

to which it cannot be withdrawn, permission to use it is given to the bank by the borrower, which is the very essence of a loan. It matters not that the bank does not pay interest on this deposit. It pays its interest in effect by the reduced rate of interest charged against the borrower. As I see it, it makes very little difference in the ultimate result, as to whether the term "deposits" as used in the underlined language quoted from Section 1(a) of Chapter 81 is to be given the meaning of "deposits" as that term is used in Chapter 83 or whether it is to be given a more general meaning since, by adhering to the definition of the term as set out in Chapter 83 *supra*, we immediately create an "account arising out of a transaction involving a loan."

In my opinion the account is an intangible as defined in Section 1(a) of Chapter 81 *supra* as amended, and as such is liable to taxation when owned by an Indiana resident unless such intangible has an actual business situs outside of the state.

PUBLIC INSTRUCTION, STATE SUPERINTENDENT:
Whether commissioned high schools may be maintained out of state aid for a minimum term prescribed for holding a commission.

July 11, 1942.

Hon. Clément T. Malan,
 State Superintendent, Public Instruction,
 State House,
 Indianapolis, Indiana.

Dear Mr. Malan:

I have before me your letter requesting an official opinion in answer to the following question:

"When and if a school corporation otherwise entitled to state aid complies with all the requirements for a commissioned high school, is it then the duty of the State Department of Education to recommend and of the Auditor of State to make payment to said school corporation out of the State Relief Fund of a sufficient amount of money to maintain such commissioned high school, in accordance with the statutes and the

regulations of said Board of Department of Education enclosed herewith, for the minimum term required of such commissioned high school even though other state aid school corporations may desire to maintain only a certified high school?"

Attached to the request is what purports to be a regulation of the Board of Education classifying public senior high schools and public junior high schools. This regulation sets out the requirements for a commissioned high school of the first class; for a continuously commissioned high school; for a certified high school; for a conditionally certified high school and for public junior high schools. The regulation provides that to be recognized as a commissioned high school of the first class the school must meet "all regular standards" and the following additional ones (here follows numerous enumerations of requirements). The first of these "additional ones" is the requirement that "the school term is at least thirty-six weeks in length."

Likewise to be recognized as a continuously commissioned high school, the school must meet "all regular standards and the following additional ones," setting out a number of such additional requirements, the first being that "the school term is at least thirty-six weeks in length."

Likewise to be recognized as a certified high school the school is required to meet "all regular standards and the following additional ones," the first of which "additional ones" being that "the school term is at least thirty-two weeks in length."

Likewise to be recognized as a conditionally certified high school, the school is required to meet "all regular standards and the following additional ones," the first of which being that "the school term is at least thirty-two weeks in length."

It is not quite clear as to what is meant by "all regular standards," or as to just what is meant by the terms—commissioned high schools of the first class, continuously commissioned high schools, certified high schools and conditionally certified high schools. I desire to say, however, that I find no statutory authority for such a terminology as a certified high school or a conditionally certified high school, and the only authority which I find for the terminology used in said regulation and applying to commissioned high schools is the

statute which classifies the public schools of the state into elementary schools and high schools with the sub-classification of high schools into commissioned high schools and non-commissioned high schools. The section of the statute referred to is Section 28-3413 of Burns' Indiana Statutes Annotated 1933, which provides as follows:

"The public schools of the state shall be and are defined and distinguished as (a) elementary schools and (b) high schools. The elementary schools shall include the first eight (8) years of school work, and the course of study for such years (that) which is now prescribed or may hereafter be prescribed by law. The commissioned high schools shall include not less than four (4) years' work following the eight (8) years in the elementary schools. The high school course in the noncommissioned high schools shall be uniform throughout the state and shall follow a course to be established and amended or altered from time to time, as occasion may arise, by the state board of education."

The above provision is Section 1 of Chapter 191 of the Acts of 1907. Section 2 of this Act, as amended in 1919 and in 1923, takes the section number 28-3418 of Burns' Indiana Statutes Annotated 1933, and lists, or enumerates, the subjects which must be taught in all commissioned high schools.

It will be observed from examination of Sections 28-3413 and 28-3418 of Burns' Indiana Statutes Annotated 1933, that while attempting apparently a definition of a commissioned high school, obviously they leave many of the details unprovided for. An example of this is the fact that the statute provides that the commissioned high schools shall include "not less than four (4) years' work." There is nothing in the statute which indicates what is meant by "four (4) years' work"—whether it is intended to require four years of twelve months, four years of nine months, four years of eight months, or a lesser amount. It is true that in the 1899 Act, Section 2 of Chapter 192 of the Acts of 1899, the school trustees are required to maintain in each school corporation a term of school "at least six (6) months in duration," but it is doubtful whether this provision should be read into the Act for the classification of schools already referred to. At any rate it is

significant that in 1911 recognition was given to the fact that the term required for a commissioned high school might be longer than the minimum term for the elementary schools in the same school unit. Note the provision of Section 28-4003 of Burns' Indiana Statutes Annotated 1933, which provides as follows:

"In any township or incorporated town in which a noncommissioned or a commissioned or certified high school has been or may hereafter be established, when the school trustee of such township or the school trustees of such incorporated town deem it unwise or inexpedient to continue the term of the elementary schools for the period required for a commissioned or a certified high school, said trustees are authorized to continue the noncommissioned, commissioned or certified high school of said school corporation for a term not to exceed that required for a commissioned high school."

