

real estate salesman before being eligible to transfer, through examination, to a broker's license.

OFFICIAL OPINION NO. 73

September 2, 1953.

Mr. L. A. Cortner, Supt.,
Indiana Soldiers' and Sailors' Children's Home,
Knightstown, Indiana.

Dear Sir:

I have your letter of August 11, 1953 with enclosure. Your letter reads as follows:

"Over the past several years the Board of Trustees of the Indiana Soldiers' and Sailors' Children's Home have received three legacies, the funds from which were placed in U. S. Series G Bonds. The amount totals \$6,000. These bonds were made out in the name of 'Board of Trustees of Indiana Soldiers' and Sailors' Children's Home, a body corporate under Burns' Indiana Statutes of 1933, Sec. 22-2303 and acts amendatory thereof and supplemental thereto, Amusement Fund, Knightstown, Indiana 42602-34.' The interest checks come to us so inscribed.

"During the past several years the Institution has operated a Student Bank for the benefit of the students in which they could deposit their savings and in which we could deposit their Veterans Administration pensions. \$22,000 of the resources of this bank have also been invested in U. S. Series G Bonds with the same inscription.

"Since the Board of Trustees have ceased to exist, it is imperative that we know who is empowered to act in the matter of handling these funds, which, strictly speaking, are not state funds, but are under the state's supervision and subject to audit by State Board of Accounts.

"To determine this fact, I wrote to the Treasury Department concerning a single interest check asking who

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should endorse it. I am enclosing herewith a copy of the reply and in the next to the last paragraph, their request for a legal opinion from yourself. We would appreciate your attention and the information as to who now is in authority as owners of this property and who has the authority to endorse interest checks and other similar documents.”

As you describe the funds in question they are not State Funds but were held by the Board of Trustees of Indiana Soldiers' and Sailors' Children's Home in trust or as bailee.

The funds which came by virtue of legacy and wills were received under the authority of Section 7, Chapter 14 of the Acts of 1887, the same being Section 22-2308, Burns' Indiana Statutes Annotated (1950 Repl.) which section provides in part as follows:

“Donations—Power to Purchase Land.—Said board of trustees shall have authority to receive, for the use of said institution, gifts, legacies, devises and conveyances of property, real or personal, that may be made, given or granted to or for said home, or in its name or in the name of said board.”

Funds received as a result of a legacy would be held under the terms of the legacy in question.

The funds which have been received in what you refer to as a “Student Bank” belong to the students whose funds were placed in the bank and were held as custodian or bailee. The State as such having no interest therein other than as such custodian.

The last paragraph of the letter received by you from the Treasury Department is as follows:

“It is requested that, in order that such a determination may be made, you obtain a legal opinion from the Attorney General of the State of Indiana as to the present ownership of property formerly owned by the board of trustees of the Indiana Soldiers' and Sailors' Children's Home as a body corporate, in view of the abolishment of this board, and in the absence of any spe-

cific statutory provision with respect to the present ownership of such property.”

The former Board of Trustees did not own the property, it was owned by the State of Indiana. Such property as well as the institutional affairs were in the charge and management of the Board of Trustees. Section 2, Chapter 14, Acts of 1887, as amended, same being Section 22-2303, Burns' Indiana Statutes Annotated (1950 Repl.) provides in part:

“Trustees. The general charge and management of said home shall be entrusted to a board of trustees consisting of four (4) members who shall be appointed by the governor of this state, which board shall be a body politic and corporate, to be known as the board of trustees of the Indiana Soldiers' and Sailors' Children's Home, by which name such board may sue and be sued, plead and be impleaded in any court in this state.”

Chapter 197 of the Acts of 1953, same being Section 60-2003, Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.) created a Department of Health as an administrative department of the State Government. One of the divisions of this department, created by Sec. 501 of said Act, same being Section 60-2041, Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), is the “Division of Medical Institutions.” This division is composed of a Commissioner of Medical Institutions and such personnel as are necessary to perform the duties of said commission or the commissioner by the Act. Section 503 of said Act, same being Section 60-2043, Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.) is as follows:

“Medical Institutions. The Commissioner in charge of the Division of Medical Institutions shall have complete administrative control and responsibility for the following institutions:

Indiana State School for the Deaf.
Indiana School for the Blind.
Northern Indiana Children's Hospital.
Southern Indiana Tuberculosis Hospital.
Indiana State Sanitarium.

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Indiana Soldiers' and Sailors' Children's Home. Indiana State Soldiers' Home.

"All the powers and duties of the respective boards of trustees of the above named institutions are hereby preserved, transferred to, and conferred on the Commissioner of this Division. Each of the institutions above mentioned shall be under the administrative control of the superintendent, which superintendent shall have the power, duties and qualifications now provided by law for each of said respective superintendents insofar as they are not in conflict with the terms of this act. Each of said superintendents shall serve for a term of four years. Said respective superintendents shall be appointed by the Commissioner of this Division with the approval of the Governor. A superintendent may be removed for cause only. Removal shall be by the Commissioner of this Division with the approval of the Governor in the manner provided by law. A superintendent shall be administratively responsible to such commissioner. A superintendent shall receive the salary fixed by the Governor with the approval of the Budget Committee commensurate with the duties with which he is charged by the terms of this act."

Sections 701, 702 and 706 of said Act, same being Sections 60-2051, 60-2052 and 60-2056, Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.) are as follows:

"Transfer of Powers to Commissioners. All powers and duties vested in or required of any board of trustees or any other body or officer abolished by the terms of this act are hereby continued in full force and effect and except as herein otherwise provided are hereby transferred to, vested in and imposed upon the Commissioner of the appropriate division of the Department of Health.

"Powers, Duties and Functions Continued. The transfer of powers, duties and functions directed by this act or made pursuant to this act shall not constitute the creation of a new authority but shall constitute a continuation of such powers, duties and functions. For the

purpose of succession, all the rights, authorities, powers, duties, functions, and obligations as exist at the time of such transfer shall continue with the same force and effect as though no transfer had been made.

* * *

“Reference in Contracts, Statutes or Documents. Whenever a person or authority, whose powers, duties and functions are transferred by this act is referred to in any statute, contract, or document such reference or designation shall be deemed to refer to and include the department, an appropriate division, institution, board or officer to which such powers, duties, and functions have been transferred.”

It thus may be seen that prior to the effective date of said Chapter 197 of the Acts of 1953, the duties of the Board of Trustees of the Indiana Soldiers' and Sailors' Children's Home included the charge and management of the Home and the Institution, and the property thereof which was owned by the State of Indiana. Under the provisions quoted from Chapter 197 of the Acts of 1953 all of the authority, powers, duties and functions previously vested in the Board of Trustees of the Indiana Soldiers' and Sailors' Children's Home have been transferred to the Commissioner of the Division of Medical Institutions of the Department of Health as well as the obligations of said prior Board.

It is therefore my opinion that the control and custody of the proceeds of the legacies mentioned are transferred to the “Commissioner of the Division of Medical Institutions of the Department of Health of Indiana.” This would include the bonds in which such proceeds have been invested. Said Commissioner would then hold the same subject to the terms and uses of the respective legacies. The operation of the Student Bank will now come under the custody and supervision of said Commissioner under the terms of said Chapter 197 of the Acts of 1953.