

2. The proceeds from the sale of such bonds are specifically exempted by Burns' Indiana Statutes Annotated, Section 62-2601, *supra*.

3. The proceeds from the bonds upon maturity are also specifically exempted by Burns' Indiana Statutes Annotated, Section 64-2601, *supra*.

4. The interest paid to the bondholders is specifically exempted from taxation by the gross income tax law by virtue of Burns' Indiana Statutes Annotated, Section 36-3010, *supra*.

OFFICIAL OPINION NO. 62

July 28, 1953.

Mr. R. B. Cooley, Secretary,
Indiana Stallion Enrollment Board,
West Lafayette, Indiana.

Dear Mr. Cooley:

I have your letter of June 15, 1953 in which you ask for an official opinion concerning the following questions:

"1. In view of the fact that the Indiana Stallion Enrollment Board has no funds on which to operate and faces a deficit of \$289.08 and with no provision made to meet this condition, are we legally required to process the applications for enrollments or licenses sent to our office this spring for the current year?

"2. Might the Enrollment Board be held liable for neglect of responsibility of duty if these applications for enrollments or licenses are not processed before the Acts of 1953 are promulgated, which I understand will be this summer.

"3. In case the enrollments or licenses are issued before the Acts are promulgated, could stallion owners with their stallions enrolled or licensed legally claim a refund of fees for the balance of 1953 following promulgation?

"4. Does the repeal of the Indiana Stallion Enrollment Law automatically dissolve the Indiana Enrollment Board without further action?"

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The statute concerned is found in the Acts of 1913, Chapter 28 and amendments thereto, the same being Burns' Indiana Statutes Annotated (1950 Repl.), Volume 5, Part 1, Sections 16-901 through 16-902 and Chapter 50 of the Acts of 1953 which was approved by the Governor on March 3, 1953.

It is my opinion that the answer to your first question set forth above should be in the affirmative.

Section 16-903 of Burns' Indiana Statutes Annotated (1950 Repl.), Volume 5, Part 1, sets forth the duties of the Stallion Enrollment Board as follows:

"It shall be the duty of the board to verify and enroll the breeding and pedigrees of all stallions as provided for in section 1 (Section 16-901) of this act; to inspect certificates of condition and soundness; to issue stallion certificates of enrollment and to provide suitable forms for the same; * * *."

The section of the statute quoted above is still in full force and effect until such time as Chapter 50 of the Acts of 1953 are declared to be in effect by the Governor. Chapter 50 of the Acts of 1953 provides as follows:

"SECTION 1. An act entitled 'An act concerning the enrollment of stallions and jacks kept or offered for public service, and for the improvement and advancement of the horse industry in the State of Indiana; providing for the dissemination of information relative to the horse interests among the people of the state and defining the duties of the stallion enrollment board and penalties for the violation of provisions of this act,' approved February 24, 1913 and all acts amendatory thereof or supplemental thereto are hereby expressly repealed.

"SECTION 2. Any unexpended balance of funds of the Stallion Enrollment Board shall be disposed of as follows: An amount to cover the cost of keeping the records of the Stallion Enrollment Board for a period of ten years following the effective date of this act shall be allocated to Purdue University which is hereby authorized and directed to keep such records. Any balance

remaining shall be paid to the treasurer of the Indiana Livestock Breeders' Association."

This Act, you will note, expressly repeals the former law, but at the present time the former law remains in full force and effect.

The opinion in the case of *State v. Williams* (1910), 173 Ind. 414, 90 N. E. 754, at page 416 says as follows:

"It is beyond question that a legislative enactment can only go into effect either by the declaration of an emergency in the act itself, or upon distribution of the session laws to the various counties, and the proclamation of the Governor. An act without an emergency clause cannot go into effect in advance of distribution of the session laws and proclamation, even though it fixes a time for its going into effect in advance of distribution and proclamation." (Citations omitted.)

It becomes apparent therefore that it is required that the Indiana Stallion Enrollment Board process any applications for enrollments or licenses received prior to the time that Chapter 50 of the Acts of 1953 goes into effect. The fact that the Board has a deficit of \$289.08 at the present time, can in no way operate to remove the requirement that the Board issue certificates of enrollments or licenses.

In reply to your second question, it is my opinion that it should be answered in the affirmative. It is to be noted that the Acts of 1913, Chapter 28, at page 48, the same being Section 16-912 of Burns' Indiana Statutes Annotated (1950 Repl.), Part 1, Volume 5 provide for a penalty for persons failing to register stallions and jacks with your Board and makes this failure a misdemeanor subject to fine or imprisonment, or both. It is my further opinion that in the event the Board fails to issue a license that is duly applied for in cases where certificates should be issued, an applicant could mandate the Board to issue the license. In support of this, I wish to quote from the case of *City of Montpelier v. Mills* (1908), 171 Ind. 175, 85 N. E. 6 as follows:

"* * * If a license be wrongfully and arbitrarily denied, the applicant is afforded an action to obtain it,

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and may also recover compensation for any damages sustained. If, as appears from the facts found by the court in this case, appellant's common council and other officers without excuse peremptorily refused appellee a liquor license to which he was entitled, his proper remedy was an action by writ of mandamus to compel the performance of their official duty." (Citations omitted.)

