Mr. Kenneth R. Beesley  
State Examiner  
State Board of Accounts  
912 State Office Building  
Indianapolis, Indiana 46204

Dear Mr. Beesley:

I am in receipt of your request for my Official Opinion on the following question:

"Is it permissible for a State University to discount or to otherwise make a special allowance to members of the staff and their children which would reduce the cost of tuition, fees and charges below that paid by other students?"

ANALYSIS

The present authority of State Universities to set tuition and other fees for students is contained in Acts of 1969, Ch. 273, Sec. 2, as found in Burns' (1970 Supp.), Section 28-5792a, which provides in part:

"The boards of Ball State University board of trustees, Indiana State University board of trustees, the trustees of Indiana University, and the trustees of Purdue University each as to its respective institution, shall have the power and duty:

* * *

(e) To prescribe the fees, tuition and charges necessary or convenient to the furthering of the purposes of the institution and to collect the same * * *"

The above statute provides that the trustees may set fees, but it does not specify whether the fees must be uniform for all residents of the State. Determination of that question requires determination of Legislative intent.

There are several indications of that intent:

First, the Legislature has made specific provisions for re-
duction or elimination of fees and charges only in certain specific instances. See Burns' Section 28-5732 (certain children of veterans); Burns' Sections 28-5316, 28-5618, and 28-5230 (two students from each county in certain Universities). The specific provisions waiving the charging of fees in certain instances implies the lack of authority in the trustees to waive or reduce fees in other instances.

Second, a further portion of the above-quoted statute empowers the Trustees:

"(h) To award financial aid to needy students and award scholarships and encouragement of excellence of achievement out of the available resources of the institution it shall seem desirable and in the best interests of the institution and its students * * *"

Had the Legislature intended to grant the Trustees the authority to lower or waive fees in any other instances, it would have included that authority in the above provision. Instead, the Legislature chose to authorize the University to grant money to the deserving student, which money usually is immediately returned to the University in the form of fees.

The foregoing legal precedents would lead to the conclusion that the Trustees are restricted in power by the Legislature to set uniform fees. That conclusion would be further buttressed by the general principle that the benefits of a State University or any other institution supported in the main by tax money should be available on an equal basis to all residents of the State. See 1969 O. A. G. No. 9, p. 32.

Further, any argument that the above statute gives the Trustees the power to set different fees for classes or groups of citizens of this State when carried to its logical extreme would support and even force the conclusion that the Trustees have the power to set fees on an individual basis. It would be discriminatory, and it would put university officials in a conflict of interest situation where their own children are involved.

While the General Assembly could no doubt properly provide for reduced fees for certain classes of persons (e.g. veterans' children), and could empower the Trustees to set the
fees for those classes, they have not done so in relation to university staff members and their own dependents. Until such time as the Legislature might grant such power in clear and unequivocal language, the power must be presumed *not* to have been granted.

**CONCLUSION**

It is, therefore, my Official Opinion that a State University is not permitted to discriminate in favor of dependents of its own personnel who are not otherwise qualified by scholarship to earn scholarship awards on their own merit. Tax supported universities cannot under present Indiana law specially discount or otherwise make an allowance to members of the staff and their children which would reduce the cost of tuition, fees and charges below that paid by other students.