PUBLIC INSTRUCTION, DEPARTMENT OF: Attendance Officers. Whether duty to appropriation to pay salary is mandatory upon County Council.

September 29, 1938.

Miss Margaret E. Paddock,
Attendance Officer, Department of Education,
Indianapolis, Indiana.

Dear Miss Paddock:

I have before me your letter requesting an official opinion based upon the following statement of facts as set out in a letter from the Superintendent of Schools of Jennings County, Indiana, viz:

"At a called meeting of the Jennings County Board of Education, Friday, July 8, 1938, it was voted to have an attendance officer for the school year 1938-1939. It was voted to allow this attendance officer $3.00 per day for the days school was in session for 9 months plus $15.00 for postage and printing, and necessary traveling expenses up to $300.00.

"The secretary of the board of education presented this to the county commissioners at their regular meeting in August, and it was approved by the commissioners and included in the county budget.

"At the regular meeting of the county council in September to approve the county budget no allowance was made for a county attendance officer due to the fact that we had not held an election in June.

"This county has been without an attendance officer for about three years."

You submit the following questions:

"Is it possible for us to go ahead and elect an attendance officer and mandate the county council to appropriate the money?

"We asked also for an additional appropriation to enable the attendance officer to work from the beginning of school until the regular appropriation would be available. Could this be included?"
Section 28-501 of Burns' Indiana Statutes Annotated (1933) provides, in part, as follows:

"Every county and every city having a school enumeration of two thousand (2,000) or more children of school age, shall constitute a separate attendance district. The county superintendent of schools shall nominate and the county board of education may appoint an attendance officer who shall be qualified as required by this Act and by the state board of attendance and who shall act as attendance officer for every school corporation of the county not organized as a separate attendance district. If the county board of education is of the opinion that it is not necessary in the proper enforcement of this Act to appoint an attendance officer, no attendance officer shall be appointed. If no attendance officer be appointed, the county superintendent of schools shall be ex officio the attendance officer for all of the schools of his county which are under his immediate jurisdiction and the school superintendent of any school city or school town which is not organized as a separate attendance district shall be ex officio the attendance officer of such school city or school town." (Our italics.)

Section 28-502 of Burns' Indiana Statutes Annotated (1933) provides, in part, as follows:

"Appointive attendance officers shall take office on the first of August and shall hold office for one (1) year and until their successors have been elected and qualified unless said officers are removed from office by the state board of attendance. No person shall be nominated or appointed to the position of attendance officer nor shall any person, except an ex officio attendance officer, hold such appointment who has not completed the work of the elementary public schools, and who is not qualified in the manner, and in accordance with the standards and regulations determined by the state board of attendance. * * * Appointive attendance officers, unless otherwise provided in this Act, shall have their salaries fixed by the appointing board and shall receive from the county treasurer not
less than three dollars ($3.00) nor more than five dollars ($5.00 per day for each day of actual service and shall further receive actual expenses necessary to the proper performance of their duties, said salaries and expenses to be paid by the county treasurer upon a warrant signed by the county auditor, and the county council shall appropriate, and the board of county commissioners shall allow, the funds necessary to make such payments.” (Our italics.)

It will be noted from the language first above quoted that the appointment of a county attendance officer is discretionary with the county board of education and that if in the opinion of said board it is not necessary to appoint an attendance officer, no such officer shall be appointed. However, under the statement of facts submitted by you it is apparent that the Jennings County Board of Education is of the opinion that it is necessary to appoint an attendance officer for the county in order to properly enforce the compulsory education law, and from such statement it appears that action has been taken to that effect by the board, which presumably was entered of record in the regular way.

I note also that the statement of facts indicates further that at the same meeting when such action was taken, the board fixed the salary to be paid to the attendance officer within the limitations fixed by the statute, as indicated in the provision quoted from section 28-502, supra.

Under the conditions stated, it appears to me that the duty of the county council, as provided by the statute, is very clear. First, the county board of education has determined that an attendance officer is necessary. That determination, in my opinion, has the effect of establishing the office of county attendance officer in Jennings County for the year indicated in the board's order. Second, the board has fixed the salary of such officer within the limits prescribed by the statute. When that has been done, the statute expressly provides that “the county council shall appropriate, and the board of county commissioners shall allow, the funds necessary to make such payments.”

Burns’ Indiana Statutes Annotated (1933), sec. 28-502.
It is stated that the ground upon which the county council declined to make the appropriation was the fact that the county board of education had not elected such attendance officer at its June meeting. I do not find anything in the statute, however, which would indicate that the attendance officer must be elected at the June meeting. It is true that the statute provides that appointive attendance officers shall take office on the first of August and shall hold office for one year and until their successors have been elected and qualified, unless removed from office by the state board of attendance, but I do not think that provision makes it impossible under the present statute to fill the office by appointment later than June or later even than the first of August. The fact that an officer once appointed holds his office until a successor is elected and qualified suggests the fact that such succeeding officer might not be appointed as early as the first of August. Moreover, under the present statute the office does not come into existence unless the county board of education is of the opinion that such an officer is necessary to enforce the compulsory education law properly, which it seems to me might very well result from action taken by the board after August first of any particular year.

It has been held without conflict in construing the statute prior to its amendment in 1932, that after the salary has been fixed the duty to make the appropriation is mandatory.

State, ex rel., Test v. Steinwedel, 203 Ind. 457;
See also the case of Stone, et al. v. State, ex rel., Bossong, 208 Ind. 65, in which the 1932 amendment to the attendance officer statute was sustained.

In the last case above cited, the court on page 71 said:

"We are of the opinion that the General Assembly has the power to create the school office of county attendance and to determine the method of selection of the attendance officer and to make such selection and payment of salary mandatory."

Your first question asks whether it is possible "for us to go ahead and elect an attendance officer and mandate the county council to appropriate the money." The word "us" in your question evidently refers to the County Board of
Education of Jennings County or perhaps to the superintendent of the Jennings County schools. I think the answer to this question should be in the negative; that is, neither the county board nor the superintendent of schools would be a proper relator in such an action. It seems to me that the proper relator in such a case would be the attendance officer, and until such an attendance officer is appointed no action would lie. However, in case an attendance officer is appointed, it seems to me that an action would lie in his behalf as relator to require the county council to make the necessary appropriation to pay the salary, and your first question is answered accordingly.

As to your second question, the appropriation to cover the period from August 1, 1938, to January 1, 1939, should have been made in September, 1937. Such an appropriation, now, would have to be presented as an emergency appropriation, and I doubt whether the facts stated indicate such an emergency as would require the additional appropriation to be made.

INDUSTRIAL BOARD: Reciprocal Insurance. Whether foreign companies writing workmen’s compensation insurance in Indiana are subject to the reasonable rules of the Industrial Board.

October 3, 1938.

Hon. Ira M. Snouffer,
Chairman, Industrial Board of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion in answer to the following questions:

"1. Can Indiana employers insure their compensation risks under the Indiana Workmen’s Compensation Act in a mutual or reciprocal insurance company organized under the laws of a foreign state or territory?

"2. Do the rules and regulations adopted by the Industrial Board of Indiana regulating mutual and reciprocal insurance companies apply to mutual or reciprocal insurance companies organized under the laws of