

OPINION 31

OFFICIAL OPINION NO. 31

December 1, 1971

Hon. Edgar D. Whitcomb
Governor of Indiana
Room 206—State House
Indianapolis, Indiana 46204

Dear Governor Whitcomb:

This is in response to your request for my Official Opinion on the following question:

“What state agency has the legal authority to assist and temporarily direct the management of a local school corporation where there has been an apparent breakdown in the financial operation of said local school corporation?”

ANALYSIS

Acts of 1865, Ch. 1, Sec. 124, as found in Burns' (1970 Repl.), Section 28-214, states as a duty of the Superintendent of Public Instruction, in part, the following:

“* * * he [the superintendent of public instruction] shall have access to, and full power to require for inspection, the use of the books and papers of the auditor's offices and whenever he may discover that any of the school funds are unsafely invested, and unproductive of school revenue, or that any of the school revenues have been diverted from their proper objects, he shall report the same to the general assembly * * *” (This section has been omitted in the compilation of IC 1971, but no authority can be found to show that it has been repealed.)

Acts of 1865, Ch. 1, Sec. 126, IC 1971, 21-1-7-12, as found in Burns' (1971 Repl.), Section 28-216, gives the Superintendent of Public Instruction certain supervisory powers over school funds as follows:

“He [the superintendent of public instruction] shall exercise such supervision over the school funds and

revenues as may be necessary to ascertain their safety, and secure the preservation and application to their proper object and cause to be instituted, in the name of the State of Indiana, for the use of the proper fund or revenue, all suits necessary for the recovery of any portion of said funds or revenues; and it is hereby made the duty of the proper circuit prosecuting attorney to prosecute all such suits at the instance of the superintendent, and without charge against said funds or revenue."

CONCLUSION

It is my official opinion that the Superintendent of Public Instruction, at his discretion, may exercise such supervision as he feels is necessary temporarily to direct the management of a local school corporation, provided that he reasonably feels this must be done to ascertain the safety and proper application of public funds for school purposes.

Further, he shall cause to be initiated through the proper circuit prosecuting attorney, in the name of the State of Indiana, all suits that he deems necessary for the recovery of such school funds spent in contradiction to the above state statutes.