

**LEGISLATURE: Boards of State penal and correctional institutions, powers thereof since passage of Public Welfare Act of 1936.**

February 8, 1937.

Hon. Arthur L. Deniston,  
Senate Chamber,  
Indianapolis, Indiana.

Dear Senator:

I have before me your request for an opinion in answer to the following question:

“What are the powers of the boards of trustees of the state’s penal and correctional institutions since the passage of the Public Welfare Act in the Special Session of 1936?”

This question requires a rather extensive research if it is to be answered in detail as to each separate penal and correctional institution in the State. However, I think it will serve your purpose to discuss the powers of the State Department of Public Welfare under the Welfare Act of 1936 and by process of elimination reveal the powers yet remaining in the several boards of trustees of the several institutions.

In defining the duties of the State Department of Public Welfare, section 5 of the Act provides in part that the State Department shall “supervise the operation of the State charitable, penal, reformatory and correctional institutions.” Later on in the section, it is provided that the State Department shall “supervise all correctional activities, including the operation of all of the penal, reformatory and correctional institutions of the State, together with the granting and supervision of paroles for adults of penal and correctional institutions, all supervision of such paroled adults, the inspection of local jails, and the recommendation of clemency to the State Commission on Clemency.” Again in subdivision (o) of section 5, it is provided that the State Department shall “classify the patients and inmates of the respective institutions of the State and transfer patients and inmates from one State institution to another, at will, when, in its discretion, it is deemed advisable for the welfare of the patient or inmate, but no patient or inmate of a benevolent institution shall be trans-

ferred to a penal or correctional institution except in carrying out a previous commitment of a court of competent jurisdiction.”

Acts of 1936, pages 16, 17 and 19.

Certain divisions are created within the Department of Public Welfare, and section 9 in defining the duties of the several divisions provides that “the division of corrections shall have immediate charge of the respective activities prescribed in subsection (e) of section 5 of this set, except as provided in subsection (b) of this section, including the supervision of the State prison, reformatory, the State farm and the woman’s prison.” (Note: Subsection (e) of section 5 referred to above is the second provision which is quoted from section 5, *supra*, and subsection (b) of section 9 referred to above provides that the children’s division shall have immediate charge of the activities prescribed in subsection (c) of section 5, including the supervision of the Soldiers’ and Sailors’ Children’s Home, the School for the Deaf, the School for the Blind, the Girls’ School and the Boys’ School.)

Section 10 of the Act prescribes the method of parole of the prisoners, providing generally that when the board of trustees of any of the penal or correctional institutions have authorized the release of an inmate upon parole, the warden or superintendent shall transmit a certified copy of the order to the State Department which the State Department shall consider and act upon, but no one can be released upon parole without the authorization of the State Department of Public Welfare. The section also provides for the appointment of parole agents by the State Department of Public Welfare and authorizes it to designate the county or other place in the State at which the paroled person must reside while on parole.

Acts of 1936, page 22.

Section 11 (b) of the Act provides as follows:

“All of the rights, powers and duties conferred by law on the Governor, and on the board of trustees and the superintendents or wardens of the respective penal, benevolent, reformatory or correctional institutions of this State to transfer inmates or wards of any one of

such institutions to another such institution, when not otherwise in conflict with any of the provisions of this Act, are hereby continued in full force and effect and are hereby transferred to and conferred upon the State Department, as created by this Act, and shall be held, exercised and performed by the State Department, under the provisions of this Act and the several Acts now in force.”

Acts of 1936, page 22.

Section 118 of the Act provides that:

“Except as otherwise herein provided, nothing contained in this Act shall be so construed as to repeal, modify or abridge the powers of the board of trustees of any of the state penal, reformatory, correctional, benevolent or educational institutions or the powers of the State Probation Commission or the powers of the respective judges of the several courts of this State having jurisdiction over juveniles or adults on probation or who may be placed on probation, or the powers of the State Budget Committee.”

Acts of 1936, page 75.