Incidentally, this is the earliest reference in the statutes to a certified high school"—a term which is nowhere defined in the statutes.

As I have stated, Section 28-3413 and Section 28-3418 of Burns' Indiana Statutes Annotated 1933, while outlining the subjects to be taught in the commissioned high schools and the number of years of high school work required in the commissioned high schools, it is obvious that much detail covering the subject of length of term especially, a uniform curriculum or curriculums, possibly the excellence of the teaching staff, necessary equipment in teaching and perhaps many other things may be regarded as having a practical relation to the establishment of standards for high schools. When I examine the statutes, however, to determine the authority for filling in these details, that authority is not entirely clear.

I find in the 1865 Act, Chapter 1 of the Acts of 1865, which may be regarded as the basis of our present school laws, under the general subject of duties and powers of the Board of Education, the following:

"Said board, at its meetings, shall perform such duties as are prescribed by law, and may make and adopt such rules, by-laws and regulations as may be

necessary for its own government, and for the complete carrying into effect the provisions of the next section of this act, and not in conflict with the laws of the state; and shall take cognizance of such questions as may arise in the practical administration of the school system not otherwise provided for, and duly consider, discuss and determine the same."

Section 28-403, Burns' Indiana Statutes Annotated, 1933.

Special attention is called to the provision authorizing the Board to take cognizance of "such questions as may arise in the practical administration of the school system not otherwise provided for, and duly consider, discuss and determine the same."

Insofar as the standards which are required for a commissioned high school are not otherwise set out in the statute, I think the Board of Education, deriving its power from the above provisions, may very well set up reasonable standards which are not inconsistent with the statutory provisions. This, at least, seems to have been recognized as applied to length of term, especially, for a number of years. In addition to the provision in the 1911 Act already referred to, Section 28-4003 of Burns' Indiana Statutes Annotated 1933, I find the recognition of this authority in the Board in the various School Relief Acts beginning in 1919 where almost the identical language of the present act is used.

Acts of 1919, pp. 840, 841;

Acts of 1921, p. 541;

Acts of 1925, p. 503.

It will be noted from all of these Acts, including the present Relief Act, that it is contemplated that some evidence that a given school has attained the requirements for a certified high school or a commissioned high school, is to be issued by the Board.

It follows from the foregoing review of the various legislative Acts bearing upon the subject, that legislative recognition has apparently been given to the authority of the Board of Education to set up such reasonable requirements for commissioned and certified high schools as are not inconsistent

with the provisions of the statutes themselves, which can be considered as bearing upon the subject of classification of such schools.

There remains to consider what must be regarded as your major question, I think, as to whether a school corporation otherwise entitled to state aid may participate in the Relief Fund required to maintain a commissioned high school operated by such school unit for the minimum term required for a commission, or if it is a certified high school, for the minimum term required for a certified high school. This question requires a consideration, from the standpoint of interpretation, of Section 3 of the 1933 Common School Relief Fund Act, which provides, among other things, in part as follows:

“Whenever any trustee of any township or board of trustees of any school town or school city, shall ascertain that there is not a sufficient amount of revenue from all other sources in his or their hands to enable him or them to maintain the public elementary schools therein for a term not to exceed eight (8) months in such current school year, *or the public commissioned or certified high school for the minimum term required of such commissioned or certified high school*, he or they, as the case may be, shall certify in writing and under oath, such fact to the county superintendent of his or their county.” (Our italics.)

The certificate thus required must contain a statement of the rate of the levy for local tuition and special school fund for current operating expenses; also the taxes on each taxable poll made for the supplementary tuition tax in the year immediately previous to the school year in which the deficiency occurs; also the full amount received from other special funds; also the names and number of teachers employed and other items which would reflect the total cost of education in the school unit involved and

“* * * an estimate of the amount that will be necessary over and above the tuition and special school revenue then on hand for those purposes to complete such a term in all the public elementary schools in such school corporation, *or the public commissioned or certified high school for a minimum term prescribed*

for holding a commission or certificate from the Board or Department of Education or both.” (Our italics.)

Burns' Indiana Statutes Annotated 1933, Section 28-903.

It seems to me that the italicized language quoted from said section can admit of only one construction and that is that such schools are entitled to state aid if otherwise entitled to it, to maintain their commissioned or certified high schools for the minimum term prescribed for holding a commission or certificate. In this connection, however, it should be remembered that the language used is “commissioned or certified high school” and if there are grades of such high schools, as the regulation attached to your request would indicate, state aid could only be used for the purpose of meeting any deficit occasioned by the maintenance of such a school of the lowest grade. In other words, referring to the regulation, a “continuously commissioned high school” would evidently be a commissioned high school, and if there are any other commissioned high schools with less requirements as seems to be contemplated by the language “all regular standards,” that would be the commissioned high school referred to in the statute.

Your question is answered accordingly.

AUDITOR OF STATE: Gasoline Tax—Status of post exchanges under the Indiana law and federal statute.

July 15, 1942.

Hon. Richard T. James,
Auditor of State,
Indianapolis, Indiana.

Dear Mr. James:

I have before me your letter relative to sales of motor fuel to Post Exchanges and the sale by such Exchanges of motor fuel thus acquired. You submit four questions. The first question is: