

during a single day, he would have a claim against each county. However, under the authorities previously cited, in my opinion he could receive compensation from only one of those counties. It would seem to be a question for an election on the part of the prosecutor as to which county he would collect from. There is no provision for apportionment between the counties for a single day, nor is there any requirement that he apportion the days as a whole between the counties.

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OFFICIAL OPINION NO. 68

November 13, 1952.

Mr. J. A. Franklin,  
Vice President and Treasurer,  
Indiana University,  
Bloomington, Indiana.

Dear Mr. Franklin:

I am in receipt of your letter of October 16, 1952 which states as follows:

“It is the established policy of Indiana University to encourage, by every proper means, the development and growth of any responsible Greek letter or other fraternity or sorority which is now or may hereafter be established on the campus of the university, including assistance and advice to such organizations in obtaining financing for the purchase or construction of chapter house facilities when such organizations are in need of more adequate housing and study facilities.

“Also, the university is interested in acquiring or restricting the use of certain real estate adjacent to the campus for its own protection in maintaining the integrity of the areas around and adjacent to the lands now owned by the university.

“Several fraternities and sororities are now engaged in one or more of the following transactions for the

## OPINION 68

purpose of developing more adequate housing and study facilities for their members, to-wit:

- “(1) Construction of new chapter houses;
- “(2) Remodeling and enlarging existing houses; or
- “(3) Purchasing and occupying existing chapter houses from organizations which are building new houses.

“The financing of all three of the aforementioned projects is being handled in part from the funds of the organizations already accumulated for that purpose and the remainder is being supplied to the organizations by banks and life insurance companies and other lending agencies. The loans made by the banks or life insurance companies to the organizations are secured or will be secured by first mortgages on the property involved.

“Inasmuch as the university is definitely interested in acquiring most, if not all, of the real estate sites involved in these chapter house projects, because they are adjacent to the campus of the university and are really part of the real estate which the university may vitally need at some future date or the use of which the university will want to restrict at least when these organizations for any reason no longer maintain their chapter houses on the property, the Board of Trustees has authorized the officers of the university to negotiate and enter into real estate purchase and sale agreements with each of the organizations presently engaged in the projects mentioned above.

“The real estate purchase contract which it is proposed be entered into between the fraternity or sorority and the university will contain the following general provisions aside from the usual formalities of a real estate purchase agreement; namely:

- “(1) The fraternity or sorority will agree that if at some future date it is unable to carry out and discharge its mortgage obligation to the lending agency, then it will sell and convey its real estate and chapter house

to the university for a purchase price equal to the unpaid balance of the mortgage loan plus accrued interest at the time of default.

“(2) The university will agree that in the event there is a default by the fraternity or sorority on its mortgage loan then the university will purchase the mortgaged property from the fraternity at and for a purchase price equivalent to the unpaid balance of the mortgage loan plus accrued interest.

“(3) The fraternity or sorority will execute a Warranty Deed to the property involved conveying same to the Trustees of Indiana University and place the deed in escrow with a designated bank or trust company with instructions that if there is a default upon the payment of the mortgage loan said deed shall be delivered to the university upon the university's paying the fraternity and the mortgagee the purchase price for the property in the sum of the unpaid balance of the mortgage plus accrued interest and other legal charges. In the event that the fraternity or sorority successfully carries out and discharges its mortgage loan obligation, then said Warranty Deed so held in escrow will in due course be turned back to the fraternity or sorority.

“(4) Even though the fraternity or sorority has successfully paid off its mortgage loan there will be created in the proposed purchase and sale agreement a covenant running with the land which will enable the university to control and restrict the future use of the real estate involved. The agreement will provide that if such real estate is sold to any person, firm or corporation other than the university, then the university must approve such sale and shall have the right to prescribe such terms, conditions and restrictions under which the conveyance shall be made as may be deemed in the best interests of the university by the Board of Trustees. Also the agreement will contain a first refusal clause whereunder the fraternity or sorority must offer the property for sale to the university at the same purchase price which the fraternity or sorority would be willing to accept from any other purchaser.

## OPINION 68

"It is the considered opinion of the Board of Trustees that entering into such agreements with the fraternities and sororities in question will serve a two-fold purpose of, first, enabling the fraternity or sorority to be sure that the mortgage loan will in any event be paid in full if there should be a default at some future date, and secondly, it will enable the university to maintain the integrity of the land areas adjacent to and around the campus through either ownership or control of the use of the properties in the years ahead.

"It is our desire to have your opinion in writing that the Trustees of Indiana University has the authority and right to negotiate and enter into real estate purchase contracts embodying the general terms and provisions hereinabove outlined. You are, therefore, respectfully requested to confirm the legality of such real estate purchase contracts and to let us have your written opinion in the matter at the earliest possible date."

It is my opinion that the question asked in the last paragraph of your letter should be answered in the affirmative.

The current organic act of the Indiana General Assembly relating to the powers and duties of The Board of Trustees of Indiana University is Section 28-5302, Burns' Indiana Statutes (1933) (1948 Replacement Volume) which provides that the exclusive management and control of Indiana University was vested in "The Trustees of Indiana University," which is created and designated as a "body politic" or public corporation. The Statute provides that this body politic shall sue and be sued in the style of "The Trustees of Indiana University" and shall "possess all the real and personal property of such university for its benefit; to take and hold in their corporate name any real or personal property for the benefit of such institution; \* \* \*; and to make all by-laws necessary to carry into effect the powers hereby conferred."

