

It seems clear that in using the words "may establish" a hospital in the 1917 Act and the words "hospital * * * that was established" in the 1947 Act, the legislature was referring to the fact of the bringing into existence of a hospital as an institution or entity, rather than to the mere building of a new structure for hospital purposes as an extension or addition. It further seems clear that the established hospital could consist of one or more buildings which might or might not be physically in contact or immediately adjacent, and that, therefore, in such a situation an addition would include an additional building, all the buildings or structures constituting the hospital as a whole.

Accordingly, in answer to question 1 above, it is my opinion that the above hospital was "established" some 34 years ago and as so established is now in existence; it is further my opinion that, owing to the existing conditions in Hamilton County, the construction of a new building on a new location does not constitute the "establishment" of a hospital within the meaning of that term as employed in Chapter 144, *supra*, and that, as in this case, where the "existing hospital" building is entirely inadequate to meet the needs of the county and the site thereof is unsuitable and inadequate for a new building, the construction of a new building as an addition comes within the intent of Chapter 66, Acts of 1947, *supra*.

In answer to question 2 above, it is my opinion that Hamilton County in the operation of its existing hospital may issue bonds to finance the cost of construction of a new hospital building on a new site in conformity to the provisions of Chapter 66, of the Acts of 1947.

OFFICIAL OPINION NO. 54

September 10, 1947.

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

Dear Sir:

Your letter of August 25th received requesting an official opinion on the following questions:

"1. Would money transferred by warrant of the treasurer and secretary of the Board of School Trustees in a lump sum for the entire amount of a school city pay roll to an employee of such school city designated as paymaster, come under the protection of the public deposits insurance fund if such money were deposited in a separate account in an authorized depository in the name of such school city, subject to withdrawal upon the signature of such designated paymaster?"

"2. Could the payment of all claims against the school city be handled in the same manner and be offered the protection of the public deposits insurance fund?"

"3. If your answer to question one or two is in the affirmative, would the treasurer of the Board of School Trustees remain liable for a proper accounting of the funds even though the actual disbursement had been made by another person from a separate bank account subject to withdrawal only upon the signature of such other person."

The Public Depository Law is Section 61-622 *et seq.*, Burns' 1943 Replacement, same being Chapter 3 of the Acts of 1937. Section 3 of said Act, same being Section 61-624, Burns' 1943 Replacement, provides in part as follows:

"(a) All public funds paid into the treasury of the state, or the treasuries of the respective counties, cities, towns, school cities, school towns and municipal corporations shall be deposited daily in one or more depositories in the name of the state or municipal corporation by the officer having control thereof.
* * *"

Section 6 of said Act, same being Section 61-627 Burns' 1943 Replacement reads as follows:

"Except as to the public funds of the state and of the townships, all warrants for the payment of public funds shall be drawn by the proper public officer upon the proper treasurer, and to each warrant when drawn

shall be attached a carbon copy of the warrant. The carbon copy of the warrant shall be readily detachable *and shall show the number thereof, the date and amount, the name of the payee, the purpose, the name and office of the drawer, the fund and the appropriation upon which the warrant is drawn.* Such warrants shall be presented by the proper public officer to the proper treasurer, who shall detach and retain the carbon copy thereof, and, except as to clerk-treasurers of certain civil cities and all civil towns, such proper treasurer shall countersign the original and stamp upon it the name of the depository by which it is payable. No warrant shall be effective until it is stamped and countersigned as provided herein. After countersignature and stamping all warrants shall be returned to the proper public officer for distribution. The proper treasurer, when any warrant shall be presented for payment by any person other than a depository may, for convenience of the persons presenting the warrant, pay the amount thereof to the holder and take an assignment by endorsement of the warrant and deposit the same in the proper depository in lieu of the cash paid out to the holder of the warrant. All township warrants shall be drawn by the township trustee directly against a township depository. All warrants for the payment of public funds of the state shall be drawn by the auditor of state on the treasurer of state. *All checks drawn upon depositories shall be signed by public officers authorized to sign the same in their official capacity.* All funds paid out of the state treasury shall be by check of the state treasurer upon the warrant of the auditor of state. *No public officer shall draw any check upon any depository for any purpose except for the payment of a warrant drawn by the auditor of state, or warrant drawn by the county auditor or the proper local officer of a city, town, school city, school town or other municipal corporation or for the payment of a legal claim against a township or for the transfer of funds between depositories to maintain, so far as practicable, proportionate balances between such depositories."* (Our emphasis).

