

## OFFICIAL OPINION NO. 66

November 12, 1948.

Hon. C. E. Ruston, State Examiner,  
State Board of Accounts,  
State House, Room 304,  
Indianapolis, Indiana.

Dear Mr. Ruston:

Your letter of September 3, 1948, is hereby acknowledged and reads as follows:

"In Honey Creek Township, Vigo County, is located a Federal Penitentiary and the Vigo Chemical Plant, both of which have people living in property owned by the Federal Government, but who want their children to attend the public schools in Honey Creek Township. The questions growing out of these two situations may be the same, however, we shall state each separately and prefer that they be answered separately in order that we can make our rulings.

"In regard to the Federal Penitentiary:

"1. Is the Federal Penitentiary at Terre Haute, Indiana, a part of Honey Creek Township, Vigo County, State of Indiana?

"2. Are the residents living on the Federal Penitentiary reservation subject to personal property and gross income tax?

"3. Can the children living on the Federal Penitentiary reservation attend the schools of Honey Creek Township and be transported by the township without paying tuition?

"4. In case they have gross income exemption, would the tuition charges be based on the full per capita cost or would the charges be minus the State support?

"In regard to the Vigo Chemical Plant:

"1. Has all or any part of the Vigo Chemical Plant at Terre Haute, Indiana, been ceded to the United States Government?

"2. Can the children of the parents, who live in the barracks and houses, which have been acquired by the Bureau of Prisons from the Vigo Chemical Plant, but who work at the United States Federal Penitentiary come to the schools of Honey Creek Township without paying tuition costs?

"3. Are the people living in these barracks and houses subject to personal property and gross income tax?

"4. Are the children, whose parents live in the barracks and houses located on the grounds of the Vigo Chemical Plant, which were acquired by the Rose Polytechnic Institute and Indiana State Teachers College from the Federal Government, eligible to attend the public schools in Honey Creek Township and to be transported without paying tuition?"

#### Regarding the Federal Penitentiary:

In regard to the Federal Penitentiary, subdivision 17 of Section 8, Article 8 of the Constitution of the United States provides as follows:

"The Congress shall have power \* \* \*

"(17) To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; \* \* \*

Section 62-1001, Burns' 1943 Replacement, being Section 1, Chapter 7, Acts 1883, provides as follows:

"The jurisdiction of this state is hereby ceded to the United States of America over all such pieces or parcels of land within the limits of this state as have been or shall hereafter be selected and acquired by the United States for the purpose of erecting post-offices,

custom-houses or other structures exclusively owned by the general government and used for its purposes: Provided, that an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of the state: And, provided further, That this cession is upon the express condition that the state of Indiana shall so far retain concurrent jurisdiction with the United States in and over all lands acquired or hereafter acquired as aforesaid that all civil and criminal process issued by any court of competent jurisdiction or officer having authority of law to issue such process, and all orders made by such court or any judicial officer duly empowered to make such orders and necessary to be served upon any person, may be executed upon said lands, and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid."

Section 62-1002, Burns' 1943 Replacement reads as follows:

"The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments so long as the same shall remain the property of the United States: Provided, however, That this exemption shall not extend to or include taxes levied by the state of Indiana upon the gross receipts or income of any person, firm, partnership, association, or corporation which is received on account of the performance of contracts or other activities upon such lands or within the boundaries thereof." (Acts 1883, Chapter 7, Section 2; 1901, Chapter 58, Section 1; 1941, Chapter 211, Section 1.)

The 1941 amendment to the last referred to statute among other things added the proviso to said section of the Act.

