinion on the following questions: