

INDIANA UNIVERSITY: Right of Board to use Educational Improvement Fund to retire bonds issued to finance building projects.

November 10, 1937.

Board of Trustees of Indiana University,
Bloomington, Indiana.

Gentlemen:

I have before me your request for an official opinion based upon the following legislation and the Acts of the university pursuant thereto, namely,

In the year 1927 an Act was passed by the General Assembly entitled:

“AN ACT to provide an educational improvement fund for the benefit of Indiana University, Purdue University, the Indiana State Normal School, Terre Haute, and the Indiana State Normal School, Ball Teachers' College, eastern division, Muncie, levying a tax therefor and providing how such funds shall be apportioned and expended, and repealing all laws and parts of laws in conflict therewith.”

Acts of 1927, p. 245.

This Act is chapter 94 of the Acts of 1927. It provided for the levy and collection of a tax of two (2) cents on each one hundred dollars in value of taxable property in the state for the purpose of raising revenue to create and provide an improvement fund for the use and benefit of the above schools. The levy was to be made for each of the years 1927 to 1937, inclusive.

Section 1 of this Act was amended in 1932 (Acts of 1932, p. 9) so as to provide for a suspension of the levy during the years 1932, 1933 and 1934. In 1935 the section as amended in 1932 was again amended so as to provide for a suspension of the levy during the years 1935 and 1936 and so as to provide that the levy should again be made during the years 1937, 1938, 1939, 1940 and 1941. (Acts of 1935, p. 928.) This Act is chapter 190 of the Acts of 1935, the same being approved on March 11, 1935.

In the meantime, an Act approved February 19, 1935, and entitled—

“AN ACT concerning the trustees of Indiana University, authorizing them to borrow and receive money, to use the same and to give security therefor and declaring an emergency”

was passed. This Act is chapter 53 of the Acts of 1935. (Acts of 1935, p. 145.)

Section 1 of the Act authorized the trustees of Indiana University to borrow money for the construction, equipment, furnishing or repair of any building to be used for the purposes of the university and to execute bonds or other instruments, negotiable or otherwise, and contracts for the repayment of any loan with interest. It provided as to the repayment of the bonds that “repayment may be made from any income of the university.”

Section 2 of the Act specifically authorized the trustees of Indiana University to construct and equip an administration building upon the campus of Indiana University and set up the method of obtaining money therefor by the issuance of bonds. This section contained no provision for the repayment of the bonds from “any income of the university,” but section 3 of the Act provided that:

“The specific enumeration of the power granted in section 2 of this Act shall in nowise limit the general power granted in section 1.”

Acts of 1935, p. 147.

Since under chapter 190, *supra*, the Educational Improvement Fund Act, the levy was restored beginning with the year 1937, the question arises as to whether this fund can be legally used to pay the principal and interest of any bonds which may have been issued pursuant to chapter 53 of the Acts of 1935, already referred to.

It will be noted that chapter 53 of the Acts of 1935 provides that bonds issued pursuant to its provisions may be repaid from “any income of the university,” so that there is no limitation as to the use of the Educational Improvement Fund to repay such bonds so far as the Act authorizing the issuance of the bonds is concerned.

The whole question, therefore, is resolved into the question as to whether the Act creating the Educational Improvement Fund is sufficient to authorize the expenditure of the fund for the payment of such bonds. An examination of the Educational Improvement Act and the purposes for which the money thus raised can be expended reveals the fact that such purposes are almost identical with the purposes for which the bonds could be issued under chapter 53 of the Acts of 1935.

For example, the Educational Improvement Fund Act provides that the funds so raised "shall be expended for improvement of, and additions to, the physical property under the control of such boards of trustees." The term "improvement to the physical property" is defined in the Act to include the purchase of real estate (upon the approval in writing by the governor), improvement of real estate, building of new structures, the purchase of equipment for such new structures, and the alteration or betterment of existing structures.

Acts of 1927, p. 246.

The Act authorizing the issuance of the bonds (chapter 53 of the Acts of 1935) provides that the money borrowed pursuant thereto is to be "for the construction, equipment, furnishing or repair of any building to be used for the purposes of the university." The purpose for which the money raised by the bond issue may be expended and the purpose for which the Educational Improvement Fund may be expended are almost identical and I think it is fair to say that if the Educational Improvement Fund is used to pay the principal and interest of bonds, the proceeds of which were used for a purpose within the legal use of the Educational Improvement Fund, the purpose for which the fund was created is being conserved.

In my opinion, therefore, the expenditure of the Educational Improvement Fund created by the Act of 1927, above referred to, as amended in 1932 and 1935, to retire bonds issued to obtain money for a like purpose under chapter 53 of the Acts of 1935 is legal.