OFFICIAL BOND: School city treasurer's, condition not covering National Defense Training program funds.

Treasurer: Of City's school bond for National Defense Training program funds.

August 20, 1940.

Mr. Floyd I. McMurray,
State Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have your inquiry as to whether or not the official bonds which have been given by city school treasurers afford protection for such National Defense Training Funds as may be sent to them by the State Treasurer for the payment of claims arising out of the National Defense Training program. The State Treasurer receives such funds pursuant to an Act of Congress making appropriation in the following language:

"for payment to States, subdivisions thereof, or other public authorities, through certification from time to time made by the United States Commissioner of Education to the Secretary of the Treasury of the name of such agency and the amount to be paid, such payment to be made prior to audit and settlement by the General Accounting Office, for the cost of courses of less than college grade, provided by such agencies and approved by the United States Commissioner of Education, which plans shall include courses supplementary to employment in occupations essential to the national defense and pre-employment refresher courses for workers preparing for such occupations selected from the public employment office registers."

While funds so appropriated and received may not be expended for any regular public school program, it has been found that the administration of the defense training program may be efficiently handled with the cooperation of officers of local school corporations, one phase of such local cooperation consisting of making payment, out of funds furnished for that purpose, of claims which have been allowed in conformity with the Act, rules and regulations.
In determining whether the bond given by a city school treasurer would cover such funds coming into his hands for the above purposes, it is essential to decide whether his duties with reference to such funds are required by law. Section 49-112 provides:

“All official bonds shall be payable to the State of Indiana; and every such bond shall be obligatory to such State, upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof.”

(Section 49-112—Burns’ Indiana Statutes Ann., 1933.)

While our courts have recognized that there is liability upon an officer’s bond for acts of the official performed under color of his office (State ex rel. v. Walford, 11 Ind. App. 392) in determining whether color of office existed the courts have announced the following rule:

“That a surety on an official bond is only answerable for the acts of his principal while engaged in the performance of some duty imposed by law is generally admitted. * * * But where an officer, though he assumes to act as such, commits a wrong under circumstances where the law does not impose upon him any duty to act at all, the wrong is not a violation of any official duty, and consequently is not embraced within the sponsorship of the surety. Hawkins v. Thomas (1891), 3 Ind. App. 399.”

(State ex rel. Reichard (1915), 59 Ind. App. 338.)

The fact that by the terms of an officer’s bond liability is assumed for all moneys that shall come into his hands is held insufficient to support liability for moneys received outside of any statutory authority. (Murfree on Official Bonds—Sec. 649.)

Applying the foregoing principles to the situation involved in your inquiry it is to be noted that there is no statute authorizing treasurers of school cities to receive or disburse funds
used for purposes of the defense training program. Nor is
their designation as such fiscal officers of the program made
pursuant to any statute conferring the power of, and requiring
their designation as such fiscal officers. However convenient,
practical and reasonable it might be to have such treasurers
perform these duties, their present official bondsmen would
not be liable for a loss of such funds in their hands.

PUBLIC SERVICE COMMISSION: Jurisdiction of Commiss-
on in matter of discontinuance of train service, whether
bankruptcy affects the question. Power to make rules.
Validity of Rule 1R.

Bankruptcy: Reorganization of corporate structure of
August 27, 1940 Railroad Corporation, whether action of
Bankruptcy Court ordering discontinuance of train serv-
ice supersedes jurisdiction of Commission.

August 27, 1940.

Hon. Perry McCart,
Chairman Public Service Commission,
Indianapolis, Indiana.

Dear Mr. McCart:

This is in answer to your request of August 20, 1940, in
which you ask me to advise the Commission as to its authority
and duty under a situation which has to do with the discon-
tinuance of two passenger trains on the Chicago, Indianapolis &
Louisville Railway Company.

You state that on the 9th of November, 1939, Holman J.
Pettibone, trustee for the Chicago, Indianapolis & Louisville
Railway Company, filed a petition before the Public Service
Commission seeking an order which would authorize the
discontinuance of passenger trains, No. 32 and No. 33, which
operate between Chicago, Illinois, and Indianapolis, Indiana.
The trains carry baggage, mail, and express, but no freight.
The petition of the trustee avers that the cost of operating
the two trains in the year 1938 exceeded the total operating
revenue for the same period by $75,079, and also, that during
the years 1937 and 1938, and the first eight months of the
year 1939, the railroad, in its entirety, was operated at a
financial loss. It is also stated that there are ten trains each