The above provisions of the Federal Constitution and Section 62-1001, Burns' Replacement, *supra*, are construed in a previous opinion of this office, same being 1943 Ind. O.A.G., 609. On page 612 of the opinion the following conclusion is made:

“The consent of the legislature of Indiana contemplated by the above constitutional provision has been conditionally given by Section 62-1001, *supra*, provided an accurate description and plat of such land so acquired has been filed with the Governor of the State, and provided also that the language ‘other needful buildings’ is sufficient to embrace the type of improvements referred to in your request. My attention has been called to the case of James v. Dravo Contracting Company, 302 U. S. 134, in which it is held by the Court that ‘other needful buildings’ as used in Article 1, Section 8, *supra*, embraces:

“‘whatever structures are found to be necessary in the performance of the functions of the Federal Government.’

“James v. Dravo Contracting Co., 302 U. S. 134 at 143.”

Also, supporting the foregoing see 1943 Ind. O.A.G., page 37, 1943 Ind. O.A.G., page 259 and 1944 Ind. O.A.G., 142. In the latter opinion at page 148, it is held that where the provisions of the Indiana statutes have been followed by the United States government for the purpose of acquiring complete jurisdiction over the area in question, by filing of the required plats of the land with the Governor of the State of Indiana, that “Under such circumstances persons residing within said area \* \* \* are for all purposes considered as non-residents of the state.” Among other cases there cited on this question are: United States v. Unzeuta (1930), 281 U. S. 138; Collins v. Yosemite Park & Curry Co. (1938), 304 U. S. 518; Adams v. United States (1943), 319 U. S. 312; and Walter B. Johnson *et al.* v. Yellow Cab Transit Co. (1944), 321 U. S. 363.

An examination of the records in the office of the Governor of Indiana reveals that on February 22, 1940, the United States government having title to the land in question filed a plat thereof in the office of the Governor of Indiana for an area of 1128.84 acres. By this action this area was ceded by the State of Indiana to the Federal Government and is no longer a part of the State of Indiana so far as residence and citizenship is concerned. It is subject to the jurisdiction of

the State of Indiana only for those purposes for which valid exception in the State statute has been made.

In view of the foregoing facts and authorities I am of the opinion your questions as to the status of persons living within the area now comprising the Federal Penitentiary at Terre Haute should be as follows:

(1) The Federal Penitentiary at Terre Haute, Indiana, is not a part of Honey Creek Township, Vigo County, State of Indiana.

(2) Residents living on the Federal Penitentiary Reservation are not subject to personal property tax by virtue of any such residence or by reason of any personal property owned and held by them in said Federal Reservation. Since the question of payment of gross income tax to the State of Indiana is now a subject of litigation now pending in the Superior Court of Marion County, Indiana, I would prefer not to express an opinion on that subject at this time.

(3) In answer to your third question I am of the opinion that since the only duties enjoined upon school trustees are to take charge of the educational affairs of their respective townships, towns or cities (Section 28-2410, Burns' 1948 Replacement, same being Section 1, Chapter 244, Acts 1901), there would be no obligation upon the school authorities of Honey Creek Township, Vigo County, Indiana, to furnish transportation or educational facilities to the children of residents of such Federal Reservation.

While the above may seem harsh it is a well established principle of law that the education of children is the duty of the sovereign power which has jurisdiction over the area in question. In this state provision therefor is made by Article 8 of the Constitution of Indiana. Therefore, the primary duty of education in such federal reservations would seem to be enjoined upon the Federal Government. As pointed out by the persons requesting such opinion by you, no such provision has been made.

In fact I find no statutory authority for school officials of this State to furnish educational facilities for children non-residents of the state even on their payment of full *per capita* cost of such education. While general transfer statutes exist for the transfer of pupils from one school corporation of this state to another, and an allocation of transfer expense incident thereto is set out in the various statutes, these do not

apply to non-residents of the state. The only statute along this line that I have found is one authorizing the transfer of Indiana high school students to the high schools of a foreign state, upon payment of certain tuition charges (Section 28-3702, Burns' 1948 Replacement). No provision is made for transfer of any pupils into this state from foreign jurisdictions. However, I believe no serious question could arise as a result of school officials of this state accepting such children residents of federal territory within the state, as such authority, in my opinion would be implied. The Legislature could not have consistently intended that Indiana pupils could be transferred to foreign jurisdictions for schooling without reciprocal rights being accorded such foreign jurisdictions, under facts and circumstances fully warranting such action.