It will be observed from the above provisions, which I think are the only ones which are important in the consideration of your question, that there are certain clearly defined powers and duties heretofore exercised by certain of the boards which are definitely and specifically conferred upon the State Department of Public Welfare. In other words, the classification of patients and inmates of the various institutions and the transfer of such inmates or patients from one institution to another now rests entirely with the State Department of Public Welfare.

Section 5, subsection (o), *supra*;

Section 11, subsection (b), *supra*.

Moreover, the relation of the several boards to the parole of prisoners has been changed. However, the several boards have the right to institute the procedure for a parole although the final discharge can be only after the approval by the State Department of Public Welfare.

## Section 10, Public Welfare Act of 1936.

As to the other powers which are conferred upon the State Department of Public Welfare which may be considered as limiting the powers and duties of the several boards, they are embraced in the proper construction of the term supervise as used in the quotations from the 1936 Act, which have been quoted earlier in this opinion. It will be noted from an examination of the powers and duties of the State Department of Public Welfare, as set out in section 5 of the Welfare Act, that the powers of the department conferred by that section, generally speaking, are of two characters, namely: the power and duty to administer and the power and duty to supervise. With respect to the penal and correctional institutions, the term always used is supervise as distinguished from administer. I think this is significant, especially in view of the provision of section 118 of the 1936 Act to the effect that the Act shall not be so construed as to repeal, modify or abridge the powers of the board of trustees of any of the State penal, reformatory or correctional institutions except as otherwise provided in the Act.

I shall pass, therefore, to a consideration of what is involved in the term "supervise" as used in the 1936 Act. It is provided by statute in this State that in the construction of statutes, "words and phrases shall be taken in their plain, or ordinary and usual, sense," unless such construction would be "plainly repugnant to the intent of the legislature or of the context of the same statute."

Burns Indiana Statutes Annotated (1933), Section 1-201.

In *Midwestern Petroleum Corporation v. State Board of Tax Commissioners, et al.* (Supreme Court of Indiana), 187 N. E. 882, it was said by the court that "it should be accepted as the rule that non-technical words used in the title of an act, or in the act itself, will be construed according to their ordinary and accepted *dictionary* meaning, unless an intention to convey some other or different meaning can be gathered from the context." (Our italics.)

*Midwestern Petroleum Corporation v. State Board of Tax Commissioners, et al.* (Ind. Sup.), 187 N. E. 882 at page 888.

In Webster's New International Dictionary (Second Edition), "supervise" is defined as "to oversee for directions; to superintend; to inspect with authority; as to *supervise* the printing of a book; also, to exercise supervision over; as to *supervise* a department in a school or business."

The above definition is adhered to in the decisions unless out of harmony with the obvious intent evidenced by other portions of the act in which the use of the word occurs. As said by the court in *State v. Chicago, etc., Ry. Co. (Ia.)*, 130 N. W. 802 at page 804:

"To supervise is to superintend, to direct, to have charge over, with the power of direction."

See also the case of *Great Northern Ry. Co., et al., v. Snohomish County, et al. (Wash.)*, 93 Pac. 924, where the court on page 927 used the following language:

"What is meant by 'general supervision'? Counsel for respondents contend that it means to confer with, to advise, and that the board acts in an advisory capacity only. We cannot believe that the legislature went through the idle formality of creating a board thus impotent. Defining the term 'general supervision' in *Vantongerren v. Heffernan*, 5 Dak. 180, 38 N. W. 52, the court said: "The Secretary of the Interior, and, under his direction, the Commissioner of the General Land Office, has a general "supervision over all public business relating to the public lands." What is meant by "supervision"? Webster says supervision means "to oversee for direction; to superintend; to inspect; as to supervise the press for correction." And, used in its general and accepted meaning, the Secretary has the power to oversee all the acts of the local officers for their direction, or, as illustrated by Mr. Webster, he has the power to supervise their acts for the purpose of correcting the same; and the same power is exercised by the Commissioner under the Secretary of the Interior. It is clear, then, that a fair construction of the statute gives the Secretary of the Interior, and, under his direction, the Commissioner of the General Land Office, the power to review all the acts of the local officers, and to correct, or direct a correction of, any errors committed by them. Any less power than this

