

**PUBLIC INSTRUCTION, SUPERINTENDENT OF: Physical education, use of appropriation for same.**

May 11, 1937.

Hon. Grover Van Duyn,  
Assistant Superintendent of Public Instruction,  
Department of Education,  
Indianapolis, Indiana.

Dear Mr. Van Duyn:

I have before me your letter dated May 4, 1937, calling attention to chapter 149 of the Acts of 1919 entitled "An Act to provide for the establishment, maintenance and supervision of courses in physical education in the elementary, high schools and accredited schools of the State." Section 9 of this Act provides that "the sum of five hundred dollars or such part thereof as may be needed is hereby appropriated annually for the enforcement of the provisions of this Act." You submit the following questions:

"May the State Board of Education have printed a handbook of source materials and services available to teachers of health and physical education from educational and semi-educational agencies?"

"May the State Board of Education use this appropriation to pay a part of the salary of a physical education supervisor or an assistant supervisor for the State?"

"May the State Board of Education use this appropriation for the purpose of purchasing materials connected with the State program of physical education?"

The above Act constitutes sections 28-1409 to 28-1418, inclusive, of Burns Indiana Statutes, Annotated (1933). The first section, among other things, authorizes the State Board of Education to prescribe suitable courses of instruction in physical education in accordance with the provisions of the Act. The second section sets out the aims and purposes of the Act. The third section, among other things, makes it the duty of local school officers of school corporations in which courses in physical education are established in accordance with the Act "to provide for, install and enforce such courses of physical education as may be prescribed by the State Board

of Education, \* \* \*." Other sections provide as to the qualifications of teachers for teaching physical education, the joining of school corporations for the purpose of employing such teachers, authorize the State Board to require normal schools to teach the subject as a part of normal school instruction, and other similar matters.

I desire to quote section 6 of the Act which provides as follows:

"It shall be the duty of the State Superintendent of Public Instruction, with the advice of the State Board of Education, to adopt and promulgate such rules and regulations and to employ such special assistants, from time to time, as may be necessary to secure the establishment and maintenance of courses in physical education in the elementary and high schools and accredited schools of the State in accordance with the provisions of this Act."

Burns Indiana Statutes, Annotated (1933), Section 28-1414.

I think the above section is sufficient authority in and of itself to authorize the use of a part of the appropriation referred to earlier in this opinion to employ a special assistant or supervisor to accomplish the enforcement of the provisions of the Act. Your second question is answered in the affirmative, although strictly speaking the employment, apparently, is to be made by the state superintendent with the advice of the State Board.

The answer to your first question is not so clear. I do not see any authority in the Act to use the appropriation for the printing of a text book. That does not appear to me to be a part of the enforcement of the act unless there are no such books available. However, the prescribing of a course of study which is authorized may possibly justify the inclusion of such source materials as will elucidate the course. With the above limitation your first question is answered in the affirmative.

Your third question is too general to justify a categorical answer. The appropriation may be used in the enforcement of the Act, and, if the purchase of such materials as are described in your third question can be said to be a part of such enforcement, an answer in the affirmative is indicated,

although, from the limited information contained in your question, I do not see how such purchases would sustain any real relation to *enforcement*. As the question stands, and without further information to show exactly what is intended, the question is answered in the negative.

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**ADJUTANT GENERAL, DIVISION OF: Public officials,  
right of mayor of city to hold commission in State Militia.  
National Guard.**

May 12, 1937.

Captain Norman E. Hart,  
139th F. A.,  
Commanding 2nd Engineers,  
Princeton, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 11, in which you submit two questions as follows:

*“First:* Is the position of an officer in the National Guard a lucrative office as defined in section 9, article 2?

*“Second:* Mayor Hall, by virtue of his office as mayor, acts as City Judge of the City of Princeton, and as such has been construed to be a judicial officer of the State, and does section 16, article 7, prohibit such a judicial officer from holding a commission in the National Guard?”

In reply to these questions beg to say that article 2, section 9, of the Constitution of Indiana, provides that,

“\* \* \* nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted: Provided, that offices in the militia to which there is attached no annual salary \* \* \* shall not be deemed lucrative:”

I am informed by the Adjutant General of this State that officers in the state militia, below the rank of major, do not receive an annual salary. It is my opinion, therefore, that your first question should be answered in the negative insofar as such section of the constitution forbids holding two lucrative offices.