

1969 O. A. G.

OFFICIAL OPINION NO. 5

May 13, 1969

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

Dear Governor Whitcomb:

This is in response to your request for an Official Opinion concerning the duties and responsibilities of the trustees, officers, and faculties of the state universities in the State of Indiana.

The Indiana General Assembly created Indiana University, Purdue University, Indiana State University, and Ball State University; and the Indiana General Assembly continues to maintain these institutions by appropriations of tax money. Its right to legislate and enact measures for the governance and existence of these institutions is unquestioned. As it has from the beginning, and as it strongly emphasized again in the 1969 session, the Indiana General Assembly has imposed upon the trustees of these institutions the power and responsibility for prescribing the duties of their officials and faculty and of making all necessary by-laws to carry into effect the power so conferred.

In the particular case of Indiana University, the Indiana General Assembly has long ago specifically delegated to the President and faculty the power to enforce the regulations adopted by the trustees for the government of the students. Acts of 1855, Ch. 99, Sec. 1, as amended, as found in Burns' (1948 Repl.), Section 23-5302.

In 1969, the Indiana General Assembly, in House Enrolled Act No. 1017 (to be published by the Secretary of State as Ch. 273 of the Acts of 1969) clearly expressed its legal intent. This Act is an emergency Act, and so it took effect the date it was signed by you on March 15, 1969. This Act is so clearly worded that I am setting it forth here verbatim:

"SECTION 1. It is the purpose of this act to recognize and define certain powers, duties and responsibili-

## OPINION 5

ties of the boards of trustees of the several universities of the State of Indiana which are supported by appropriations made by the General Assembly. The powers, duties and responsibilities referred to by this act are not intended to include all powers, duties and responsibilities of the several boards and nothing contained in this act shall be deemed to diminish or abrogate any other of the powers, duties or responsibilities of the respective boards specifically conferred by statute or properly implied thereby.

“SEC. 2. 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:

“(a) To govern the disposition and method and purpose of use of the property owned, used or occupied by the institution, including the governance of travel over and the assembly upon such property ;

“(b) To govern, by specific regulation and other lawful means, the conduct of students, faculty, employees and others while upon the property owned by or used or occupied by the institution ;

“(c) To govern, by lawful means, the conduct of its students, faculty and employees, wherever such conduct might occur, to the end of preventing unlawful or objectionable acts which seriously threaten the ability of the institution to maintain its facilities available for performance of its educational activities or which are in violation of the reasonable rules and standards of the institution designed to protect the academic community from unlawful conduct or conduct which presents a serious threat to person or property of the academic community ;

“(d) To dismiss, suspend or otherwise punish any student, faculty member or employee of the institution who violates the institution’s rules or standards of conduct, after determination of guilt by lawful proceedings ;

“(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;

“(f) To prescribe the conditions and standards of admission of students upon such bases as are in its opinion in the best interests of the state and the institution;

“(g) To prescribe the curricula and courses of study offered by the institution and to define the standards of proficiency and satisfaction within such curricula and courses;

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

“(i) To cooperate with other institutions to the end of better assuring the availability and utilization of its total resources and opportunities to provide excellent educational opportunity for all persons.

“SEC. 3. Conduct which constitutes a violation of the rules of the institution may be punished, after determination of guilt by lawful procedures, without regard to whether such conduct also constitutes an offense under the criminal laws of any state or of the United States or whether it might result in civil liability of the violator to other persons.

“SEC. 4. The individual governing boards are responsible to fulfill the powers, and duties conferred upon each by law. Each such board is authorized to employ such officers, faculty, employees, consultants and counsel as it may deem necessary or convenient to aid in the formulation and implementation of its policies and to execute its will within its particular institution. To such end each board may delegate to such persons and to others such authority as it may possess; Provided, that no manner of delegation shall be irrevocable and such delegated authority may be exercised only at the pleasure of such board and subject to its approval.

## OPINION 5

“SEC. 5. Nothing in this act shall be deemed to discourage or disparage the status of students, faculty and other persons or the valid concerns of the public in matters of policy and of management of the universities of this state.

“SEC. 6. The provisions of this act shall be considered separable and in the event any provision, or the exercise of any power contained herein with respect to any person, shall be declared illegal, such invalidity shall not affect any other portion of this act which can be given effect.

“SEC. 7. The provisions of this act shall be applicable to each university declared by the General Assembly to be a university of the state, now or hereafter created.

“SEC. 8. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in force from and after its passage.”

The Indiana General Assembly, composed as it is of the elected representatives of all of the people of Indiana, further made clear its abhorrence of misconduct in whatsoever guise which interferes with the lawful use of university property. The 1969 Indiana General Assembly set forth in House Enrolled Act No. 1257 (to be published by the Secretary of State as Ch. 179 of the Acts of 1969) the penalties for trespassing upon and damaging any real or personal property of public educational institutions. Because it, too, should be noted by the university officials, faculties, and students, and others concerned, I am setting it forth here verbatim:

“SECTION 1. It shall be a misdemeanor for any person intentionally to damage any property, real or personal, of any institution established for the purpose of the education of students enrolled therein.

“SEC. 2. It shall be a misdemeanor for any person to go upon or remain upon any part of the real property of any institution established for the purpose of the education of students enrolled therein in violation of any rule or regulation of any such institution for the

purpose of interfering with the lawful use of such property by others or in such manner as to have the effect of denying or interfering with the lawful use of such property by others.

“SEC. 3. It shall be a misdemeanor for any person to refuse to leave the premises of any institution established for the purpose of the education of students enrolled therein when so requested, regardless of the reason, by the duly constituted officials of any such institution.

“SEC. 4. It shall be a misdemeanor for any person to go upon or remain within a public building for the purpose of interfering with the lawful use of such building by other persons or in such manner as to have the effect of denying to others the lawful use of such building.

“SEC. 5. A person who commits a misdemeanor defined in this act shall be punished, upon conviction, by a fine of not to exceed five hundred dollars (\$500) or by imprisonment for not to exceed six months, or by both fine and imprisonment.

“SEC. 6. Nothing in this act shall be interpreted as affecting the right of any person to engage in any conduct not in violation of this act or any rule or regulation of any such institution, or of any institution established for the purpose of education of students to discharge any employee, or expel, suspend or otherwise punish any student, in accordance with its procedures for any conduct which may be a violation of any such rule or regulation of any such institution or rendered unlawful by this act or may otherwise be deemed a crime or misdemeanor.”

There are also specific contractual duties and obligations imposed upon the individual trustee, president and other university officers and faculty members. The contractual duties and obligations thus imposed should be enforced by the proper party.

## OPINION 5

In addition, every student on his admission to a state educational institution impliedly promises to conform to, and be governed by, all the necessary and proper rules and regulations which have been or which may be adopted for the government of the university. *State ex rel. Stallard v. White* (1882), 82 Ind. 278.

The trustees, officers and faculty are duty-bound by rules and regulations which each institution has adopted. These rules and regulations set forth the minimum standards of conduct and decorum necessary for the orderly administration of a state university in order to maintain and preserve the facilities and property and the personal security and personal freedom of all persons connected therewith.

The power of suspension or expulsion of students is a necessary attribute of the government of educational institutions. *Sampson v. Trustees of Columbia University*, 167 N. Y. Supp. 202. In an Opinion of the Attorney General of Indiana in 1923 (Official Opinion of the Attorney General to Indiana University trustees as to the power to refuse to grant diplomas and to suspend or expel students, pp. 305-306), Indiana law was cited to the effect that the trustees of Indiana University may properly expel a student or refuse to grant him a diploma because of acts of immorality or other misconduct as would be subversive of the discipline of the college or as would show him to be morally unfit to be continued as a member thereof.

All of our state universities do clearly have the power to suspend, expel, or refuse a diploma to students who commit criminal acts. Included would be those who attempt a physical restraint of other students and faculty members who are trying to avail themselves of the legitimate objectives and purposes for which these universities exist. The trustees, other officials, faculty members and students have to obey the same laws under our Constitution as all other citizens of the United States. Criminal laws apply equally to all persons.

In this connection, state university officials are reminded of the following Indiana criminal laws which have conceivably been violated at a number of campuses recently according to the elements reported and recorded in the news media:

(All citations are from Burns' Annotated Statutes) Arson (10-302, 10-303, 10-306); Assault and Battery (10-401); Desecrating of the United States Flag (10-506, 10-507, 10-509); Housebreaking to commit violence (10-706); Contributing to the Delinquency of Minors (10-812); Racketeering in hatred (10-906); Resisting or Interfering with officer (10-1005); Refusing to aid an officer (10-1006); Obstructing the execution of legal process (10-1008); Intimidating officers or witnesses (10-1011); Conspiracy to commit felony (10-1101); Inciting of violence (10-1302); Riotous conduct (10-1505); Riotous conspiracy (10-1506); Rout (10-1507); Disturbing public meetings (10-1508); Disorderly conduct (10-1510); Public nuisances (10-2502); Unlawful dumping of debris and rubbish (10-2605a, 10-2605b); Public indecency (10-2801); Obscene and pernicious literature and devices (10-2803, 10-2804, 10-2805); Kidnapping and unlawful restraint (10-2901, 10-2903); Larceny of public records (10-3004); Criminal Libel (10-3201); Criminal Slander (10-3202); Blackmail (10-3204); Uniform Narcotics Drug Act (10-3519, 10-3520); Forceable entry or detainer (10-4501); Entry after permission refused—Refusal to depart (10-4506); Trespass on public grounds (10-4507); Malicious Trespass (10-4509); Defacing or destroying public records (10-4514); Illegal posting on buildings, walls or trees (10-4516); Injury to telephone lines or equipment (10-4518); Vagrancy (10-4602); Tramps (10-4603); Carrying dangerous weapons (10-4706); Drawing dangerous weapons (10-4707); Commission of or attempt to commit a crime while armed with deadly weapon (10-4709). The victims of such acts are entitled to sign complaints with the local prosecuting attorneys.

It is my opinion that the majority of students who have, and are, performing their part of the contract which they entered into on their matriculation at the state universities—yet are prevented from receiving the *quid pro quo*, which is the opportunity to further their education in an atmosphere and environment devoid of rebellion and anarchy—may, also, seek redress by civil actions in a court of law. Acts of 1889, Ch. 128, Sec. 1, as found in Burns' (1968 Repl.), Section 3-3401. And it is clear that the State of Indiana has the right to institute civil law suits against officials at any level to collect

## OPINION 5

claims for damages against state property. Acts of 1889, Ch. 71, Sec. 4 (Burns' Section 49-1902).

If any state university official abrogates his responsibility, he should resign or face legal process for removal.