It is my opinion that your third question should be answered in the negative and that Stallion Owners cannot claim a refund on the fees for the balance of the year after the 1953 Act goes into effect. In support of this I wish to quote from Burns' Indiana Statutes Annotated (1951 Repl.), Volume 10, Part 1, Sections 49-1809 and 49-1810.

"The treasurer of state is expressly prohibited from paying any money out of, or transferring any money from, the treasury of state, except upon the warrant of the auditor of state; and the auditor shall examine, with care, every demand and claim presented for payment, and shall be satisfied that every claim is just, legal, and unpaid, before he shall allow, audit, or countersign it; and, for that purpose, may require that the affidavit of the claimant, or other evidence, and he shall require every claim to specify the particular items of indebtedness. But when satisfied that any claim is just, legal and unpaid, and if there be money to the credit of the fund, and not before, the auditor shall issue his warrant on the treasurer for its payment out of the proper fund; and if there be money of such fund in the treasury when the warrant is presented, the treasurer shall pay it, but not otherwise; and when paid, the treasurer shall take a receipt therefor on the back, and shall cancel the warrant with a canceling hammer, and shall register, file and preserve the same."

"The auditor of state shall at no time draw a warrant upon the treasurer of state unless there be money in the treasury belonging to the fund upon which the same is drawn to pay the same, and in conformity to appropriations made by law, and on money actually in the treasury subject to the payment of the same, and the

auditor of state shall enter upon his books the number, date, payee, and amount of every draft in favor of the treasurer of state, and properly charge and credit the same to the appropriate fund, so as to keep an exact debit and credit account with each particular fund in the treasury; and the auditor shall carefully file and preserve such claim as his voucher for issuing the warrant."

In addition to the above-quoted sections, I would like to cite to you the case of *Ristine, Auditor, etc. v. The State of Indiana ex rel. Board of Commissioners of the Sinking Fund* (1863), 20 Ind. 328 which is authority for the proposition that the treasurer of the state can only pay warrants where there has been an appropriation made by law for such purpose.

I am unable to locate any provisions in the law concerning Stallion Enrollment Boards which directs that such payments be made. However, I would like to quote from the case of *State ex rel. Board of Commissioners of the County of Hamilton v. Carey et al.* (1909), 44 Ind. App. 659, 84 N. E. 761. In this case the court dealt with the matter of fees and cited additional authorities in support of its view. On page 661 the court said as follows:

"It is well settled that under the fee and salary law of this State all charges for services performed by county officers, for which charges are authorized by statute, and which are designated as fees, become the property of the county, 'and must, when collected by said officer, be paid into the county treasury, unless said act expressly provides that the same shall belong to such officer.' *Smith v. State ex rel.* (1907), 40 Ind. App. 240, and cases cited. In the case last cited, quoting from the case of *Cowdin v. Huff* (1858), 10 Ind. 83, it is said: 'Fees are compensations for particular acts or services.' It was said in the case of *Landis v. Lincoln County* (1897), 31 Ore. 424, 50 Pac. 530; 'By the ordinary acceptance of the term "fees," as heretofore and now used in the statute, we understand it to signify compensation or remuneration for particular acts or services rendered by public officers in the line of their duties, to be paid by the parties, whether persons or

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municipalities, obtaining the benefit of the acts, or receiving the services, or at whose instance they were performed.' * * *"

While the language of the court does not say expressly that fees cannot be reclaimed it is apparent that these are deemed to become the property of the office to which paid and that there would be no legal claim for a refund in the situation in which you set forth.

It is my opinion that your fourth question should be answered in the affirmative. Chapter 50 of the Acts of 1953 expressly repeals the act establishing the Stallion Enrollment Board and as soon as the 1953 Act becomes law, the Board is automatically dissolved. However, you will note that provision is made in the 1953 Act for the keeping of records of the Board for a period of ten years following the effective date of the Act.

OFFICIAL OPINION NO. 63

July 29, 1953.

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

Dear Mr. Wickersham:

Your letter of June 10, 1953 has been received and reads as follows:

"By reason of Camp Atterbury being located in Johnson County, there are, according to the Johnson County Superintendent of Schools, 105 children of officers and enlisted men of the United States Armed Service attending the township schools of that County at present. The families live off the Army Post or Reservation in Johnson County and the children attend the schools of the township in which they reside.

"Chapter 175, Acts 1933, being Section 28-3716, Burns' Revised Statutes, provides for the transfer tui-