

1969 O. A. G.

OFFICIAL OPINION NO. 42

December 5, 1969

Superintendent Robert K. Konkle
Indiana State Police
301 State Office Building
Indianapolis, Indiana 46204

Dear Superintendent Konkle:

This is in reply to your letter requesting my Official Opinion with respect to a proposal to the Indiana State Police Board for state assistance to certain State Police Officers interested in completing college work toward a degree.

As stated in your letter,

“* * * the proposal is that any police employee who has, at no expense to the state, satisfactorily completed at least one-half the credit hours necessary for a graduate or undergraduate degree, would be eligible to apply to the Superintendent for a loan from Department funds, covering the expenses of the remaining tuition and books necessary to complete such degree. The loan would be made in the form of a semester or quarterly payment from appropriated funds direct to the institution of higher learning, and the course of study would be subject to increasing the efficiency of the employee and thereby increasing his value to the Department.

“At the time of such application for educational assistance, the officer would be required to sign a note agreeing to repay the amount loaned at a reasonable rate of interest, provided he did not remain in the service of the Department for at least five years after said date, the entire loan would be forgiven.”

Your question raises matters of first impression in that it does not specifically appear to have been the subject of legislative enactment, judicial decision, or opinion by this office.

The established principle of law is that you, your Board and your Department, have no power and authority other than that granted by the Legislature. *Thomas v. Lever* (1949), 227

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Ind. 432, 86 N. E. (2d) 71. In the case of *Storen, etc. v. Sexton, etc.* (1935), 209 Ind. 589, 596, 200 N. E. 251, this principle is discussed as it relates to loans as follows:

“In the absence of a statute authorizing it, no public agency has the right to loan the public funds.”

Accordingly, an examination of Acts of 1945, Ch. 344, which is the statute that created the State Police Department and prescribed its powers and duties and which statute is found in *Burns' (1965 Repl.)*, Sections 47-846, *et seq.* reveals no authority for the loaning of money as proposed by your letter nor can such authority be fairly implied therefrom.

Another important basic principle which must be considered is that it is the function of the Legislature to appropriate money, and it is for the Legislature to determine whether such expenditures as contemplated by your proposal would be of such a benefit as to be classified as a public purpose.

It is my opinion that you do not have legislative authority to loan to individual employees or officers state funds which have been appropriated for your Department in the absence of specific statutory authority otherwise, no matter how commendable the purpose.

It may be that the new Law Enforcement Assistance Agency and related Federal and private programs now are in a position to provide this needed scholarship assistance to police officers desirous of doing college work to improve their professional abilities.