

fixing a date when the same shall be considered and determined upon, and taxpayers shall have a right to be heard thereon. No such proposed additional amount shall be appropriated or expended unless and until such appropriation and expenditure shall have been approved by the state board of tax commissioners, as hereinafter provided. \* \* \*.”

Therefore, in answer to your question number 2(b), I am of the opinion since Chapter 275 of the Acts 1947, under the above definition of “municipal corporations”, applies to “any person, persons, or organized body authorized by law to establish tax levies for any purpose”, that it applied to the Board of Sanitary Commissioners created by Chapter 157 of the Acts of 1947 relative to emergency appropriations.

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OFFICIAL OPINION NO. 63

October 9, 1947.

Miss Adeline C. Lehman,  
 Superintendent,  
 Indiana Girls' School,  
 R. R. 2, Box 440,  
 Indianapolis 44, Indiana.

Dear Miss Lehman:

Your letter of August 28, 1947, received requesting an official opinion as to the right of the city of Indianapolis to make a transfer charge for tuition for girls committed to your institution, who are thereafter placed by the Board of Trustees of your institution in private homes in the city of Indianapolis. These children are being placed in wage homes and, in some instances, in foster homes, they are still under your strict supervision and subject to recall to the institution and have not been finally discharged from your custody.

In your letter, you specifically desire to know whether Chapter 118 of the Acts of 1947 applies to your school on the above question. Since a study of that statute reveals it is an amendment of Section 10, Chapter 182 of the Acts of

1933, same being Section 22-2335 Burns' 1933, which Act concerns only the Soldiers' and Sailors' Children's Home, said statute is not applicable to your institution.

However, I am advised that the claim of the city of Indianapolis for tuition transfer charge is based upon the provisions of Chapter 179 of the Acts of 1947, which was Senate Bill 118 of the 1947 General Assembly. Section 2 of said Act provides as follows:

"Dependent children and/or public wards or children otherwise receiving foster care living in a private home of a taxpayer of the community shall be permitted to attend the public schools of the school district in which said private home is located or of which the children in the locality attend. Provided, That the private home in which said children reside is to be the home for said children for an indefinite period, including children being kept there under the supervision of the county department of public welfare or other agency given supervision thereof according to law, and the said children are not living in said home for the sole purpose of getting an education."

Section 3 of said Act further provides:

"All children under foster care shall be entitled to be educated under the provisions of the compulsory education law as other children living in the same district or locality are educated without discrimination and with the same privileges and benefits, and are to be admitted without delay when applying for such education. Any question which may arise between the officials of the different school districts regarding said children shall not delay their admission to the proper school in the district in which said children reside or at which the children in the locality attend, or affect their treatment or education in any way. Transfer tuition charges shall be paid in the manner and as provided by law in case of transfer from one school corporation to another school corporation. In the event an agreement can not be reached by the officials of the school districts or corporations concerned an

agreed statement of the facts shall be submitted to the State Superintendent of Public Instruction for his decision. The decision of said State Superintendent of Public Instruction shall be final and conclusive."

Chapter 144 of the Acts of 1935, same being Section 22-120 et. seq., Burns' 1945 Supp. provides for the manner of appointment of the trustees of the benevolent, reformatory and penal institutions of the State. Section 3 of said Act, same being Section 22-123 Burns' 1945 Supp. names the various institutions included in such legislation and, among others, names the Indiana Girls' School.

Section 5 of the last referred to statute, same being Section 22-128 of Burns' 1945 Supp. among other things provides "such board of trustees shall have the supervision of their respective institutions." Section 8 of said Act, same being Section 22-130, Burns' 1945 Supp. provides as follows:

"Such boards of trustees and superintendents or heads of institutions referred to in this act shall have the same duties, powers and functions as now pertain to the present boards and superintendents or heads of institutions named in this act under existing laws, and the duties, powers and functions that are conferred expressly by this act."

