

“* * * While the contract clause of the Constitution protects parties dealing with the State, it does not, of course, affect the validity of statutes releasing obligations due the State. 16 C. J. S., Constitutional Law § 285, p. 714. *Miller v. Henry* (1912), 62 Ore. 4, 124 P. 197, 41 L. R. A. (N. S.) 97. *State, ex rel. Arpin v. George* (1913), 123 Minn. 59, 142 N. W. 945. There is, consequently, no question as to the impairment of the obligation of a contract with the State involved in this case. The same may be said as to vested rights. A State has no vested rights which are immune from its legislative control. * * *

It is therefore clear the State of Indiana has no such vested interest in the contract between the teachers and the State Teachers' Retirement Fund Board that such contract cannot be changed by the Legislature as long as no detriment or damage results as far as the teachers who are members of such Fund are concerned.

I am therefore of the opinion that Chapter 350 of the Acts of 1945 is constitutional, valid and enforceable.

OFFICIAL OPINION NO. 86

August 20, 1945.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis, Indiana.

My dear Governor:

I have your letter of August 2nd in which you ask my official opinion concerning a purchase of land for the Logansport State Hospital. I quote from your letter as follows:

“At the Logansport State Hospital, it seems advisable to attempt to purchase about 400 acres of land. I do not know what authority I have to make purchases for the state institutions—whether the responsibility

rests with me or with the board of trustees. The cost of this land would be approximately \$60,000.00.

"It is my own opinion that this money would have to be appropriated by the legislature. However, the institution is very desirous of tying up this land, and they thought that perhaps an option might be taken which would run until such time as our legislature convenes.

"I would like to have your opinion as to whether the state would have any right to take an option, and in case we could take an option, who would have the authority to negotiate this.

"Also, I am advised that the land that they propose to purchase is not contiguous to the land now owned by the state of Indiana at the site of the Logansport State Hospital. I would like to know if this fact would vary the situation."

The board of trustees of the Logansport State Hospital, being an administrative arm of the state government, derive all powers from those expressly granted by statute and those necessarily implied. Thus, if the power to purchase the land or take an option thereon is not found in the statute either by expressed provision or necessary implication, the board of trustees is without authority to act.

See:

New York Central R. Co. v. Public Service Commission, 191 Ind. 627 (1921);

Dept. of Insurance v. Church Members Relief Assn., 217 Ind. 58 (1940).

The general rule is applied in Indiana to contracts made by officials and administrative boards. In *Julian v. State*, 122 Ind. 68 (1890), in speaking of a contract made by the Attorney General, the court said at p. 73:

"* * * A contract made with the attorney general is void unless he is expressly or impliedly authorized by statute to make such contract. * * *

"It is also well settled that all who deal with officers exercising statutory powers, and whose authority is

limited by statute, are charged with notice of the scope of such officers' authority. * * *."

See also:

Julian v. State, 140 Ind. 581 (1894);
Hord v. State, 167 Ind. 622 (1907).

In the light of those principles it is necessary to examine the existing statutes in order to determine the authority of the board of trustees with regard to real estate contracts and purchases.

Section 1, Page 5, Chapter 4 of the Acts of 1875 (22-521 Burns' 1933 R. S.) reads as follows:

"It shall be unlawful for the board of trustees of any benevolent, scientific, reformatory, or educational institution of the state to borrow money upon the credit of the state, or to contract any indebtedness on the credit of the state, or to make *expenditures for improvements for said institutions* in any way, unless the said loans or expenditure of money are first authorized by an act of the general assembly for such purposes." (My italics.)

It seems clear from the later statute that the board of trustees of the hospital for the insane are prevented from (1) borrowing money to make purchases for the institution, (2) becoming indebted upon contracts for purchases, or (3) making improvements for said institution unless the loan, indebtedness or expenditure or improvement has been authorized.

Legislative authority for the expenditure of funds for a certain type of improvement, namely acquisition of real estate is found in Section 1, Page 116, Chapter 59 of the Acts of 1913 (22-502 Burns' 1933 R. S.).

"Whenever the board of trustees, board of managers, or board of control of any penal, benevolent, correctional, educational, or other institution belonging to the state of Indiana shall deem it necessary or desirable for the welfare or convenience of such institution to acquire real estate for its use, said institu-

tion, by its board of trustees, board of managers or board of control, is hereby authorized to purchase such real estate by contract with the owner, in case suitable and acceptable terms can be agreed upon. When real estate is purchased for said purpose by any such institution, the deed of conveyance therefore, shall be executed conveying such real estate to the state of Indiana, in trust for such institution: Provided, That no purchase of real estate authorized by this act shall be made without the written consent and approval of the governor of the state."

It should be noted, however, that the last act does not authorize the creation of indebtedness or borrowing money to purchase the real estate. It would then appear that the proper interpretation to be placed on the 1913 Act is that with the approval of the Governor, the board of trustees may purchase real estate provided there has been an appropriation made and funds available for that purpose.

In an opinion rendered to the Governor on January 6, 1930 (1929-1930 O. A. G., P. 27) the Attorney General in interpreting the last mentioned act stated:

"The above section is sufficient to authorize the purchase of land by the board of trustees of the hospital for the insane at Evansville with the written consent and approval of the governor when deemed necessary or desirable for the welfare of the institution provided, of course, there is money available from the appropriations regularly made by the legislature for that purpose."

However, there is no expressed authority to enter into an option agreement in the 1913 Act and I do not find that authority necessarily implied, since it is not essential to the purchase of real estate, that such purchase be preceded by an option. The only authority granted is "to purchase such real estate by contract with the owner."

In the light of those considerations I am of the opinion that the board of trustees does not have authority to enter into an option agreement with the owner of real estate, nor do I find authority for any other officer or board to enter into

an option to purchase real estate for the benefit of the board of trustees of Logansport State Hospital.

In the authority to purchase real estate there is no requirement imposed that the land be contiguous to lands owned by the state for the use of the hospital. In that respect, discretion is vested in the board of trustees with the approval of the Governor as to the necessity or desirability of purchasing the particular land and if in the sound discretion of those officials it is necessary or desirable to purchase lands which are not contiguous, I am of the opinion that the purchase can be contracted providing the other legal requirements are met. The impression concerning the necessity of contiguity of land may have been obtained from the specific provisions of the law with respect to Richmond State Hospital. By Section 1, p. 58, Chapter 179 of the Acts of 1929 (22-1106 Burns' 1933 R. S.) the board of trustees of the Richmond State Hospital, with the approval of the Governor, is authorized to sell lands belonging to the hospital and to use the money derived from the sale for the purchase of other lands contiguous to the lands belonging to such hospital. That statute, however, did not apply to the Logansport State Hospital.

OFFICIAL OPINION NO. 87

August 24, 1945.

Hon. Albert E. Virgil, Superintendent,
Indiana State Farm,
Greencastle, Indiana.

Dear Sir:

I have your letter dated July 31, 1945, in which you ask an official opinion upon the following questions:

"We have an inmate of this institution who was committed here from both the circuit and city court for different offenses. Should he serve this time concurrently or consecutively? In the past where there has been more than one sentence from the same court the sentences have been served concurrently even though the court ruled they were to run consecutively.