would make the "supervision" an idle act—a mere overlooking without power of correction or suggestion.' Defining the like term in *State v. F. E. & M. V. R. R. Co.*, 22 Neb. 313, 35 N. W. 118, the court said: 'Webster defines the word "supervision" to be "the act of overseeing; inspection; superintending.'" The board, therefore, is clothed with the power of overseeing, inspecting, and superintending the railways within the state, for the purpose of carrying into effect the provisions of this act, and they are clothed with the power to prevent unjust discrimination against either persons or places.' It seems to us that the term 'general supervision' is correctly defined in these cases."

The court thereupon continues:

"Certainly a person or officer who can only advise or suggest to another has no general supervision over him, his acts or his conduct."

As bearing upon the proper construction to give to the word supervise, I desire now to notice briefly the meaning of the word administer. Administer means in a very commonly used sense "to manage or conduct as public affairs." An acceptable synonym is given as manage.

Webster's New International Dictionary, Second Edition.

In view of the above definition considered in connection with what has already been said in defining supervise, I think, as already indicated, the use of the above terms in the relations in which they appear in the Act is quite illuminating. The legislature had in mind the creation of a State Department of Public Welfare. That much is very clear. It found, however, that in the field of public welfare as contemplated by the Act, certain agencies already existed which it did not desire to abolish. On the other hand, it desired to extend the State's welfare service in certain particulars, especially in those particulars made necessary to effect a compliance with those provisions of the Federal Social Security Act which required a state plan with responsible state administration, and as to which existing agencies were either lacking or insufficient.

This could be accomplished as to all such cases by establishing direct state administration wherever the Federal Social Security Act required a state plan; or the legislature could create new local agencies under state control; or the legislature could accept existing local agencies and place them under state control. The legislature did some of all three of the above, and I am referring now only to those portions of the Welfare Act of 1936 where compliance with the Federal Social Security Act becomes an important factor. Where direct state administration was contemplated, "administer" was, of course, the appropriate word. Where indirect state administration through other agencies was contemplated, "supervise" was the appropriate word, and to effect its purpose could mean nothing less than control so far as policy and plan was concerned. This, I think, is the explanation of the use of the word "supervise" in coordinating the state legislation with that of the Federal Government.

Is there any ground for giving the term a different meaning when applied to services not affected by the Federal Social Security Act? I doubt whether there is so far as the language itself is concerned. Returning, however, to the statutory rule for the construction of statutes referred to earlier in this opinion, it will be noted that nontechnical words are to be taken in their plain or ordinary and usual sense unless such construction would be "plainly repugnant to the intent of the legislature or of the context of the same statute."

Burns Indiana Statutes Annotated (1933), Section 1-201.

This is only another way of saying that statutes should be construed as an entirety, a rule sustained by numerous authorities.

Woodring v. McCaslin, 182 Ind. 134, 139;  
 Huff v. Fetch, 194 Ind. 570, 579;  
 State, ex rel., v. Lewis, 187 Ind. 564, 569;  
 Kelso v. Cook, 184 Ind. 173, 192.

In the case first above cited, on page 139, the court said:

"It is elemental that all the parts of an act relating to the same subject-matter should be considered together, and not each by itself, and, if possible, such

construction must be given to the several sections as will impart force and meaning to each. As is said in Endlich, Interp. of Stat., Sec. 40: 'Possibly the most important purpose of the construction of all the parts of a statute together and with reference to one another, is that of giving, by means of such comparison, a sensible and intelligent effect to each, without permitting any one to nullify any other, and to harmonize every detailed provision of the statute with the general purpose or particular design which the whole is intended to subserve.'"

Woodring v. McCaslin, 182 Ind. 134 at p. 139.

