

fied and construed by Court in an action for a declaratory judgment.

TLW:mfl:ar

OFFICIAL OPINION NO. 61

July 11, 1949.

Mr. Stanleigh B. McDonald, Director,
School Lunch Division,
Department of Public Instruction,
State House, Room 227,
Indianapolis, Indiana.

Dear Sir:

Your letter of June the 11th, 1949 received requesting an Opinion on the following questions:

"1. Is a school lunch program an 'athletic, social or school function' under the terms of the statute governing school extra-curricular activities funds (Acts 1937, ch. 151, and Acts 1945, ch. 312; Burns' 28-5133, 28-5141, 5145)

"2. When federal reimbursement (food assistance money) for a school lunch program, distributed by the State Superintendent of Public Instruction, School Lunch Division, is received in the local school unit, must it be treated as public funds under the terms of the Depository Act:

 "(a) When received by the duly constituted officers of the school unit?

 "(b) When received by the sponsors designated program supervisor, such as Parent-Teachers Association, Home Economics Club, or Fraternal Organization?

"3. When federal reimbursement for a school lunch program distributed by the School Lunch Division, State Department of Public Instruction, is received in the local unit by duly constituted officers of the unit, need such money be appropriated before being expended?

"4. If your opinion answers question number 1 in the negative, may the treasurer of the school extra-curricular activities funds also serve as treasurer of an organization designated by the sponsor to supervise the school lunch program, and if so, must separate records and accounts be kept and the lunch funds be deposited in a separate bank account?

"5. Are cooks and cook's helpers employed by the sponsor or the supervising organization eligible for benefits under the Indiana Workman's Compensation Insurance Statute?"

You supplement your letter with "The following definitions are presently used by the State Superintendent of Public Instruction; School Lunch Division, in connection with the aforesaid issues, to-wit:

"1. The sponsor of a school lunch program is: the school, city, town, or township.

"2. The sponsors representatives are members of School Board, Township Trustees, or Senior School Official in Parochial or Private Schools.

"3. The supervising organization or agency is the organization designated by the sponsor, other than the school corporation, to directly supervise the lunch program and to have custody of school lunch funds.

"4. The treasurer may be the school treasurer under the terms of the extra-curricular activity fund statute, appointed by the school official to have custody of the school lunch funds, or the treasurer may be a member of the supervising organization, appointed thereby to have custody of school lunch funds."

The statutes governing the school lunch program in this State is Section 28-5146, *et seq.* Burns' 1948 Replacement, same being Chapter 305 of the Acts of 1947. While certain provisions of this Act were amended in 1949, they are not material to the inquiry.

The above statute was enacted to facilitate the participation by the State of Indiana in the school lunch program pre-

scribed by the provisions of a certain Act of the 79th Session of the Congress of the United States, being public law Number 396, and known as the National School Lunch Act, which Federal Act, for the present, furnishes the money through a Federal Administrator, to the State of Indiana for distribution, on contract, by the State Superintendent of Public Instruction to the various schools throughout the State. The Administration costs of such distribution by the State is the only expense furnished by the State.

Under the above program as prescribed by said Act of Congress, and as operated under numerous rules and regulations of said Federal Agency, and as prescribed in the conditions set forth in the contract executed by and between said Federal Agency and the State Superintendent of Public Instruction, the State is required to make a full accounting to the Federal Government, in accordance with said rules and regulations, of the proper use of such Federal money so advanced.

Under the State Law the State Superintendent of Public Instruction is authorized to prescribe rules and regulations for the keeping of accounts and records and the making of reports by, or under the supervision of, school Boards. They shall be open to inspection and audit by authorized officials as prescribed by said Superintendent of Public Instruction and he may conduct such audits, inspections and administrative reviews of accounts and records, with respect to school lunch programs as may be necessary to determine whether his agreements with School Boards and regulations made pursuant to said Act are being complied with, and to insure that said School Lunch Programs are effectively administered. (Section 28-5150 Burns' 1948 Replacement.)

Under Section 3 of the above said Act, the Superintendent of Public Instruction may enter into agreements with any school Board, or with any other agency or person, as he may deem necessary to provide for the establishments, maintenance, operation, and expansion of any School Lunch Program, and to direct the disbursement of Federal and State Funds, in accordance with any applicable provision of Federal or State law. (Section 28-5146, Burns' 1948 Replacement.)

The foregoing State Law authorized the school cities, school townships, school towns, and joint districts to establish, equip, operate and maintain school kitchens and school lunch

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rooms and to appropriate funds of said school corporation for such purpose. Such participation in such program is discretionary with the school corporation. (Section 28-5155 Burns' 1948 Replacement.)

The school boards are authorized to operate or appoint a sponsoring agency for the operation of School Lunch Programs under their jurisdiction. (Section 28-5149 Burns' 1948 Replacement.)

In view of the foregoing your question will be answered in the order presented:

1. Your first question concerns whether the School Lunch Program is an "athletic, social or other school function," under the terms of the Indiana Statute regarding extra-curricular activities. (Burns' 28-5133 to 28-5145.)

In an official opinion of this office, same being 1948 Opinions of the Attorney General, Official Opinion Number 20, directed to the Secretary of the State Board for Depositories (a copy of this opinion is enclosed for your convenience), the extra-curricular statute was construed at great length in connection with a construction of the Public Depositories Law.

