

intendent of Public Instruction is chairman of that Board under the provisions of said statute.

Section 61-1301, *et seq.* Burns 1948 Replacement provides authority in any State Board, Department or Agency to cooperate with the Federal Government for the purpose of securing Federal assistance and grants to the State under Acts of Congress, however, the approval of the Governor is required by the above statute.

The State Department of Education has certain inspectors inspecting and checking on buildings and improvements and all new construction and additions to school buildings must now pass the approval of the Indiana State Board of Education, so the function of survey of the school system is within the general powers of said board.

On your second question it is submitted that the Office of Treasurer of the State of Indiana is authorized by Article 6, Section 1 of the Constitution of Indiana and his duties are to be defined by law.

In this State all funds payable to the State of Indiana for public purposes must be paid or turned over to the Treasurer of State and his authority is fixed and governed primarily by the provisions of Sections 49-1801 to 49-1817, Burns 1951 Replacement. In my opinion he would be the officer authorized to receive any Federal grants under the above mentioned Federal Law, for the use of the administering state agency.

OFFICIAL OPINION NO. 39

May 3, 1951.

Indiana State Board of
Registration for Architects,
State House,
Indianapolis, Indiana.

Dear Sirs:

Your request of April 11, 1951, for an official opinion of the Attorney General, is as follows:

"The Indiana Society of Architects has recommended that we modify our Rules and Regulations in

OPINION 39

accordance with a resolution adopted by that organization as follows:

'In order to properly safeguard life, health and property it is recommended that the State Board of Registration for Architects use its present powers to require each applicant, for the examination for a certificate of registration as a registered architect, to have had three year's experience in an office or offices of a recognized practicing architect or architects.'

"Before taking Board action on the recommendation, we request your opinion on the following points:

"1. Section 3 of the Indiana Agricultural Act, H. B. 212 of 1929 and as amended, defines the duties of the Board. Does the Board have the authority to require three year's experience as outlined in the resolution, without being in conflict with the provisions of Section 7 of the Act?

"2. At time law was enacted the members of the Architects Registration Board were appointed by the Administrative Building Council. It is our understanding that this has since been changed by Acts of the Legislature requiring appointment by the Governor. We wish to be informed whether or not any By-Laws and Rules referred to in Section 3 of the Act still require approval by the Administrative Building Council in light of Chapter 120 of the Acts of 1945 entitled Promulgation of Rules."

1. Your first question deals with the rule making powers of your Board. Your Board originally acquired its rule making powers from Section 2-3, Chap. 62, Acts of 1929—Burns Statutes, Sec. 63-102-3, which read in part as follows:

"There is hereby created and established a board of registration for architects, which shall consist of five (5) members, who shall be appointed by the administrative building council of Indiana, as hereinafter provided."

“Subject to the approval of the council, the board is hereby authorized to make such by-laws and prescribe and promulgate such rules as may be deemed necessary in the performance of its duty. Suitable office quarters shall be provided by the state for the use of the board in the city of Indianapolis.”

However, the general rule making powers and procedures were fixed by the General Assembly in Chapter 120, Acts of 1945. Sections 4 and 5 of the Act provide as follows:

“Before any rule is adopted by any agency it shall cause a notice to be published in a newspaper of general circulation printed and published in Marion County, Indiana at least ten (10) days prior to the date set for a hearing. Said notice shall include a statement of the time and place of said hearing, a reference to the subject-matter of the proposed rule or rules and refer to the fact that a copy of said proposed rule or rules is on file at the office of said agency where it may be examined: *Provided, however,* That no rule shall be invalid because the reference to the subject-matter thereof in said notice may be inadequate or insufficient. At least five (5) copies of said proposed rule or rules shall be on file at the office of said agency from the date of the publication of said notice continuously until the said hearing and any interested person shall be given an adequate opportunity to examine a copy of said proposed rule or rules.

“On the date set for hearing any interested party in person or by attorney shall be afforded an adequate opportunity to participate in the formulation of the proposed rule or rules through the presentation of facts or argument or the submission of written data (data) or views. All relevant matter presented shall be given full consideration by the agency.

“Any agency may adopt procedures in addition to those required by this Act including the holding of conferences and inviting and permitting the submission of suggestions, facts, argument and views of interested persons in advance of the drafting of the proposed rule or rules.”

