

1975 O. A. G.

OFFICIAL OPINION NO. 13

August 19, 1975

Honorable Adam Benjamin, Jr.
Indiana State Senator
3637 Grant Street—Suite 7
Gary, Indiana 46408

Dear Senator Benjamin:

This is in reply to your request for my official opinion on the following question:

“Whether the Indiana Higher Education Telecommunication System may utilize (a) specialized communication carriers or (b) instructional television fixed service, both licensed by the FCC, to extend their network service.”

ANALYSIS

I.

The Indiana Code of 1971, Section 20-12-12-1, authorizes the trustees of the state universities to provide for broad dissemination of a variety of educational communications by the use of a multi-purpose, multi-media, closed circuit, state-wide telecommunications system. Pursuant to Indiana Code of 1971, Section 20-12-12-1, this telecommunications system is to be furnished by “communications common carriers subject to the jurisdiction of the public service commission of Indiana.” Thus, under the Indiana Code of 1971 provision, communications systems must be furnished by common carriers who are subject to the jurisdiction of the Public Service Commission of Indiana (PSC), even though they are subject to the jurisdiction of the Federal Communications Commission (FCC).

However, as you noted in your opinion request, Acts of 1975, Public Law Number 343 (House Enrolled Act Number 1101), in making an appropriation to the Indiana Higher Education Telecommunications System (IHETS), the body

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which administers the system established by the Indiana Code, Section 20-12-12-1, adds the following language to that appropriation:

“This appropriation shall be used for a telecommunication system furnished by specialized or common communication carriers subject to the jurisdiction of Federal communication or public service commission.”
Public Law Number 343 at p. 1880.

The Appropriation Act indicates that the Indiana General Assembly may have wished the IHETS to use a system furnished by FCC-licensed specialized and common carriers in addition to the authority already granted by Code Section 20-12-12-1 to use a system furnished by common carriers under PSC jurisdiction. That wish, however, runs afoul of Article 4, Section 19, of the Constitution of Indiana, which provides that a legislative act “shall be confined to one subject and matters properly connected therewith.” Public Law Number 343 makes appropriations for the monetary operation of state government for the period between July 1, 1975 and June 30, 1976 and, in Section 26, continues those appropriations for the period July 1, 1976 to June 30, 1977 in the event the 1976 Indiana General Assembly fails to enact a new appropriation law by March 15, 1976. By enacting this appropriation law, the General Assembly has authorized the amounts of money it deems proper for already established state agencies to spend during the period designated. But an appropriation law cannot constitutionally alter permanent, non-appropriation provisions of the Code.

The factual situation here should thus be distinguished from that in Official Opinion No. 9, issued earlier this year, which concluded that the 1975 Appropriation Act, Public Law Number 343, financially controlled temporarily for the period of the appropriation where its provisions and those Code provisions governing freedom of choice grants administered by the State Scholarship Commission were inconsistent. The question there was whether the State Scholarship Commission had the authority to reduce the amount of renewal grants where the General Assembly had not appro-

priated an amount sufficient to make full awards under the pattern established by the Commission two years previous. The affected Code provisions there concerned the precise subject of the Appropriation Act, namely, the amounts of money available for expenditure by a state agency. Furthermore, the Scholarship Commission *had the prior basic legal authority* under the Indiana Code of 1971 to adjust payments and was proposing only to reduce the grants in proportion to the reduced appropriation.

II.

Whereas the first part of your question concerns the authority of IHETS to utilize the capabilities of others, whether they be specialized or common carriers, the second part of your question as to whether instructional television fixed service (ITFS) may be utilized by IHETS turns on the authority of IHETS to provide services itself since ITFS is not a service supplied by a carrier but rather is a system using special frequencies available only to educational institutions under an FCC license. The Indiana Telecommunication System Law, Indiana Code of 1971, Sections 20-12-12-1 to 20-12-12-6, indicates IHETS does have that authority.

When this law first was enacted in 1967, there was no statewide system in existence. By providing in the Indiana Code of 1971, Section 20-12-12-1, that IHETS should arrange for a system furnished by common carriers, the Indiana General Assembly merely indicated that IHETS should not itself get into the carrier business but rather should lease lines of communication. The Indiana Code of 1971, Section 20-12-12-1 added, however, that “[s]uch transmission system shall be so designed as to permit the installation of additional capacity and coverage as accumulating communication needs of higher education may require.” And, in the Indiana Code of 1971, Section 20-12-12-6, which creates a special fund for the program, authorization is given to expend money, *inter alia*, “for equipment for the originating and receiving of instructional communication and educational information by means of such telecommunications system.” When all of these sections are read together, the intention of the Indiana

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General Assembly hardly can be interpreted as restricting IHETS to contracting with others for the performance of its non-carrier-related functions. Of course, the ultimate question of whether IHETS may hold an ITFS license must be determined by the FCC pursuant to its ITFS regulations. 47 CFR §§ 74.901 to 74.984.

CONCLUSION

It is, therefore, my Official Opinion that the Constitution of the State of Indiana places the power of the public purse in the Indiana General Assembly, which controls it through its Appropriation Acts. Appropriation Acts are limited by the Indiana Constitution to the subject matter of money. They cannot create, amend, or repeal the substantive laws. The Constitution requires that every Act which creates, amends, or repeals substantive laws shall be a separate subject Act.

Accordingly, funds appropriated by the Indiana General Assembly to the Indiana Higher Education Telecommunications System (IHETS) must be spent in accordance with the Indiana Telecommunications law (Indiana Code of 1971, Section 20-12-12-1, *et seq.*). This law would permit the Indiana Higher Education Telecommunications System to apply for a license issued by the Federal Communications System for instructional television fixed service. The law does *not* presently permit the Indiana Higher Education Telecommunications System to use specialized communications carriers which are not subject to the jurisdiction of the Public Service Commission of Indiana.