It is pointed out in said opinion among other things that the extra-curricular funds of such schools are not "Public Funds" within the meaning of said Public Depositories Law. The statute defining "Public Funds" within the meaning of said Act, same being Section 1 (e) Chapter 5, Acts of 1937, reads as follows:

"The term 'Public Funds' means and includes all funds coming into the possession of the treasurer of state, treasurer of the board of trustees of any state benevolent, penal or educational institution and all funds coming into the possession of any state officer by virtue of such office, and all funds coming into the possession of any local officer by virtue of such office, *but shall not mean nor include funds coming into the possession of any public officer which are not impressed with a public interest nor designed for a public use.*"
(Underscoring my own.)

Under the foregoing official opinion it is also specifically pointed out that extra-curricular funds under the said school

statute are subject to the control of the school principal, the appointees, the sponsor, and members of the organization or class and that such funds are not impressed with a public interest nor designed for a public use but may be expanded by following the procedure required in said extra-curricular statute for any purpose for which the class or organization raising a particular fund may designate.

It is also pertinent to note that under Section 3 of the extra-curricular fund statute, same being Section 28-5143 Burns' 1948 Replacement, the requirements of Section 4 of said Act (about such receipts coming into the hands of the treasurer of the extra-curricular fund being deposited in an extra-curricular account) does not apply and they do not need to be deposited in a separate bank account if they do not exceed Three Hundred (\$300.00) Dollars during a school year. Otherwise, they must be placed in a "school extra-curricular Account" and a separate record kept of each organization, class or activity so that the balance in each fund may be known at all times. (Section 28-5144 Burns' 1948 Replacement.)

From the foregoing in answer to your question Number 1, I am of the opinion that a School Lunch Program is not really a part of the extra-curricular activities of the school corporations. Under the above quoted rules of the State Department of Education, while the sponsor of the local program is the school, said supervising agency for supervision of the program may be someone other than a school or public official and such supervising agency may have not only supervision of the School Lunch Program but also the custody of the School Lunch Funds. These funds are contemplated being used on a day to day basis for the purchase of commodities and for provisions used in such program. The reports to the State and the manner of keeping such Accounts are up to the decision of the State Superintendent of Public Instruction by rules and regulations or by other contract provisions. This would all seem to be inconsistent with the provisions of the extra-curricular funds as to the manner of requirements for payment of money out of said fund. The requirements of the designated persons to approve the payments from said Fund would unquestionably conflict with said Department regulations and for that reason I am of the opinion that the School

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Lunch Program is a special and separate function from the extra-curricular activities.

The mere fact the treasurer of the School Fund may be the treasurer under the terms of the extra-curricular activities fund statute as prescribed by the rules of said Superintendent of Public Instruction would undoubtedly facilitate the use of such Fund for a depository where the treasurer of the extra-curricular fund is treasurer of the School Lunch Fund. In such event no great opposition could be asserted from the use of such offices and depositories. However, where the officials are different, I seriously question that the extra-curricular fund Act could be used for School Lunch Programs.

2. Your second question has in fact been answered by the foregoing for, from the foregoing discussion, it is clear that Federal money disbursed by the State Superintendent of Public Instruction to the local school units or their supervising agencies, would not in all events be in the hands of public officials within the meaning of the above quoted section of the Public Depositories Law. They are the subject of an accounting and handling in a manner prescribed by State regulation which would also be somewhat inconsistent with the Public Depositories Law. The fact that in some cases they are used by the public school officials and in other instances by the supervising agencies, would be a sufficient reason to exempt them from the Public Depository Law, for it would not be logical to hold the Public Funds subject to the Depository Law in one instance and to give them a different classification when handled by private agencies.

3. In answer to your third question I am of the opinion that when Federal money is disbursed by the School Lunch Division of the State Department of Public Instruction to the local school officer or unit there is no need for an approval by the local authorities as it has already been appropriated by the Federal Government and has been expressly distributed for use for certain purposes by the administering agencies of the State to the particular school or agency entitled to spend it.

4. Your question Number 4 has been answered in our answer to your question number 1.

5. As to whether or not cooks or cook's helpers employed by the state or supervising agencies are eligible to participate

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under the Indiana Workmen's Compensation Act it is deemed necessary to point out that all state and local municipal corporations are subject to the Workmen's Compensation Act (40-1217 Burns' 1940 Replacement). It also applies to all other employers "using the services of another for pay" (Section 40-1701 Burns' 1940 Replacement). The term "employee" as used in said Act is construed to mean:

"to include every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer." (Section 40-1701 (b) Burns' 1940 Replacement.)

Therefore, the answer to your question number 5 would be answered in the affirmative if such cooks or cook's helpers are employed and their services are being used for pay. Otherwise the Workmen's Compensation Act would not be applicable.

TLW:mfl:man
Encl.

OFFICIAL OPINION NO. 62

July 13, 1949.

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

Dear Sir:

Your request for an official opinion reads as follows:

"We have been asked to request an official opinion on a matter in controversy relative to Sec. 45, Chapter 174, Acts 1947, Burns' Supp. 53-745.

"1. Does the phrase 'filed with the county recorder' mean that the ordinance is merely filed to remain as a