

My conclusion is, that the common school income was created by the Constitution. At various times this distributive fund has been augmented by the addition of taxes and other funds and at other times taxes and funds so added have been withdrawn from future distribution by repeal of statutes. But the basic fund and substantially all funds enumerated in the original 1865 Act remain the same and would have to remain the same under constitutional mandate. Various Acts dealing with the fund have employed different names for it. But in each case the fund intended was the constitutional school income with additions by statute as they stood at that time.

Specifically answering your question, I am of the opinion that the reimbursement for maintenance of special classes for disabled children is not payable out of the newly created state school tuition fund as such. Reimbursement for those classes should be made from the school revenues available for distribution as provided by law in 1927, namely, the income from the common school fund as augmented by unclaimed fees. The reimbursement for special classes for disabled children constitutes a prior claim upon the income and should be reserved therefrom before inclusion into the state school tuition fund.

OFFICIAL OPINION NO. 16

March 15, 1945.

Hon. Thurman A. Gottschalk, Administrator,
Department of Public Welfare,
141 South Meridian Street,
Indianapolis 14, Indiana.

Dear Sir:

Your letter of January 31, 1945 received, requesting an official opinion on the following question:

“With regard to the appointment of the employees of a county children’s home do the provisions of Sec. 22-2805 of Burns’ Ind. Stat. 1933, control as to the appointment of such employees in children’s homes operated by the county welfare department as suc-

cessor to the county board of children's guardians or are such appointments controlled by the Indiana Personnel Law or the Merit provisions of the Welfare Act?"

A Board of Children's Guardians was created by Chapter 173 of the Acts of 1901, as amended, same being Section 22-2801, Burns' 1933, *et seq.*

Section 5 of Chapter 173 of the Acts of 1901, as amended by Section 4, Chapter 61, Acts 1923, same being Section 22-2805 Burns' 1933, provides in part as follows:

"The board of county commissioners may provide and maintain a house of suitable size and convenience for the accommodation of the children placed under the custody and control of such board of children's guardians or the court having juvenile jurisdiction, said house to be approved by said board of children's guardians; shall pay such agents and assistants as may be deemed necessary by said board of children's guardians and the court of such county having juvenile jurisdiction, and appointed by said board of children's guardians, with the approval of the court of such county having juvenile jurisdiction, * * *."

It is to be noted under the provisions of the above statute the employees in such Board of Children's Guardians' Home were to be appointed by said Board of Children's Guardians with the approval of the court of such county having juvenile jurisdiction.

Under the provisions of Section 52-1121, Burns' 1943 Supplement, same being Acts 1936 (Spec. Sess.), Chapter 3, Section 22, as amended by Section 4, Chapter 41, Acts 1937, all the rights, powers and duties conferred by law upon the Board of Children's Guardians were transferred to the County Department of Public Welfare, and said Board of Children's Guardians abolished, said statute being as follows:

"All of the rights, powers and duties conferred by law on the board of children's guardians and the board of county charities and corrections are hereby continued in full force and effect and are hereby transferred to and conferred upon the county department

and shall be held, exercised and performed by the county department under and by virtue of the provisions of this act and of the several acts now in force and the board of children's guardians and the board of county charities and corrections is hereby abolished."

It is therefore clear that the authority to appoint the employees of such children's homes is now vested in the County Department of Public Welfare, subject to the approval of the judge of the court having juvenile jurisdiction in such county, unless such right is affected by the State Personnel Act or the merit provisions of the Public Welfare Act.

The State Personnel Act is Section 60-1301, *et seq.*, Burns' 1943 Supplement, same being Chapter 139, Acts 1941, as amended. The Public Welfare Act is Section 52-1102, *et seq.*, Burns' 1943 Supplement, same being Acts 1936 (Spec. Sess.), Chapter 3, as amended. In an official opinion of this office addressed to you under date of May 14, 1943, appearing in 1943 O. A. G., page 273, holding the county director of public welfare shall be appointed from eligible lists established by the State Department of Public Welfare, it was held that the State Personnel Act, as amended by Chapter 101, Acts 1943, did not supersede the Public Welfare Act, as amended by Chapter 179, Acts of 1941, or as amended by Chapter 83 of the Acts of 1943, the pertinent part of said opinion being as follows:

"From an examination of the new personnel act in its entirety it is apparent that only the rights, powers and duties of the prior State Personnel Board were to be exercised by the new Indiana Personnel Board established by Chapter 101, Acts 1943. Therefore, it becomes necessary to determine what were the rights, powers and duties of the State Personnel Board under the Acts of 1941 in so far as they affect the question under consideration.

