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The Department of Correction has only those powers which are given and conferred upon it by statute. There is no statutory power granted to such Department to offer and pay rewards for the return of escapees to any school or institution within that Department. In this regard it should be noted that the Legislature has considered enabling legislation necessary in this field, and in the case of cities, towns, and counties, such power has been granted. Acts of 1899, ch. 100, Sec. 1, p. 132, Burns' Indiana Statutes Annotated (1948 Repl.), Section 26-1104; and Acts of 1911, ch. 277, Sec. 3, p. 665, Burns' Indiana Statutes Annotated (1950 Repl.), Section 48-1413.

I am therefore of the opinion that in the absence of enabling legislation, the Department of Correction has no authority to offer and pay awards, or rewards, to either peace officers or private citizens, for the return of an escapee to a school or other institution which is a part of the Department of Correction.

OFFICIAL OPINION NO. 108

November 27, 1953.

John W. McConnell,
Col. Arty. Ind. NG,
Asst. Adjutant General,
212 State House,
Indianapolis, Indiana.

Dear Col. McConnell:

This is in reply to your letter of November 16, 1953 which is as follows:

"An official opinion is requested as to the disposition and utilization of funds derived from the sale of any State-owned armory under the jurisdiction of the State Armory Board in accordance with the sale procedure outlined in your Opinion No. 21, issued under the date of April 16, 1953.

"It is anticipated that such transaction will take place subsequent to 1 January 1954 and that Burns' 45-1917, 1953 Supplement will then be in effect.

"The question is in the interpretation of the last sentence of the above referenced section which reads as follows: 'All money derived from the sale, conveyance or other disposition of any such real property shall be paid into the State Treasury, *but may* be used for the purchase of any real property for armory purposes.'

"Question: Will it be necessary for the State Legislature to appropriate said money in the biennial budget for the construction of additional armory facilities? (or) Could the State Treasurer immediately deposit said money to the appropriation account 600-840 of the Adjutant General's Department so that it could be used for additional armory facilities along with any existing money in that appropriation?

"This office is contemplating the sale of four or five old armories in various cities to obtain the necessary State matching funds to build new ones as we are informed Federal funds are presently available. If it is necessary to await action of the Legislature for access to funds derived from these sales, this opportunity to obtain new modern buildings will be lost until 1 July 1955, as we could not afford to sell present facilities in view of the long interim period involved.

"Your expeditious rendering of this opinion will be appreciated."

The Acts of the General Assembly of 1953, Chapter 187, as found in Burns' Indiana Statutes Annotated (1952 Repl., 1953 Supp.), Sections 45-1901 to 45-1929 provides in part as follows:

SEC. 211.

"The state armory board, as appointed, is hereby empowered and directed to erect or provide, anywhere within the limits of this state, upon such terms and conditions as shall be decided upon by said armory board as most advantageous to the state, armories for the use of the military and naval forces of Indiana, which armories shall be used for drill, meeting and rendezvous purposes by the organization of the military or naval forces occupying same, and in which shall

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be stored and safely kept all property of the United States or of the state, issued to such organization for military or naval purposes."

SEC. 212.

"Said state armory board shall have full authority to purchase real estate in the various localities throughout the state where it shall be deemed necessary to provide armories; said real estate, in each instance, to be purchased in the name and for the use of the state of Indiana, and upon the grounds so purchased, the armory board is authorized and directed to erect, for the use of such company, battery, troop, battalion, regiment, division organization, air squadron or group, an armory to be used for meetings, rendezvous and drill purposes, and in which shall be stored the ordnance stores, quartermaster stores and other property issued to the organization occupying said armory. When such armory or armories are erected or provided, the said armory board shall have charge thereof, and arrange for its occupancy and use under the direction and responsibility of the senior officer in command of such company, battery, troop, battalion, regiment, division organization, air squadron or group."

SEC. 214.

"Such state armory board shall have power to receive from counties, cities, municipalities, the federal government or other sources, donations of land or contributions of money, to aid in providing or erecting armories throughout the state for the use of the armed forces of Indiana, and which shall be held as other property for the use of the state of Indiana; and such counties, cities and municipalities are hereby authorized to make such contributions."

SEC. 215.

"All expenses incurred in the operation of state armories shall be paid out of the rentals, income, earnings and any and all other receipts of whatsoever character and such sums are hereby appropriated, or out of any other appropriation provided by law for the pur-

pose of paying the expenses incurred in the operation of the several armories."

SEC. 217.

"The state armory board is hereby authorized to sell, convey or otherwise dispose of any real property belonging to the state of Indiana and being under the charge and in the custody and possession of the state armory board, whenever, in the judgment of the state armory board, such real property can no longer be used for the purpose for which it was acquired. Such sale shall be made at public or private sale, after due publication, for the highest price to be obtained for the same. All money derived from the sale, conveyance or other disposition of any such real property shall be paid into the state treasury, but may be used for the purchase of other real property for armory purposes."

SEC. 219.

"The purchaser of any real property so sold, or to whom any such real property is conveyed or otherwise disposed of, shall pay the purchase money therefor, as shall have been agreed upon, and as shall be certified by the board to the treasurer of state *for the use* and benefit of the armory board, and shall take the receipt of said treasurer therefor. Upon presentation to the auditor of state of the receipt of the treasurer of state, accompanied by a request in the form of a certified resolution approved by the armory board, and setting forth the terms and conditions of such sale, conveyance or other disposition, the auditor of state shall cause to be executed a deed of conveyance to such purchaser which deed shall be signed by the governor and officially attested by the auditor of the state with the seal of the state of Indiana."

The question being whether the proceeds which are derived from the sale of the armories are appropriated or merely earmarked for future appropriations. This question was competently and in my opinion accurately discussed in the Opinions of the Attorney General of 1945, Official Opinion No. 116, page 499. That situation was distinguishable from the one at bar

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in that no specific person was authorized to expend the money. In order to have a valid appropriation, three elements must be found:

1. A sum certain or ascertainable.
2. The purpose.
3. Person or persons who have the authority to expend.

Section 211, *supra*, empowers the State Armory Board to erect armories within the State of Indiana. Section 212, *supra*, authorizes the Board to purchase real estate. Section 217, *supra*, authorizes the Board to sell real estate and provides that the proceeds may be used for the purchase of other real property for armory purposes. Section 219, *supra*, states that all proceeds shall be paid to the Treasurer of the State for the use and benefit of the State Armory Board. Section 215, *supra*, is an appropriation of all receipts of whatsoever character for the purpose of paying expenses incurred in the operation of the several armories.

In addition to the aforesaid, note should be taken of the independence of the militia as discussed in 1944 O. A. G., page 363.

It is therefore my opinion that it is unnecessary to await the action of the legislature to gain access to the funds derived from the sale of the old armory in order to build new buildings as the money, when received by the Treasurer of the State, is appropriated for your benefit.

OFFICIAL OPINION NO. 109

November 27, 1953.

Mr. Ross Teckemeyer,
Executive Secretary,
Public Employees' Retirement Fund,
707 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Mr. Teckemeyer:

This is in reply to your inquiry of November 4, 1953. From your letter and other amplifying information, I understand