The placing of girls in the Indiana Girls' School together with the form of commitment from the court is provided by Section 13-707, Burns' 1942 Replacement, same being Section 2-266, Acts of 1915, which reads in part as follows:

"Hereafter, no girl under the age of ten (10) years shall be committed to the Indiana Girls' School and the maximum age for such commitment is hereby extended to eighteen (18) years. Such girls shall be committed to the custody of the board of trustees of the Indiana Girls' School, to be confined by it at that institution, or at such other place as may be designated by said board of trustees where they can be most faithfully and properly cared for, and they shall be confined therein until they reach the age of twenty (20) years unless sooner released by said board of

trustees, subject to such rules and regulations as said board of trustees may establish. No commitments shall be for a shorter period than until such girls shall attain respectively the age of twenty (20) years.  
\* \* \* All commitments to the Indiana Girls' School shall be made in the following form:

#### “ORDER OF COMMITMENT

“State of Indiana, County of —, ss.

“Be it remembered, That on the — day of — A. D. 19—, application was made to the undersigned, judge of the juvenile court of — County, state of Indiana, by — for the commitment of — to the custody of the board of trustees of the Indiana Girls' School, and upon due proof, I do find that said — is a suitable person to be so committed.

“It is, therefore, ordered that the application of the said — be granted; that the said — be, and is hereby, committed to the custody of the board of trustees of the Indiana Girls' School, to be confined by it at that institution, or at such other place as may be designated by said board of trustees where she can be most faithfully and properly cared for, and that she shall be confined therein until she reaches the age of twenty (20) years, unless sooner released by said board of trustees, subject to such rules and regulations as said board of trustees may establish; it is further ordered that one-half of the estimated cost of keeping her while an inmate of the institution, together with the entire cost of conveying her thereto, be paid by — County, as provided by law.”

Section 13-709, Burns' 1942 Replacement, same being Section 3-171 of the Acts of 1909 further provides for the placing of girls committed to said institution in private homes, as follows:

“Whenever the board of trustees shall deem it for the best interests of any girl in its custody, it shall instruct the superintendent of said school to release such girl on trial as soon as a suitable home is found

for her. One or more women shall be employed as visiting agents for the school, whose duty it shall be, under the direction of the superintendent, to find homes for the girls so released and visit them thereafter. No girl shall be placed in a home which has not been previously investigated by such agent and a full report thereof made to the superintendent. Such agent shall visit such girls as often as the superintendent shall deem necessary to ascertain whether they are properly placed, and shall, from time to time, make to the superintendent full reports of all investigations and visits made by her. It shall be the duty of the superintendent to recall any girl who may not conduct herself properly or who does not have a suitable home."

Section 52-1410a, Burns' 1945 Supp., same being Section 23, Chapter 41, Acts of 1937 provides:

"That part of the care and maintenance of the inmates of the Indiana State Sanatorium, Indiana Boys' School and the Indiana Girls' School which, under the provisions of the laws of this state, is to be charged back to the several counties of the state, shall be paid from the county general fund and not the county welfare fund, unless otherwise provided by law."

In construing similar statutes applicable to a boy in a private home on placement from the Indiana Boys' School, it was held in an official opinion of this office, being Official Opinion No. 28 of 1946, that said boys on placement were public wards of the Boys' School and that the relationship of guardian and ward prevailed between such institution and such child on placement. The same relationship results under the above statutes from a placement of a girl in a private home by the trustees of the Indiana Girls' School for the reason they are committed solely to the custody of such board of trustees, for confinement at such institution or at such other place which may be designated by said board of trustees. In this connection, it is pointed out in such official opinion that the juvenile court does not retain jurisdiction of a child committed to a correctional or other state institution

under the provisions of Section 7, Chapter 336 of the Acts of 1945, same being Section 9-3204, Burns' 1945 Supp.

Since such girls are committed to the custody of this board of trustees of the Indiana Girls' School to be confined at the institution, or at such other place designated by said board of trustees, I am of the opinion they would still be considered "inmates" of the Girls' School while on placement in such private homes, within the meaning of the word "inmate" as used in Section 13-707, Burns' 1942 Repl., *supra*.

Wright v. Mary Calloway Home for Aged Women (1939), 186 Miss. 197, 208, 187 So. 752, 755;

*In re Seidel* (1939), 204 Minn. 357, 362, 283 N. W. 742;

Boyd v. Howard, Warden (1946), 224 Ind. 439, 68 N. E. (2d) 652, 654.

It is, therefore, clear that a girl committed to the Indiana Girls' School is a public ward of said institution until she is twenty years of age unless discharged by said board of trustees pursuant to law. It is further apparent that under the order of commitment, the county from which said commitment is made is required to pay one-half of the estimated cost of keeping said child under said commitment, and under Section 52-1410a, Burns' 1945 Supp., *supra*, the same is payable from the county general fund.

Since the statute on commitment, Section 13-1707, Burns' 1942 Repl., *supra*, requires that on such commitments said girls "be most faithfully and properly cared for," I am of the opinion this would require such girls of school age to be given schooling. Such a construction is entirely consistent with the requirements of Chapter 179 of the Acts of 1947, *supra*.

Such a construction is also consistent with the provisions of Section 28-3401, Burns' 1933, same being Section 1, Chapter 95, Acts of 1931, which reads as follows:

"ELEMENTARY STATE SCHOOLS—BENEVOLENT AND CORRECTIONAL INSTITUTIONS—USE OF ENGLISH LANGUAGE — SUBJECTS TAUGHT — TUITION FREE. — All subjects and

branches taught in the elementary schools of the state of Indiana and all elementary schools maintained in connection with benevolent or correctional institutions, shall be taught in the English language only, and the trustees, and such other officers as may be in control, shall have taught in them, orthography, reading, writing, arithmetic, geography, English grammar, physiology, history of the United States, scientific temperance and good behavior, and such other branches of learning as the advancement of pupils may require, and the trustee, and other officers in control direct. The tuition in such schools shall be without charge."

The requirement of educating girls in the Indiana Girls' School is further clearly shown by the following statutes:

The Indiana Reformatory Institution for Women and Girls was established by Section 1, Chapter 32, Acts 1869 (Spec. Sess.). Section 38 of said Act, same being Section 13-644 Burns' 1933, provided:

"It shall be the duty of said board of managers (board of trustees) to provide teachers, and as far as practicable, instruct the inmates of said institution in readings, writing and arithmetic."

The name of said institution was changed to Reform School for Girls and Women's Prison (Sec. 1, Chapter 174, Acts 1889).

Said institution was separated as to women and girl inmates and the institution for girls became the Indiana Industrial School for Girls (Section 13-602, Burns' 1933). Said Act provided that prior laws would apply to said institutions as so separated (Sec. 13-603, Burns' 1933). Said name of said girls school was finally changed to Indiana Girls' School (Section 13-701, Burns' 1933, Acts 1907, Ch. 119, Sec. 1).

The provisions regarding teaching of inmates in reading, writing and arithmetic, under Section 3-644, Burns' 1933, *supra*, are still applicable to girls in the Indiana Girls' School.

I am further of the opinion that a child on placement from the Indiana Girls' School in a private home comes within the

definition of a public ward within the meaning of that term as used in Chapter 179 of the Acts of 1947, and that said statute in and of itself effectively transfers said children into the public school system where such private homes are located, for schooling, and that the reference to transfer and tuition charges contained in said Act merely provides the machinery for calculating said transfer charges under the now effective statute, which is Section 28-3717, Burns' 1945 Supp., same being Section 1, Chapter 82, Acts of 1945.

For clarification, it is considered necessary to call attention to the provisions of Section 2, Chapter 357, Acts of 1947, which governs payment of state teachers tuition support, and which on page 1434 of said acts provides in part as follows:

“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.”

Therefore in construing Chapter 357 of the Acts of 1947, in *pari materia* with Chapter 179 of the Acts of 1947, *supra*, and Section 28-3717, Burns' 1945 Supp., *supra*, I am of the opinion the school corporation that educates said child so placed in such private home by the Indiana Girls' School, should include such child as attending its school in its report to the state superintendent of public instruction, receive any amount due it from the state tuition fund and credit that sum against any transfer charge authorized by Section 28-3717, 1945 Supp., *supra*. That the Indiana Girls' School, and the county from which child was committed to Indiana Girls' School, are each liable for 50% of any such transfer charges then remaining due and unpaid for the education of such girls on placement in said school corporation.