Having regard to the foregoing rule, I desire now to pass to a more detailed consideration of certain language contained in section 118 of the Act, as follows:

"Except as otherwise herein provided, nothing contained in this act shall be so construed as to repeal, modify or abridge the powers of the board of trustees of any of the state penal, reformatory, correctional, benevolent or educational institutions or the powers of the state probation commission or the powers of the respective judges of the several courts of this state having jurisdiction over juveniles or adults on probation or who may be placed on probation, or the powers of the state budget committee."

Acts of 1936, page 75.

It will be noted that the above provision is an effort of the legislature itself to reveal, negatively it is true, its intention, directing that in the construction of the statute nothing contained in it shall be construed so as to bring about a certain specifically described result *except as otherwise provided in the statute*. The right of the legislature to embody in an act passed by it a construction of its meaning is recognized, and such construction is binding upon the courts because it forms a part of the act as enacted and should make clear the intent of the legislature which passed it.

Bettenbrock v. Miller, 185 Ind. 600, 606.

In continuing the Act under consideration, therefore, the provision of section 118, *supra*, should be given effect and its

mandate followed as to the construction of other parts of said Act. The section, itself, however, contains some difficulty of construction. What is the extent of the meaning of the language "*except as otherwise herein provided?*" Does it mean that nothing shall be construed as repealing, modifying or abridging the powers as in said section 118 defined except where the Act expressly provides that a certain provision *shall be construed as repealing, modifying or abridging such powers?* I do not think the exception can be given such a limited meaning for to do so, for all practical purposes, would be to give it no meaning at all, since nowhere in the Act is there such a provision. I think, rather, that the exception is to be given such a meaning as to prevent the repealing, modifying or abridging of such powers unless other provisions of the Act in their plain and ordinary meaning do have such an effect. If such other provisions, when given their plain and ordinary meaning, do have such an effect, I think there is nothing in section 118, *supra*, which would prevent the court from so construing them.

As applied to the use of the word "supervise" in the Act under consideration, in coordinating the State legislation with that of the Federal Government, I have held that it was intended to indicate an *indirect* state administration through the instrumentality of some other board and to involve control so far as policy and plan was concerned. This is the plain and ordinary meaning of the word, and I see no ground for giving it a different meaning as applied to services not affected by the Federal Social Security Act from the meaning accorded it as applied to those so affected.

It follows from what has been said that, in my opinion, except as to the specific cases referred to earlier in this opinion, the various boards with one exception, which I shall mention in a moment, possesses the same powers as they had prior to the passage of the Welfare Act of 1936, subject, however, to the supervision of the State Department of Public Welfare as that term has been defined herein. The boards are yet, save for the exceptions noted earlier in this opinion, the responsible bodies charged with the *administration* of their several institutions subject to the supervisory power of the State Department of Public Welfare. They are, for example, charged with the custody of the property and, generally speaking, with the business and financial relationships

of the institutions and other like matters as now provided by law. They are the responsible agency to carry out the directions of the State Department of Public Welfare in its supervisory authority, except as to the particular matters hereinbefore noted wherein the Department of Public Welfare is the direct administrator.

I should call your attention also to another power formerly belonging to the several boards which no longer belongs to them, and that is the power of appointment of the superintendent or warden. This power was not taken away from the several boards by the 1936 Welfare Act, but by chapter 4 of the Acts of 1933.

I trust that this may serve your purpose, but if more detailed information is desired and specific questions are asked as to any particular power heretofore belonging to any particular board, I shall be glad to give the matter further consideration by applying the principles herein stated to that particular situation.

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**TAX COMMISSIONERS, STATE BOARD OF: Taxation of building and loan association. Intangibles tax—method of computing tax due from building and loan associations. Home Owners' Loan Bonds, whether investment in same may be deducted in establishing tax basis of building and loan association.**

February 17, 1937.

Hon. Gaylord S. Morton,  
Commissioner,  
State Board of Tax Commissioners,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you ask for an official opinion as to whether a building and loan association, in computing and paying its tax liability under chapter 82 of the Acts of 1933 and as subsequently amended in 1935, may deduct the amount of funds invested by the association in bonds issued by the Home Owners' Loan Corporation.

Section 5 of the above Act, as amended in 1935, provides as follows: