

Governor, have authority to enter into such contracts and agreements as are necessary to carry out the purpose of the Act. Since this money is not available, however, until July 1, 1938, payment of the contractual obligations cannot be made until that time and then only to the amount of money on hand within the particular fund and available for such purpose. You should further bear in mind that contracts in excess of the appropriation are absolutely void.

Williams v. City of Michigan City, 100 Ind. App. 136.

Subject to these limitations, it is my opinion that the board, as set up in the Act above quoted, has authority to now proceed in the discharge of their duties.

PURDUE UNIVERSITY: Appointment of trustees—term of office.

September 3, 1937.

Honorable M. Clifford Townsend,
Governor of the State of Indiana,
State House,
Indianapolis, Indiana.

My dear Governor:

This will acknowledge receipt of your request for an official opinion as to the length of term for which trustees for Purdue University should be appointed.

In regard to this question your attention is directed to chapter 45 of the Acts of the Indiana General Assembly of 1865, authorizing the acceptance of certain congressional land tracts for the purpose of the endowment, support and maintenance of at least one college for the teaching of such branches of learning as are related to agriculture and the mechanic arts. Section 2 of this Act reads as follows:

“That the Governor of this state, for the time being, and Alfred Poland (Pollard), of Gibson; Smith Vawter, of Jennings; Henry Taylor, of Tippecanoe, and Lewis Burke, of Wayne, and their successors, are created a body corporate, under the name of The Trustees of the Indiana Agricultural College.”

Acts of 1865, page 110.

The name of this institution was subsequently changed in 1869 to Purdue University.

Section 28-5606, Burns Indiana Statutes, Annotated, 1933 Revision.

In 1921 the Board of Trustees was increased to nine members and certain provisions were made for the appointment of such trustees, and after the appointment provided for in the Acts of 1921, the following provision was made:

“All succeeding and subsequent trustees, whether selected by the Purdue Alumni Association or appointed by the Governor, as in this section provided, shall serve for a period of three (3) years.”

Section 28-5614, Burns Indiana Statutes, Annotated, 1933 Revision.

The question, therefore, arises as to whether or not the State Executive-Administrative Act, the same being chapter 4 of the Acts of the Indiana General Assembly of 1933, and particularly section 6 thereof, controls in the appointment of trustees for Purdue University. Section 6 of said above mentioned Act reads as follows:

“That the Governor, being vested with the executive powers of the state, be and he is specifically authorized and empowered to appoint and commission each and every officer, employee or servant of the executive, including the administrative department of the State of Indiana, except as hereinafter stated; and the tenure of office, employment or service of each and every officer, employee or servant of the executive, including the administrative department, shall continue at the pleasure and discretion of the Governor, except in the appointments of the deputy secretary, the deputy auditor, the deputy treasurer of state, the deputy state superintendent of public instruction, and the secretary to the lieutenant-governor.”

Acts of 1933, page 9.

It will be noted by the above section that the Governor is authorized and empowered to appoint every officer, employee

or servant of the executive, including the administrative departments of the state. Since the trustees of Purdue University are by legislative enactment created a body corporate, they constitute a distinct and separate legal entity and cannot be classed as either officers, employees or servants of any department of state.

It is my opinion, therefore, that the trustees of Purdue University should be appointed for a statutory period of three years.

ACCOUNTS, STATE BOARD OF: Gasoline tax funds, appropriation by county council required annually.

September 7, 1937.

Hon. Wm. P. Cosgrove, State Examiner,
Department of Inspection and Supervision,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of September 3 in which you submit the following questions:

"1. Will the balance of county highway funds on hand December 31, 1937, which has not been used for maintenance and repair of highways during 1937, be placed in the construction account of such county?"

"2. Is it necessary for the county council to appropriate motor vehicle highway funds, which chapter 135 of the Acts of 1937 provides shall be used for construction and reconstruction of highways under the supervision of the State Highway Commission? (See sections 4 and 6.) If your answer is in the affirmative, must such appropriation be made at the annual meeting of such council?"

"3. If all of the estimated receipts of a county from the motor vehicle highway account for the year 1938 are not budgeted for maintenance of highways, is the surplus placed in the construction account by the provisions of the Act, or is it necessary for the county council to make appropriation of such surplus for construction, upon request of the Board of County Commissioners?"