"The law concerning the State Personnel Board of 1941 has been previously construed by this office. See 1941 Opinions of the Attorney General, pages 268-275. Concerning the authority of the State Department of Public Welfare, that opinion said:

“1. Answering your questions specifically, I am of the opinion that as of the effective date of the promulgation of the Acts of 1941, Chapter 179 thereof will override and supersede Chapter 139 so far as the component parts of said Act are in conflict.

“2. Your second question is answered in the affirmative, that is, the State Board of Public Welfare can operate its own merit system for the State and County Welfare Departments.’

“Section 2 of Chapter 83 of the Acts of 1943, which amended Section 20 of the original Welfare Act of 1936, 52-1119 Burns’ 1933 Supplement, provides in part as follows:

“‘Duties of the county boards. The county board of public welfare shall appoint a county director of public welfare who shall be appointed solely on the basis of merit *from eligible lists established by the state department,*
* * *’

“Section 52-1104, Burns’ 1943 Supplement, Acts 1936 (Spec. Sess.), Ch. 3, Sec. 5, p. 12; 1937, Ch. 41, Sec. 1, p. 235; 1941, Ch. 179, Sec. 3, p. 536, was not amended by the 1943 Acts and it provides in part as follows:

“ ‘ * * * The state department is hereby *charged with the administration or supervision* of all of the public welfare activities of the state as hereinafter provided. The state department:

“ ‘ * * *

“(j) Shall hold or provide for holding *examinations* to determine the qualifications of applicants for positions in the state department and county departments and *provide for annual merit ratings of employees* in the state department and county departments to ascertain

whether such employees, or any of them, are maintaining the eligibility standards prescribed by the state department.' ”

I am therefore of the opinion that under the foregoing statutes, as so construed, the State Personnel Act would not control as to appointments made in the County Department of Public Welfare, as such authority was superseded by the aforesaid amendments to the Public Welfare Act. It therefore remains to be determined whether or not the State Department of Public Welfare has authority and control over the appointment of employees in children's homes operated by the County Department of Public Welfare, as successor to the County Board of Children's Guardians, under the provisions of Section 22-2805, Burns' 1933, *supra*.

Section 52-1104, Burns' 1943 Supplement, Acts 1936 (Spec. Sess.) Chapter 3, Section 5, as amended by Section 3, Chapter 179, Acts 1941, *supra*, which defines the duties of the State Board of Public Welfare, under Clause (j) thereof, provides in part as follows:

“* * *

“Shall establish minimum qualifications of employees, based on education or experience or both, and the service requirements of each classification of position, classification of positions and salary ranges for each classification, and minimum number of employees in each classification for the several county departments of the state, to be selected from eligible lists established by the state department under the rules and regulations of the state department. *Provided, that the provisions of this subsection shall not apply to institutional employees of the several county departments of public welfare. * * **”

Under the last quoted section of the statute it is clear the Legislature withheld from the authority given the State Department of Public Welfare any supervision as to the employment of institutional employees serving county departments of public welfare, and that, therefore, the Merit provisions of the Public Welfare Act would not apply to employees in children's homes operated by the County Department of Pub-

lic Welfare, as successor to the County Board of Children's Guardians under the provisions of Section 22-2805, Burns' 1933, *supra*.

I am therefore of the opinion the appointment of the employees of a county children's home, operated by the County Department of Public Welfare, as successor to the County Board of Children's Guardians under the provisions of Section 22-2805, Burns' 1933, are to be made by the County Department of Public Welfare, subject to the approval of the court of such county having juvenile jurisdiction, and that such appointments are not controlled by either the State Personnel Act or the Merit provisions of the Public Welfare Act.

OFFICIAL OPINION NO. 17

March 17, 1945.

Hon. Thurman B. Rice, M. D.,
Acting Secretary, Indiana State Board of Health,
1098 West Michigan Street,
Indianapolis 7, Indiana.

Dear Dr. Rice:

Your letter of January 26, 1945, received as follows:

"The official opinion of the State Attorney General is requested on the questions listed below on Chapter 264, Acts of 1943, known as the Cold Storage Locker Plant Law.

"1. Is the license issued to the locker plant or to the individual operating the plant, and if to the plant, is the license transferable?

"2. Shall a license be issued on an annual or calendar year basis? If on an annual basis, is it within the authority of the board to promulgate regulations to place it on a calendar year basis? Section 19 states that the board may make reasonable rules and regulations necessary or expedient to carry out the provisions of the act. It would definitely save considerable time and money by placing it on a calendar year basis.