OPINION 39

Section 2 of the Act provides as follows:

“That all rules and regulations heretofore made, adopted or promulgated by any agency of the State of Indiana which were not promulgated, approved and filed in conformity with the provisions of Chapter 213 of the Acts of 1943, shall be invalid void and of no force and effect after the first day of January 1946.”

If your Board has failed to comply with the requirements of Chapter 120, Acts of 1945, you have no valid rules and regulations at this time.

Your question is, whether or not your Board could lawfully make a rule to require applicants for examination for a certificate to have three years' experience in an office or offices of a recognized practicing architect or architects. The Legislature, at Section 7, Chapter 62, Acts of 1929, Burns Statutes, Section 63-107, provided as follows:

“Any person who is twenty-one (21) years of age and of good moral character shall be qualified for an examination for a certificate of registration as a registered architect, provided he shall have graduated from a high school or a secondary school, approved by the board, and a school of architecture recognized by the board, or has completed an equivalent course of study, as determined by an examination conducted by the board, and has subsequently thereto completed such courses in mathematics, history, and language, as may be prescribed by the board, and has had at least one (1) year's experience in the office or offices of a reputable architect or architects.”

It is noted that the Legislature gave to applicants the right to take the examination when they had acquired “*at least* one (1) year's experience”. Thus it would appear that a rule requiring three such years' experience would *conflict* with the legislature's enactment, and would be of no force or effect.

2. Your second question is whether or not your rule making power still is subject to the approval of the Administrative Building Council as provided in the 1929 Act, Burns Statutes, Section 63-102.

Section 5 of Chapter 120, reads as follows:

“It shall be the duty of every agency which may have been or hereafter may be clothed with or given any power or authority to make, adopt, promulgate or enforce rules to submit the same to the attorney general for approval as to legality and when so approved to submit the same to the governor for approval. When approved by the governor such agency shall file the original approved copy and one (1) duplicate thereof with the secretary of state who shall note the date and hour of such filing thereon and said agency shall also file a duplicate approved copy with the legislative bureau. No such rule shall be effective until after compliance with the provisions of this Act and until they have been so approved and filed and shall be effective as of the date and time filed with the secretary of state; *Provided, however,* that any rule adopted by any agency after the effective date of this Act and prior to the first day of January, 1946, when approved and filed in accordance with the provisions of this Act, shall be effective as of the date of its adoption by such agency.”

Under the provisions of Section 1-4 and 5 of Chapter 120, Acts of 1945, as referred to heretofore, it appears that the members of the Board or to supersede the powers of the appearing and discussing such proposed rules, but the final approval or disapproval would be with the Attorney General, for approval as to legality, and thereafter with the Governor for approval generally and finally.

Since *Tucker v. State*, 218 Ind., the power to appoint such administrative officers has been declared to be in the Governor. I do not believe the Council now has the power to defeat either the power of the Governor to appoint the members of the Board or to supercede the powers of the Governor to control the Board's rules and regulations as provided by Chapter 120, Acts of 1945. See Section 2, Chapter 56 of the Acts of 1945.

In my opinion, the power of approval or disapproval of rules and regulations by the Council as applied to the Architect's Board by the Acts of 1929, has been superseded by the

OPINION 40

Act of 1945, in that, the Governor now has the final power of approval or disapproval of rules and regulations as to all state agencies.

OFFICIAL OPINION NO. 40

May 11, 1951.

Honorable Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of May 4, 1951, asking an official opinion concerning certain questions arising with reference to House Enrolled Act 82, being Chapter 287, Acts 1951, reads as follows:

“House Enrolled Act 82 being Chapter 287, Acts 1951, creates a Health and Hospital Corporation in counties having a population in excess of 500,000 and abolishes the existing department of Public Health and Hospitals in such counties.

“Due to certain date discrepancies in Sections 7, 27, 52 and 55, the Act appears to be ambiguous. Without proper construction to avoid absurdity there will be difficulty of compliance and performance.

“We have been asked to request your official opinion upon the following:

- “1. Is Section 55 considered the last expression of the legislature?
- “2. If the answer is in the affirmative, are the dates therein set out controlling over conflicting dates in Sections 27 and 52?
- “3. When is the present Department of Public Health and Hospitals dissolved?
- “4. When do members of the new corporation assume their duties?