PUBLIC INSTRUCTION, SUPERINTENDENT OF: Power of State Board to make rules for distribution of relief fund; limitations on such power.

May 26, 1937.

Hon. Grover Van Duyn,
Assistant Superintendent,
Department of Education,
State House,
Indianapolis, Indiana.

Dear Mr. Van Duyn:

I have before me your letter dated May 21 referring to chapter 167 of the Acts of 1933 with reference to the power of the Board of the Department of Education in authorizing the distribution of the school relief fund provided for by said Act, and submitting the following question:

> "May the Board of the Department of Education establish regulations based upon any one or more of the following items as an eligibility qualification regulation for a town school corporation to receive State school relief money as provided for in section 1 of this Act:
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> a. A minimum assessed valuation.
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> b. A minimum average daily attendance of resident children.
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> c. The financial status of the township in which the town school is located."

Section 1 of said Act provides for the levy of seven cents on each one hundred dollars worth of taxable property in the State and fifty cents on each taxable poll in the State which, when collected, shall be paid into the State treasury for a common school relief fund and apportioned to the several school taxing units in the manner provided in the Act.

Acts of 1933, page 863.

Section 2 of the Act provides that the fund collected shall be distributed to the several school taxing units of the State *"under regulations and orders to be promulgated from time to time by the Board of the Department of Education."*

Acts of 1933, page 863.

Section 3 of the Act, among other things provides the conditions which must exist to authorize an application for State relief and as to what the application must contain.

Acts of 1933, pages 864 and 865.

Section 4 of the Act provides what the county superintendent must do when an application is filed with him and indicates very clearly that the Board of the Department of Education may prescribe, by regulation, the extent of the supplementary tuition and special school tax which must have been levied locally to enable any given unit to receive State relief.

Acts of 1933, page 865.

Section 5 of the Act provides in part as follows:

> "Upon receipt of such statement from the county superintendent, the Board of Department of Education shall make a thorough examination of such statement, and for the purpose of determining the amount which shall be allocated to such school taxing unit out of the funds provided for in section one of this Act, shall submit such statement and all supporting files to the State Board of Accounts, which board shall thereupon proceed through its State examiner, deputy examiner, or field examiner to make a thorough audit of same *under and pursuant to the rules and regulations promulgated by the Board of Department of Education* and shall certify its findings to the Board of Department of Education.
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> "* * * The said Board of Department of Education shall thereupon, *under and pursuant to the regulations heretofore promulgated by such Board of Department of Education, as in this Act provided,* determine the amount of such relief fund which shall be allocated to the said school taxing unit and shall thereupon certify the said determination to the auditor of state. * * *" (Our italics.)

Acts of 1933, pages 865 and 866.

Section 6 of the Act, which is the section dealing especially with the powers of the Board in making rules and regulations, provides as follows:

"The Board of Department of Education shall have and is hereby given full power and authority to promulgate regulations and issue its orders from time to time defining and setting forth the terms and conditions upon which the various school taxing units of the State may avail themselves of any portion of said relief fund provided for by section 1 of this Act; *Provided, however,* That nothing in this section shall be construed as any limitation whatsoever upon the power and authority of the Board of Department of Education to determine finally the amount of such relief fund which shall be allocated to any school taxing unit in any year under the provisions of this Act; and, *Provided, further,* That the said regulations and orders of the Board of Department of Education issued under and pursuant to the terms of this Act, shall, when so promulgated and issued, have the full force and effect of law."

Acts of 1933, pages 866 and 867.

All school relief legislation where the relief granted is extended to less than all the units in the State system to be determined upon some defined basis, rests upon the theory that common school education is a state-wide obligation whether the terms and conditions upon which the units to receive aid is fixed is determined by the legislature or by some administrative agency authorized so to do by the legislature. The legislature, however, is without power to pass local or special laws "providing for supporting common schools" (Article 4, section 22, Indiana Constitution) and I think the same would necessarily apply to rules and regulations of any administrative agency to which such a power has been delegated.

It will be observed that section 6, *supra,* contains a very broad delegation of power to the Board of the Department of Education to "promulgate regulations and issue orders defining and setting forth the terms and conditions upon which the various school taxing units of the State may avail themselves of any portion of said relief fund." Such regulations, however, cannot be arbitrary, local or special; and any regulation of the type suggested by your questions would have to

meet the constitutional test already indicated as respects acts of the General Assembly "providing for supporting common schools."

The several subdivisions of your question all relate to the classification of the several school units of the State separating them into two classes, one of which would be entitled to State relief and the other not entitled to such relief. In the first place, to justify the classification as general and not arbitrary, it must be based upon some point or points of differentiation related to the purpose of the classification and must reasonably tend to effect that purpose. Unfortunately the statute is not very clear upon that subject, but I think it is fair to assume that since the purpose is relief in order to furnish not less than a fixed minimum educational standard throughout the State, such classification must be based primarily upon need, notwithstanding relatively similar local tax burdens. I think this would clearly authorize the Board to fix a reasonable minimum of local taxation (referring to rate) throughout the State which must be first levied in order to entitle any local unit to apply for aid.

It is very clear, however, that while the levying of a uniform minimum rate of local taxation as a condition to the extension of State aid operates uniformly throughout the State as to the local taxpayer, it may not operate uniformly viewed from the standpoint of an equitable division of the fund. Take, for example, the first factor referred to in your question—"assessed valuation" for taxation. If the assessed valuation in any particular unit is low, the minimum rate applied to it will raise less money than where the "assessed valuation" is high. Consequently, assuming that both units are entitled to some State relief, the one where the "assessed valuation" is high will receive less State aid. This low "assessed valuation" may be caused by the fact that, while the territory embraced in it is large enough to justify its continuance as a separate unit, the property valuations are actually low. On the other hand, it may be that the low assessed valuation is caused by the smallness of the unit, or it may be caused by a combination of both the smallness of the unit and the impoverishment of its people.

The question arises as to whether this situation may be taken into account and a more equitable division of the fund secured by making as a condition to participation in the fund

not only the requirement of a fixed minimum rate of taxation, but, as to towns, the requirement of a fixed minimum assessed valuation also. If the establishment of such a rule would have the effect of making it impossible for the citizenship of certain towns to avail themselves of the benefits of the Act under consideration upon the sole basis of inadequacy of taxable valuation of the unit in which they live, I would think that such a rule would be invalid. But, as I understand it, such a rule would not have that effect. A town with a population of less than two thousand inhabitants may legally turn over the control of its schools to the township in which it is located, and it may do this without any concurring act on the part of the township.

Burns Indiana Statutes, Annotated (1933), sections 28-1205 to 28-1207.

Thus a town, with an insufficient "assessed valuation" and for that reason deprived of participation in the fund by such a rule, could surrender control of its schools to the township and thereby obtain for its citizens a participation in State aid if the township had made the required levy. It may be that that is a sufficient compliance with the constitutional requirement of general laws "providing for supporting common schools." Classification undoubtedly is permitted by section 22 of article 4 of the Constitution, if same is reasonable and based upon some ground of difference related to the object to be attained by the classification, and, as applied to a situation such as is now under consideration, does not deprive any part of the State of participation in the fund upon the same relative basis of need.

The question in my opinion, however, is so close that I can not categorically answer it as stated. The rule, to be valid, must be so drawn as to make its operation uniform throughout the State. The right to participate must not be made to depend upon the action of a school unit outside of the unit involved. The minimums fixed must be justified upon the basis of the accomplishment of the real purpose of the Act under consideration and to secure a reasonably equitable division of the fund.

Having in mind the foregoing observations, in my opinion a valid rule could be drawn which would in a measure take into consideration some, and possibly all, of the factors indi-

cated in your question, but I do not desire to commit myself further in the absence of the proposed rule. When such a rule is submitted, I shall be glad to enter upon a further consideration of it and to advise with reference to its legality.

ACCOUNTS, STATE BOARD OF: County clerks, fee allowed for admissions of persons to State institutions.

May 28, 1937.

Hon. W. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 24, in which you submit the following question:

> "Chapter 39 of the Acts of 1937, provides in part, as follows:
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> "'(B) For all duties required in connection with the admission of persons into and discharge from any hospital for the insane, the Fort Wayne State School, the Muscatatuck Colony, the Indiana Village for Epileptics, and the James Whitcomb Riley Hospital for Children, the clerk shall be entitled to receive the sum of $5.00 for each person, which shall be paid for the county treasury and which shall be the personal property of the clerk.'
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> "Does the above quoted provision entitle the clerks of circuit courts to receive $5.00 for each person admitted into the institutions mentioned and $5.00 for each person discharged therefrom, or is the clerk entitled to one $5.00 fee for each person covering both admission and discharge? If you hold that the $5.00 fee covers both the admission and discharge, is the clerk entitled to draw the $5.00 at the time the person is admitted?"

It will be noted that section 22-1219, Burns Indiana Statutes, 1933 Revision, imposes certain duties upon the clerk of the court in the discharge of any patient from a hospital for