

OPINION 88

Law therefore applies to licensed teachers teaching in the kindergarten, elementary and secondary grades of such institutions.

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OFFICIAL OPINION NO. 88

October 8, 1953.

Mr. Don Clark, Secretary,  
State Office Building Commission,  
302 State House,  
Indianapolis, Indiana.

Dear Mr. Clark:

This is in reply to your letter in which you inquire as follows:

“Will you please furnish the State Office Building Commission with an official opinion that will show the total amount of appropriation available to said commission. Section 13 of the Act carries an appropriating clause for the sum of \$50,000. Some members of the commission have expressed the desire that the \$20,000 amount referred to in Section 7 be considered as appropriated in addition to the \$50,000. So that there can be no question as to the amount legally appropriated I make this request.

“A second request on which we would appreciate your opinion is ‘would any architect who assists the professional advisor be barred from entering the competition?’ There is a possibility that the professional advisor might want to consult with one or more of Indiana’s leading architects prior to the competition and that said architects might desire to enter the competition. Therefore, it is felt that it would be very advantageous to know whether or not they could help the professional advisor without disqualifying themselves as far as the competition is concerned.”

The Acts of the General Assembly of 1953, Chapter 221, Sections 7, 13 and 14 as found in Burns’ Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Sections 60-2107, 60-2113 and 60-2114 provide in part as follows:

“Sec. 7. The commission shall procure and adopt a design for the erection and construction of such state office building. For the purpose of securing designs the commission shall employ an architect of known skill and ability in his profession as its architectural adviser, hereinafter referred to as the professional adviser, who shall not submit or be interested in any way in any design, plan or specifications which may be submitted for consideration by the commission. \* \* \* For the purpose of meeting the cost of the competition and incidental expenses connected therewith the commission may expend a sum not to exceed twenty thousand dollars. \* \* \*”

“Sec. 13. For the purpose of providing funds for the carrying out of the administrative provisions of this act there is hereby appropriated from the general fund of the state of Indiana the sum of fifty thousand dollars. This appropriation shall be used for the purpose of paying the expenses of the commission and its staff previous to the acquisition of the site for the state office building as herein provided for and shall expire when other funds as provided for in this act become available.”

“Sec. 14. Other than expending the funds herein specifically appropriated for preliminary work, preparation of plans, and specifications, and the contest and awards for securing the best architectural plans and specifications as herein provided, the commission shall have no authority to proceed with the letting of contracts or the building of the state office building or the procurement of the land therefor unless and until said commission shall have arranged for the financing thereof through private capital, including but not limited to insurance companies, banks or investment companies, with interest on such money so received not to exceed four per cent (4%) per annum. \* \* \*”

Section 3 of Article 10 of the Indiana Constitution provides:

“Sec. 3. Appropriations.—No money shall be drawn from the Treasury, but in pursuance of appropriations made by law.”

## OPINION 88

The word "appropriation," as used in the Constitution, *supra*, has been construed to require that a statute granting an appropriation must contain the following:

1. The sum to be expended or a method of determining such fund.
2. The person or persons authorized to expend the sum.
3. The purpose for which it is to be expended.

Henderson v. State Board of Monument Comrs.  
(1891), 129 Ind. 92, 28 N. E. 127;

Ristine v. State *ex rel.* Boards of Comrs. of Sinking  
Fund (1863), 20 Ind. 328.

Section 7 of Chapter 221, *supra*, as found in Burns' Indiana Statutes Annotated, Section 60-2107, *supra*, complies with the requirements of an appropriation in that it provides that for the *purpose* of meeting the cost of competition the *Commission may* expend a sum not to exceed twenty thousand dollars (\$20,000).

Section 11 of Chapter 221, *supra*, as found in Burns' Indiana Statutes Annotated, Section 60-2113, *supra*, provides for a separate and distinct appropriation from the above mentioned appropriation as it in essence provides an appropriation of *fifty thousand dollars (\$50,000)* for the *purpose* of providing funds for the carrying out of the administrative purposes of the *State Office Building Commission*, and to pay other expenses.

This construction is further strengthened by the wording of Section 14 of Chapter 221, *supra*, as found in Burns' Indiana Statutes Annotated, Section 60-2114, *supra*.

Section 7 of Chapter 221, *supra*, as found in Burns' Indiana Statutes Annotated, Section 60-2107, *supra*, provides that the professional advisor employed by the Commission shall not submit or be interested in any design, plan or specifications which may be submitted for consideration by the Commission. The professional advisor is not an officer of the State, but is more in the role of an independent contractor or employee. Therefore, anyone could enter the competition so long as in the event he won, his winning would not benefit the profes-

1953 O. A. G.

sional advisor. That is to say, a partner of the professional advisor or someone associated in such a capacity that if he won the competition some of the prize money would inure to the benefit of the professional advisor.

It is therefore my opinion that:

1. The twenty thousand dollar (\$20,000) appropriation is in addition to the fifty thousand dollar (\$50,000) appropriation and both appropriations are available to the State Office Building Commission.

2. An architect who assists the professional advisor would be barred from entering the competition only in the event, if by his winning the competition, benefits would inure to the professional advisor.

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OFFICIAL OPINION NO. 89

October 8, 1953.

Mr. B. W. Johnson, Executive Secretary,  
Ind. State Teachers' Retirement Fund,  
336 State House  
Indianapolis 4, Indiana.

Dear Mr. Johnson:

Your letter of September 21, 1953 has been received and reads as follows:

"The amendments to the Indiana State Teachers' Retirement Fund Law enacted in 1953, Chapter 149, Acts of 1953, provide for crediting a half year of service by combining it with one-half year in another school year. The language in question is found in Section 2, Sub-section (m) of the Act and reads as follows:

"Not less than one hundred twenty (120) days of service in any one year or sixty (60) days service in each of two (2) different years, whether under contract or not, shall be required for one year of service credit."

"The Retirement Fund is receiving many requests for credit under this clause, from teachers who re-