Section 10 of said Act, same being Section 61-631 Burns' 1943 Replacement provides in substance that the Board of School Commissioners of each school city shall constitute a board of finance for such corporation and as such have supervision of all public funds of said corporation and of the safekeeping and deposit thereof.

Section 16 of said Act, same being Section 61-637 Burns' 1943 Replacement in substance provides that after a public depository has been selected said board of finance shall execute a depository proposal and agreement on a form prepared by the State Board of Accounts with the approval of the Attorney General and requires that said form shall be used and observed by all concerned in the performance of the duties imposed upon them by the provisions of said Act.

Section 20 of said Act, same being Section 61-641 Burns' 1943 Replacement provides for a "Public Deposits Insurance Fund" for the purpose of insuring and safekeeping the prompt payment of any public funds "deposited in any depository in the manner required by this act".

Section 21 of said Act, same being Section 61-642, Burns' 1943 Replacement sub-section (b) provides:

"(b) After this act takes effect all public funds deposited in accordance with the terms of this act in banks or trust companies designated as depositories for public funds under the terms hereof shall be and continue to be insured under the provisions of this act."

Section 36 of said Act, same being Section 61-657 Burns' 1943 Replacement provides as follows:

"Notwithstanding any other law of this state providing for the supervision, management and control of any public funds of the state or any municipal corporation, hereafter all public funds shall be under the jurisdiction and supervision of the appropriate board of finance created by this act and *shall be deposited and kept under and pursuant to the terms of this act and to the order and direction of said board of finance.*" (Our emphasis).

Section 35 of said Act, same being Section 61-656 Burns' 1943 Replacement provides in part as follows:

"If any public officer shall fail to deposit public funds, or shall deposit such fund so otherwise than as provided in this act or shall draw any check against such funds except in the manner provided in this act, he shall be deemed guilty of embezzlement of public funds, and upon conviction, * * *. If any public officer shall knowingly fail to discharge and perform any duty imposed upon him by this act, other than a duty imposed by this section, or shall violate any provision of this act, other than a provision for which another penalty has been provided in this section, he shall upon conviction thereof * * *." (Our emphasis).

In construing a statute the court will look to the general purpose and scope of a statute to determine the legislative intent.

City of Indianapolis, v. Evans (1940), 216 Ind. 555, 567;

State ex rel. Bailey v. Webb (1939), 215 Ind. 609, 612.

In the case of *Storen, State Treasurer v. Sexton*, Marion County Treasurer (1935), 209 Ind. 589, the court was required to determine in a declaratory judgment action the constitutionality and effect of the State Sinking Fund for Public Deposits Act (Acts 1932, Chapter 33, page 141), and in doing so reviewed the legislation in this state, beginning with the first legislation regarding the depositing of public funds as originally enacted in 1907. In construing the purpose of said legislation the court on page 596 and 597 of the opinion, said:

"* * * The Public Depository Law has reference to, and is intended to provide for, the deposit of funds only *pending the time when they can be applied to the ultimate use for which they are designed*. It requires the deposit in state depositories of all public funds. For the purposes of that law, and the law here under consideration, all funds impressed with a public interest, that is, funds raised by general taxation, or special levies upon special

assessment districts, or the income from publicly-owned properties, or funds arising from private sources in the hands of public officers which are designed for public use, must be deemed public funds. The Depository Law exempts all public officers from liability for the loss of public funds *which are deposited in public depositories pursuant to the terms of the law*, and the funds therein referred to must be construed to include every fund that comes to such officers in their official capacity." (Our emphasis).