(4) In answer to your question number four I am of the opinion the question of exemption or non-exemption from Indiana Gross Income Tax, as to persons living in property owned by the Federal Government in the Federal Penitentiary Reservation, has no application from a legal standpoint on the question of whether or not tuition charges in Honey Creek Township should be based on a full *per capita* cost or whether based on tuition charges minus the state support. This is true because the payment out of the State Tuition Fund to school corporations in which children are in average daily attendance is governed by the State School Tuition Fund Act, same being Section 28-912 *et seq.*, Burns' 1948 Replacement. The pertinent section on the question involved is Section 5 of said Act, as amended by Section 2, Chapter 357, Acts 1947, same being Section 28-916, Burns' 1948 Replacement, which in part reads as follows:

“The number of units for which a public school corporation may qualify for state support as provided in this Act, for the first eight (8) grades, shall be one unit for each thirty-five (35) pupils in average daily attendance in any one school corporation, and for grades nine (9) to twelve (12) inclusive, shall be one unit for each twenty-five (25) pupils in average daily attendance in any one school corporation, except in case of an emergency, which emergency shall be determined and declared by the commission on general education. \* \* \* The method of determining the aver-

age daily attendance shall be prescribed by the commission on general education and shall be uniform throughout the state.

“The commission on general education shall make necessary rules and regulations to supplement the provisions of this act with reference to determining and verifying the names, numbers, terms, and salaries of instructors for the purposes of this act, the number of units for which each school corporation is entitled to payment, and for computing the average minimum salary of all the instructors of each school corporation, which average minimum salary shall be multiplied by the number of units to which such school corporation is entitled in order to compute the total amount of money to be distributed thereto under this act. \* \* \*

“Where a child *is transferred* from the school corporation in which such child resides to another corporation, the school authorities of the school corporation to which such child is transferred may include the attendance of such child in the report to the state superintendent and shall deduct from the transfer tuition, which the corporation from which such child is transferred is required to pay as provided by law, an amount equal to the *per capita* pupil allowance received from the state under this act, and the amounts so remaining shall be paid as transfer tuition for each pupil so transferred.” (Our emphasis.)

In construing the above statute it is clear no authority is granted for making of a charge for the teaching of a child to a corporation receiving a non-resident pupil to make a charge based on the *per capita* cost of education less state tuition support, except where a child is legally transferred into such school corporation. As above pointed out, no such statute exists for a legal transfer from territory outside the state to a school corporation in this state, the transfer statutes being Section 28-3701 *et seq.*, Burns' 1948 Replacement, which only provide for the transfer of the pupils of one school corporation in this state to another school corporation in this state, or for transfer of high school pupils in certain specific

instances by contract with foreign states (Section 28-3720, Burns' 1948 Replacement, *supra*.)

As a matter of fact there is no school corporation in existence in said Federal Penitentiary Reservation to issue a transfer even if provision was made therefor by the state law.

In addition to the foregoing it is to be noted that under the provisions of Section 28-916, Burns' 1948, *supra*, authority is given the Commission on General Education of the State Department of Education to prescribe what is average daily attendance and to make necessary rules and regulations to supplement the provisions of said Act with reference to determining the number of units for which school corporations are entitled to payment from the State Tuition Fund in order to determine the amount to be distributed to such school corporations under said Act. In furtherance of such authority said Commission on General Education has legally promulgated and adopted, pursuant to the requirement of the Indiana laws, Rules 26 and 41, which read as follows:

"26. The average daily attendance of a non-resident pupil will not be credited to the corporation that conducts the school attended unless the pupil has a legal transfer. A legal transfer is one issued through the proper school officials or where full payment has been made by the parent or guardian."

"41. In interpreting the term 'legal transfer' the board will accept, as a legal transfer, any arrangement whereby a parent of a school child attending school in a corporation other than that of his legal residence submits to the State Board of Education written evidence of payment of the legal transfer charged to the corporation in which the child is actually in attendance."

Indiana Rules and Regulations, 1947, Vol. 1, pages 762, 763 and 766.

Since the statute regulating the distribution of the State Tuition Fund only authorizes school corporations holding legal transfers for non-resident pupils to deduct the amount received from the State Tuition Fund in computing its charges; and since the rules of the Commission on General Education require either a legal transfer or full payment by the parent

or guardian of a non-resident child before such child is considered transferred, no authority would be given Honey Creek Township School corporation to receive children of persons living in property on the Federal Penitentiary Reservation to educate such children except on payment of full *per capita* costs.

#### Regarding the Vigo Chemical Plant.

The records of the office of the Governor of Indiana reveal that on May 22, 1944, the United States Government having title to some 6,146.131 acres of land, for use in connection with a military reservation designated as the *Vigo Ordnance Plant*, filed a plat of the same with the Governor of Indiana under which it specifically accepted exclusive jurisdiction over said area as authorized by the provisions of Chapter 7, page 8, Laws of Indiana 1883 (Burns' 1933, Section 62-1001) "as amended by Section 1 of an act of the General Assembly of Indiana, approved March 9, 1901 (Chapter 158, page 344, Laws of Indiana, 1901), as amended by Section 1, of an act of the General Assembly of Indiana, approved March 11, 1941 (Chapter 211, page 641, Indiana Acts, 1941)."

Of course from said records in the Governor's office there is no way of determining that "Vigo Ordnance Plant" and "Vigo Chemical Plant" are one and the same. However, supplemental investigation has revealed that pupils from the Rose Polytechnic Institute and Indiana State Teachers College are by permission of the United States Government living in barracks and houses located on the land occupied by the Vigo Ordnance Plant and from the facts stated in your questions I assume the Vigo Ordnance Plant and the Vigo Chemical Plant are one and the same and the following opinion in answer to your questions is based on such assumption.

In view of the reasons for the answers to your questions numbered 1, 2, 3 and 4 as applied to the Federal Penitentiary, *supra*, I am of the opinion no legal distinction exists as to the status of persons residing on the area comprising the Vigo Chemical Plant. Therefore, the answers to each of your questions, concerning the Vigo Chemical Plant, numbered 1, 2, 3 and 4 are exactly the same as the answers heretofore given to your questions numbered 1, 2, 3 and 4, respectively, as applied to the Federal Penitentiary.

Each of the foregoing answers is based upon the assumption that these people have acquired a legal residence in the area now comprising the Federal Penitentiary, at Terre Haute, Indiana, and the Vigo Ordnance Plant and that they are not temporarily living there with a legal residence at some other place. If their legal residence is in some other place in this State the ordinary laws regarding transfers of pupils would control.

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OFFICIAL OPINION NO. 67

November 9, 1948.

Mr. Lefler R. Anderson, Chairman,  
Indiana Alcoholic Beverage Commission,  
201 Illinois Building,  
Indianapolis 9, Indiana.

Dear Sir:

I am in receipt of your request of October 15, 1948, asking my official opinion as follows:

“Section 4, Chapter 148 of the Acts of 1947, on page 459 states the following:

“For the purpose of this section the term “residential district” is hereby defined to mean and include an area composed of all territory within a radius of five hundred feet of the premises described in the application being considered for a permit and in which area seventy-five per cent or more of the territory is used for residential purposes as opposed to commercial, business or manufacturing purposes.”

“Considering the foregoing, the Commission requests an official opinion on the following questions:

“1. What territory, if any, within the five hundred feet radius may be excluded from the computation?

“2. If, as the statute directs, all territory within the five hundred feet radius must be included in the computation, would streets and alleys be considered residential or commercial and business?”