

body in accordance with the provisions of the Act creating such body are, in effect, a part of the statute.

Wallace v. Dohner, 89 Ind. 416.

The specific provision of section 5 (g), *supra*, gives the state department broad powers to make such rules and regulations as are necessary or desirable to carry out the provisions of the Act and when so adopted by the state board, have the positive force of law.

Answering your question specifically, I am of the opinion that the state board may lawfully adopt the proposed regulation. I am further of the opinion that when so adopted the state department may lawfully pay such county director from state funds available for reimbursement to such county so long as the county is not harmed thereby.

TREASURER OF STATE: Investment of Purdue Trust Fund. Right of department to use such fund to pay premium on bonds purchased above par.

April 28, 1937.

Department of Treasury,
State House,
Indianapolis, Indiana.

Gentlemen:

I have had under consideration the request of the department for legal guidance with respect to the investment of the Purdue Trust Fund in consideration of chapter 49 of the Acts of 1937, page 287, and the several Acts of Congress relating thereto. A brief summary of the applicable legislation is desirable.

Section 1 of chapter 49 of the Acts of 1937, *supra*, authorizes the Department of Treasury of the State of Indiana to take charge of, hold, manage and invest said fund consisting of three hundred forty thousand dollars (\$340,000.00) for the use and benefit of the trustees of Purdue University, the *entire income* received from said fund to be paid in semi-annual installments to said trustees of Purdue University.

Acts of 1937, page 287.

Section 2 provides that the fund shall be held, managed, controlled and invested in accordance with the applicable

Acts of Congress and in accordance with the terms of the State Act, *supra*.

Acts of 1937, page 288.

Section 3 sets out the type of securities in which the fund may be invested and section 4 pledges the faith of the State that the principal of the fund shall forever remain unimpaired.

Acts of 1937, page 288.

So much of the applicable Act of Congress as is necessary in the consideration of your question, as hereafter stated, is as follows:

“All moneys derived from the sale of lands as provided in section 302 of this title by the states to which lands are apportioned and from the sales of land scrip provided for in said section shall be invested in bonds of the United States or of the states or some other safe bonds; or the same may be invested by the states having no state bonds in any manner after the legislatures of such states shall have assented thereto and engaged that such funds shall yield a fair and reasonable rate of return, to be fixed by the state legislatures, and that the principal thereof shall forever remain unimpaired: Provided, That the moneys so invested or loaned shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section 305 of this chapter), and the interest of which shall be inviolably appropriated, by each state which may take and claim the benefit of sections 301 to 308, inclusive of this chapter, to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.”

Title 7 (1936 Cumulative Annual Pocket Part)
Section 304.

The following, being a part of section 305 of Title 7 U. S. C. A., also should be considered,

“The grant of land and landscrip authorized in the foregoing sections of this chapter shall be made on the following conditions, to which, as well as to the provisions hereinbefore in this chapter contained, the previous assent of the several states shall be signified by legislative acts:

First. If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by the state to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in section 304 of this chapter, except that a sum not exceeding 10 per centum upon the amount received by any state under the foregoing provisions of this chapter, may be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective legislatures of said states.”

Title 7 U. S. C. A. Section 305.

See also Title 7 U. S. C. A. Section 303, which provides as follows:

“All the expenses of management, superintendence, and taxes from date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the states to which they may belong, out of the treasury of said states, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes hereinafter in sections 304 to 308, inclusive, of this chapter mentioned.”

Title 7 U. S. C. A. Section 303.

You state that the department desires to invest said fund

in certain bonds which are obligations of the United States, which investment will involve the payment of a premium. The State Act authorizes and the Congressional Act permits the investment of the fund in United States bonds without limitation as to interest return except that the State Act provides that the authorized securities in which the fund is invested, whatever their type may be, shall bear "such rate of interest as may be currently obtainable."

Acts of 1937, page 288.

Title 7 (1936 Cumulative Annual Pocket Part)
Section 304.

Your first question is as to whether the principal of the fund may be used to pay the premium on United States bonds which are, at the time of the purchase, above par. I think this question must be answered upon the basis of the answer to the further question as to whether the payment of the premium on such bonds is an expense of management of the fund or is, itself, an investment of the fund. In my opinion a practical consideration of this latter question can result only in the answer that the payment of such premium is an investment *pro tanto* of the fund. That is the way it would be considered in the ordinary commercial sense and I see no reason for requiring that it be considered otherwise as applied to the question before me. If then, as I believe to be true, the payment of such premium is an investment *pro tanto* of the fund, no reason is apparent which would prevent the use of the principal of the fund to pay it. In my opinion there is nothing in either the state or the federal legislation which prevents the department from using a part of the principal of the fund to pay the premium on United States bonds purchased at their current price by it.

You next inquire as to whether sufficient of the money received in payment of semi-annual interest coupons as may be necessary to amortize during the unexpired term of the bond the amount paid as premium, may be retained by the department and credited to the fund. I think it can be so done. After all, if that is not done, the department would be required to suffer a diminution of the fund to the extent of the premium paid for no other reason than that it has paid to the trustees as interest a sum in excess of the actual return on the investment for that cannot be called interest which

diminishes the principal. This is not like a loss of principal through a bad investment, which, of course, the department would be required to make good. In this case, the only loss of principal would be the loss sustained by paying to the trustees the full amount received in payment of the interest coupon on the theory that it was the return on the investment when in fact in that amount there is a sum which with other similar sums retained from other similar payments will equal the premium paid so that at the bond's maturity such retained amounts plus the par value of the bond will equal the sum originally invested. Such a treatment of the case gives to the trustees the actual earnings of the fund, which is all that is required.

I am familiar with the case of *People, ex rel. Cornell University, v. Davenport, Comptroller*, (N. Y.) 23 N. E. 664, and while I think the method used by the comptroller in that case in charging the entire premium paid as a payment to the university in a lump sum was improper, I do not think the opinion of the court to the effect that the State must make good the entire premium is sound. Manifestly if the bonds below par were purchased, there would be an accretion to the fund at their maturity which I think would be earnings and would be payable to the trustees. If that is true, by the same token, when bonds are bought at a premium, the premium should be repaid out of the receipts from the payment of interest coupons, since otherwise the trustees would receive *more* than the actual earnings from the investment.

CONSERVATION, DIVISION OF: Abstract of title to real estate, Sullivan County, for fire tower.

April 30, 1937.

E. P. Wilson,
Assistant State Forester,
Conservation Department,
Indianapolis, Indiana.

Dear Sir:

In re: Abstract of Title No. 11457, prepared for Alma Mitchell and William M. Mitchell by Brown Abstract Company, Sullivan County, Indiana, for fire tower site.