Thus, it is clear that the legislature has conferred the power upon The Trustees of Indiana University to take and hold the title to and to possess real estate for the use and benefit of said university. This power, so conferred, contemplates the ownership and possession of such real estate as may be reasonably necessary for the broad educational purposes of the

university. One of these purposes, in fact a duty, is to provide housing facilities for students in attendance at the university. This in turn contemplates the acquisition and possession of such real estate as may be reasonably necessary for such specific purpose. Inasmuch as said body politic or public corporation has the right to acquire and hold real estate for the above-mentioned lawful purposes, it is immaterial by what particular method it acquires the same.

It matters little whether title to needed property is acquired by outright purchase through a Warranty Deed, by gift or devise, by a statutory appropriation or by an executory contract for the purchase of real estate.

It is believed that statutory authorization which establishes Indiana University as a "body politic" or corporation gives it the power to carry on the purposes of the university and that both the purchase and sale of real estate are necessary to its legitimate function.

The legislature has in fact specifically recognized the duty of The Trustees of Indiana University to provide housing facilities for the students in Sections 28-5722, *et seq.*, Burns' Indiana Statutes (1933) (1948 Replacement), which provides that said Trustees are "authorized and empowered, from time to time, and as such Trustees shall find a necessity therefor exists to erect, construct, equip, furnish, operate, control and manage dormitories at or in connection with Indiana University." Said Trustees are further authorized and empowered to acquire by purchase, lease, condemnation, gift or otherwise such real estate as in the judgment of the Trustees shall be necessary for such housing facilities and title to such property so acquired, including the improvements thereon, is taken and held by and in the name of The Trustees of Indiana University in its corporate capacity.

In support of the foregoing are the Acts of 1947 as contained in Section 28-5738 of Burns' Indiana Statutes which specifically provides authority for the sale of any real estate held by the Trustees of Indiana University. Section 28-5741 also provides for retaining any funds so derived in a distinct fund which may be used "as in the judgment of the board of trustees of said corporation shall be for its greatest benefit, *for the purchase and/or improvement of other real estate*

## OPINION 68

*acquired or to be acquired in the name of said corporation \* \* \*.*" (Our emphasis.)

Section 28-5302, Burns' Indiana Statutes cited and quoted above in part, provides that the Board of Trustees of the University shall also have the power "to expend the income of the University for its benefit"; this general statutory power has been limited specifically by the legislature from time to time in the biennial appropriation laws, which do not follow any definite pattern however. The appropriation statute enacted at the 1951 session of the Indiana General Assembly, making the appropriation for the University for the period July 1, 1951 to July 1, 1953, contains the following provision concerning the use of income for the purchase of lands and buildings, to-wit:

"All receipts from fees and earnings on hand June 30, 1951, and all receipts from fees and earnings accruing thereafter, are hereby appropriated to the Board of Trustees and may be expended for any necessary expenses of the university including Indiana University hospitals, school of medicine, nurses' training school and school of dentistry. *PROVIDED, That such fees, receipts and earnings may be used for lands and structures only if approved by the Budget Committee and the Governor.*"

This limitation on the use of the funds appropriated to the University does not extend to the use of other funds belonging to the University such as trust funds which the University may have available for the purpose of investing by the authority of the Board of Trustees.

If the terms and conditions pertaining to the use of any trust funds held by the University, whether created by gift or devise, permit and authorize the Board of Trustees to use such funds to purchase income producing real estate as an investment for such fund then it would be perfectly in order to carry out such a transaction through the instrumentality of an executory purchase contract such as that contemplated by your letter of October 16, 1952. In the event you should desire to employ funds covered by the provisions of Chapter 217 of the Acts of 1951, as quoted above, in the purchase of such real estate then the Board of Trustees of the University

1952 O. A. G.

should secure the approval of the Budget Committee and the Governor of the state.

Therefore, whether or not it is necessary for the University to secure the approval of the Budget Committee and the Governor of the state prior to the purchase of real estate for educational or housing purposes will depend entirely upon the source of the funds to be employed for that purpose and will have to be determined by the facts in each instance.

It is, therefore, my opinion that executory contracts for the purchase of real estate as referred to in your letter of October 16 are within the corporate powers and authority of The Trustees of Indiana University.

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OFFICIAL OPINION NO. 69

November 14, 1952.

Mr. Herbert P. Kenney, Director,  
Indiana Legislative Bureau,  
State House,  
Indianapolis 4, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

"The Metropolitan Area Study Commission created by Chapter 215 of the 1951 Acts, has pursuant to Section 6 of said Chapter, deposited 775 copies of its report with the Legislative Bureau.

"Section 6 provides 'for distribution of the same by the Bureau to each member of the Eighty-eighth Session of the General Assembly of the State of Indiana and to civic groups or similar organizations that may request copies of the report'.

"In view of the fact that the General Assembly has designated who are to be recipients of copies of this report, the Legislative Bureau would like an opinion from your office on the following questions: