SCHOOLS—STATUTES—Distributions to School Corporations as Regulated by Appropriations Act.

Opinion Requested by Hon. John P. Gallagher, Auditor of State.

I am in receipt of your letter which reads:

"1. Can the Superintendent of Public Instructions make a distribution in excess of 25% of the estimated annual distributions to school corporations prior to April of any year?

"2. If the answer to question # 1 is in the affirmative, is there a limit to the distributions prior to April and what is the limit?

"3. What specific period of time is covered by the statutory appropriations for school distributions?"

The distributions to school corporations are currently regulated by the Appropriations Act enacted by the 1967 General Assembly, the same being Acts 1967, ch. 298, p. 1050. That Act first appropriates money to be distributed ($383,036,348 for the biennium) and describes a formula for determining the amount to be received by a school corporation, and then provides (pp. 1055, 1056):

"The necessary data concerning each school corporation which qualified under this act for distributions of state funds shall be certified by the state superintendent of public instruction to the Auditor of State on or before the first day of May of each year from the records of the office of the state superintendent of public instruction."
“Distribution to school corporations as provided for herein shall be made by the auditor on or before August 1 of each year: PROVIDED, HOWEVER, That the first distribution under the formula prescribed in this act shall be made in January 1968, and shall be calculated on the average daily attendance, instructors, and number of pupils for the school year starting July 1, 1967, without regard to tax rates levied prior thereto. Each annual distribution made thereafter shall be calculated on information and data for the preceding school year.

“A payment not to exceed one-half of the estimated distribution for the current school year shall be made from the state appropriation balance in approximately equal installments in the month of January and in the month of April of each year. In the event the balance of said appropriations shall be less than the amount necessary to make a one-half distribution as provided herein, then the basis for such payments shall be the ratio of money available in said state appropriation balance to the estimate of total state payments to local school corporation as determined from the estimates shown as state distribution in the local school budgets for the current year after inspection and approval by the State Tax Board.

“July payments shall be determined in each school corporation by deducting the sum of the January and April payments from the total annual estimate and dividing the remainder by two.

“The October payment shall be determined in each school corporation by deducting the sum of the January, April and July payments from the total annual computation for State Support based on reported data for the prior school year.”

The Act thus contemplates that the money to be distributed to a school corporation be distributed in four payments of, hopefully, approximately equal amounts to be made in the calendar year subsequent to the start of the school year, and provides that the amount distributed be determined by
a formula based on average daily attendance, number of instructors, and number of pupils for the school year. Phrased more simply, each school corporation receives for each school year a certain amount of money from the state, the specific amount to be determined by a computation involving average attendance, number of instructors, and number of pupils during that school year. The state money is to be distributed in four quarterly payments. The quarters, however, do not begin with the commencement of the school year in July, but instead begin six months later, with the commencement of the next succeeding calendar year in January. Payments are made in January, April, July, and October. Thus two payments, those made in January and April, are made during the school year involved, and the other two payments, those made in July and October, are made subsequent to the school year.

Since the amount to be distributed to a given school is calculated from information that is not complete until the close of the school year, such as average daily attendance, it is not possible to determine the specific amount to which each school corporation is entitled until the end of the school year. However, there is enough information available by January of the school year to make a reasonable estimate of the specific distribution amount. The January and April payments to any school corporation should each represent one-quarter of the estimated distribution for that school corporation, assuming that the balance of the state appropriations is sufficient for a distribution of that size. (The state fiscal year, like the school year, begins on July 1. The January and April payments must be drawn from the funds remaining in the appropriation for that fiscal year.) The July payment is made subsequent to the close of the school year, but so soon in time that it would be impossible to determine the actual distribution amount, and thus that payment is also based on the estimated distribution. The July payment is different, however, in that it occurs in a new fiscal year and thus at a time when ample funds are available. In fact, if the January and April payments equaled less than one-half of the estimated distribution, then it is possible to begin curing that shortage in the July payment. The July payment, therefore, is to be one-half of that portion of the
estimated distribution that has not yet been given to the school. If the funds available for the January and April distributions were sufficient to enable a full one-quarter payment at those times, then the July payment will also be one-quarter of the estimated distribution; if the appropriated funds available for the January and April payments were not sufficient for a full one-quarter payment, then the July payment will be greater than one-quarter of the estimated distribution. The final payment is to be made in October, a time sufficiently removed from the end of the school year to permit determination of the actual distribution amount. Therefore, the October payment is the amount that should be distributed for the school year involved minus the amount distributed in the January, April and July payments.

The duties to be performed by various state officers under this Act are ministerial in nature and involve no discretion on the part of the officers. The Act specifically describes the procedure for determining the amount of each payment and the time for making such payments. It is the duty of the State Superintendent of Public Instruction to determine the amount of each payment according to the formula prescribed by the Act, and to certify that amount to the Auditor of State. It is the duty of the Auditor of State to make the payments so certified at the proper time.

Thus, the answer to your first question as stated must be in the negative. The State Superintendent of Public Instruction cannot authorize a distribution in excess of 25% of the estimated annual distribution to any school corporation prior to April of any year.

Your specific question, however, implies a further question, namely: Can any authority authorize a distribution in excess of 25% of the estimated annual distribution to a school corporation prior to April of any year?

As stated above, Acts 1967, ch. 298, does not itself authorize any variation from its procedure. This, however, does not preclude the possibility of variation being permitted by some other statute. The State Board of Finance, as created by Acts 1941, ch. 27, the same being Burns §§ 60-310 to 60-319, consists of the Governor, the Auditor of State, and
the Treasurer of State, and has "advisory supervision of the safe-keeping of all funds coming into the state treasury" (Sec. 1, Burns § 60-310). The Board of Finance is given various powers in relation to state funds, including, for example, the power to transfer portions of an appropriation made for one state agency to another state agency. The Board does not have such power in relation to "trust funds" as defined in the Act, which definition includes the money to be distributed to school corporations. The Board, however, has certain authority in relation to trust funds, such as the authority to make interest-bearing loans to other state funds (Sec. 8, Burns § 60-317), or, within specified limitations, to levy a tax for the benefit of a given fund (Sec. 10, Burns § 60-319).

A full examination of the Act reveals that one of the prime functions of the State Board of Finance is to make those adjustments in the distribution of appropriated funds necessary to permit the efficient operation of the state government despite the minor difficulties or emergencies that may occur in the biennium between legislative sessions. No matter how carefully a budget is prepared, it is impossible for the General Assembly to foresee accurately all the expenses that will arise in operating the state government for a period of two years and thus some method of adjustment is indispensable. (A similar function, although in different areas, is performed by the budget agency created by Acts 1961, ch. 123, as amended, the same being Burns §§ 60-401 to 60-415).

The need of a school corporation for a pre-payment of the state distribution in order to meet current expenses is, in my opinion, one of the situations unforeseeable by the Legislature, and therefore within the power of the State Board of Finance to alleviate. Many different occurrences could result in a school corporation requiring a pre-payment, and many such occurrences would be completely outside the control of the school corporation involved. The Appropriations Act itself contains an example, namely, that the amount of funds available for distribution was not sufficient to make a full one-quarter distribution in January and thus the corporation received an amount less than it had anticipated when
preparing its budget. To hold that a school corporation can in no event receive a pre-payment of its distribution from funds already appropriated and thus available, realizing that a lack of such pre-payment would result either in a closing of the school or in the borrowing of money at interest in anticipation of the distribution, would be absurd.

“It is presumed that the Legislature does not intend an absurdity, and such a result will be avoided if the terms of the act admit of it by a reasonable construction; ...” Marks v. State, 220 Ind. 9, 18, 40 N.E. 2d 108, 111 (1942). The Appropriations Act can reasonably be construed as providing a normal method for distributing state money to school corporations absent any untoward occurrences, but the State Board of Finance still has the same authority in relation to the funds for distribution that it has in relation to other funds in the state treasury should some unforeseen circumstance arise.

Thus, a complete answer to your first question would be that the State Superintendent of Public Instruction, prior to April 1, does not have the power to authorize a payment to any school corporation that would exceed twenty-five percent of the estimated distribution for that corporation, but he does have the power to recommend to the State Board of Finance that such a payment be made, and that Board does have the power to authorize such a payment.

I believe the somewhat extensive answer to your first question contains the answers to your second and third questions, but I shall nevertheless briefly answer those questions.

There is one basic limit in the size of the possible payment prior to April 1st. There must be sufficient appropriated funds available to make that payment. The State Board of Finance has the authority to accelerate the payment of funds already appropriated by the Legislature in this area, but it does not itself have the authority to appropriate funds. Within this limit, the State Board of Finance can advance the amount that the members of the Board consider both proper and necessary. The Board is, after all, comprised of three elected state officers, and thus it is proper that it is vested with a large amount of discretion.
In answer to your third question, the moneys appropriated for distribution are appropriated on a fiscal year basis, said fiscal year commencing on July 1st. The distribution payments, as noted above, are on a calendar year basis. Thus the January and April payments for the calendar year 1968 are to be made from the funds appropriated for the 1967-1968 fiscal year, and the July and October payments are to be made from the funds appropriated for the 1968-1969 fiscal year.

OFFICIAL OPINION NO. 21

May 21, 1968

MOTOR VEHICLES—Issuance of Permits for Tractor-Mobile Home Rigs—Inspection to Determine Oversize or Overweight Vehicles.

Proper Recipient of Fees.

Opinion Requested by Mr. Martin L. Hayes, Executive Director, State Highway Commission.

I am in receipt of two closely related opinion requests submitted by you, and I have taken the liberty of combining them into this one opinion.

Your first request inquires whether fees collected by the State Highway Commission for the issuance of permits for “tractor-mobile home rigs” should be deposited in the Motor Vehicles Highway Account or in the State Highway Fund.

The operation of tractor-mobile home rigs on the public highways of Indiana is regulated by Acts 1931, ch. 83, §§6a through 6f, as last amended by Acts 1967, ch. 132, the same being Burns IND. STAT. ANN. §§47-534a to 47-534f.