Again on page 598, the court continues:

"That it is within the power of the legislature to provide for the safety of public funds, without regard to whether they are derived from taxation or otherwise, cannot be questioned. The legislature may provide that current funds shall not be deposited in banks, but that they be held in public treasuries without interest until they are appropriated to the purpose for which they are intended. It may provide that they shall be deposited in banks, fixing the interest which shall be paid. It may change the rate of interest, as conditions may suggest the necessity of such a change, or require the withdrawal of deposits previously made, if, in the judgment of the legislature, that may seem advisable for the safety of the fund. The Constitution does not require that public funds shall be deposited in banks, nor that, if deposited, they shall earn interest. *Those matters lie within the legislative discretion, and that discretion cannot be controlled by the courts.* * * *" (Our emphasis).

It has been held that the legislature is presumed to be acquainted with existing law and in legislating on any subject to have in view its provisions together with the construction placed thereon by the courts.

Stith Petroleum Co. v. Department of Audit and Control (1936), 211 Ind. 400, 405;

Town of Brownstown v. Trucksess (1933), 98 Ind. App. 322, 329.

It is further submitted that said Public Depository Law does not authorize the "establishment of such separate funds and matters of payment therefrom" contemplated in your questions 1 and 2. Such authority is neither given expressly nor by implication. The law is well settled that where an office is created by statute, public officers may exercise only such powers as are expressly authorized by statute.

Blue v. Beach (1900), 155 Ind. 121, 131;
Wallace v. Dohner (1929), 89 Ind. App. 416,
420;
Chicago etc. R. Co. v. Public Service Commis-
sion (1943), 221 Ind. 592, 594.

An exception to the above general rule is recognized only where certain incidental powers are implied for the purpose of carrying out the express powers given a public officer.

43 Am. Jur. "Public Officers", Sec. 25;
State ex rel. v. Goldthait (1909), 172 Ind. 210,
216.

When each of the foregoing sections of the said Act are construed in *pari materia* it is clear that the legislature has required that all such public funds be duly deposited in approved depositories and that the same should remain in said account in said depository until withdrawn therefrom on warrant of the authorized public official, which warrant should show the specific purpose of such withdrawal including the name of the payee, the date and amount, the purpose, the name and office of the drawer, and the fund and appropriation upon which such warrant is drawn. Said Act provides that such funds are secured by the Public Deposits Insurance Funds only when deposited pursuant to the provisions of said Act and provides a severe penalty for the withdrawing of any of such funds "except in the manner provided in this act" and provides a penalty for any public officer who knowingly fails to discharge and perform any duty imposed upon him by said Act.

Under Section 36 of said Act, *supra*, it provides that said funds "shall be deposited *and kept* under and pursuant to the terms of this act". It, therefore, appears that the legislature in enacting the 1937 law has in no uncertain terms, by

its provisions, followed the construction of the Supreme Court in the case of *Storen, State Treasurer v. Sexton, Marion County Treasurer, supra*, and that such funds when so deposited are placed there "pending the time when they can be applied to the ultimate use for which they are designed". As stated by the court in that case, the matter of the deposits of public funds is a matter for legislative discretion and such discretion can not be controlled by the courts.

From the foregoing, I am of the opinion each of your questions must be answered in the negative. If such plans, as outlined in your questions, are considered necessary to remove burdensome, detailed administrative duties from such public officials in large communities, they can only be effectuated by remedial legislation.

OFFICIAL OPINION NO. 55

September 15, 1947.

Miss Anne M. Dugan, R.N.,
 Secretary, Indiana State Board
 of Examination and Registration of Nurses,
 638 K. of P. Building,
 Indianapolis, Indiana.

Dear Miss Dugan:

Your letter of August 5, 1947, received, as follows:

"Sister Miriam Dolores, President of this Board, is being transferred to a hospital in Illinois. The members of this Board would like for you to give us an official opinion stating how long Sister will legally be eligible to continue as a member of this Board.

"Sister Miriam Dolores expects to leave sometime within this week, and we should appreciate an early reply, if possible."

Section 63-901 Burns' 1943 Replacement, same being Section 1, Chapter 182, Acts 1921, creates the Indiana State Board of Examination and Registration of Nurses and provides in part as follows: