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City of Mishawaka, supra, wherein the school caused the zoning board's refusal to grant a variance to be reviewed and reversed by the St. Joseph Superior Court, and the zoning board in turn appealed that reversal to the Indiana Appellate Court.

It is, therefore, my opinion that a properly adopted master plan could prohibit the construction of a school on land purchased for that purpose before the plan was adopted if construction had not begun prior to adoption of the plan. If inability to construct the school creates a hardship, the Board of School Trustees may petition the Board of Zoning Appeals for a variance from that plan. If the variance is not granted the Board of School Trustees may have the refusal reviewed by the Circuit or Superior Court of the county and, if necessary, may appeal that court's decision to the Appellate Court of Indiana.

OFFICIAL OPINION NO. 19

July 11, 1967

BOARDS AND COMMISSIONS—STATUTES—Anti-Secrecy Law—Refusal to Reveal Votes of Members of Board on Government Functions.

Opinion Requested by Mr. Donald H. Sauer, Director, Department of Financial Institutions.

I am in receipt of your letter advising that the Members of the Department of Financial Institutions have by majority vote adopted the policy that neither the numerical vote nor the indication as to how individual Members of the Department vote on any issue is to be made public, and in which you pose the following two questions :

“May the Members of the Department of Financial Institutions withhold from the public and records of its proceedings either, or both, a count and listing of how individual Members voted on matters coming before the Department? Also, does this opinion hold equally for votes on applications submitted by individual institutions and matters pertaining to policies and regulations of the Department?”

The Department of Financial Institutions was created by Acts 1933, ch. 40, as amended, the same being Burns §§ 18-201 through 18-239, and has the general power to regulate and control financial institutions in the State of Indiana. The management and control of the Department is vested in six Members, and the Act sets out their powers and duties.

Section 10 of the Act, as last amended by Acts 1945, ch. 348, § 6, the same being Burns § 18-207, provides in part:

“The department is hereby authorized, by a majority vote of the members, to make, promulgate, alter, amend or repeal rules and regulations for any or all of the following enumerated purposes:

“(a) For the conduct of the meetings of the members and the conduct of the work of the department and the several divisions thereof.”

The above statute would appear to indicate that the Department could enact a rule or regulation to the effect that the manner of voting of the individual Member on any question is not to be made public. While your letter indicates that the policy of not revealing the manner of voting was adopted by a majority of the Members, it does not state whether this policy was formulated as a rule or regulation of the Department. (The procedure through which an administrative agency adopts rules or regulations is prescribed by Acts 1945, ch. 120, Burns §§ 60-1501 through 60-1511.)

A rule adopted by the Department must be in accord with the power granted by law. An administrative agency's power to adopt rules and regulations, and the limitations of that power, was succinctly described by the Indiana Supreme

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Court in *Indiana Dept. of State Revenue, v. Colpaert Realty Corp.*, 231 Ind. 463, 479, 109 N.E. 2d 415 (1952), thusly:

“An administrative board has the undoubted right to adopt rules and regulations designed to enable it to perform its duties and to effectuate the purposes of the law under which it operates, when such authority is delegated to it by legislative enactment. *Blue v. Beach* (1900), 155 Ind. 121, 56 N.E. 89; *Albert v. Milk Control Board of Indiana* (1936), 210 Ind. 283, 200 N.E. 688; *McCreery v. Ijams* (1945), 115 Ind. App. 631, 59 N.E. 2d 133. But it may not make rules and regulations inconsistent with the statute which it is administering, it may not by its rules and regulations add to or detract from the law as enacted, nor may it by rule extend its powers beyond those conferred upon it by law. *McCreery v. Ijams, supra*; 73 C.J.S. Public Administrative Bodies and Procedure, §§ 93 and 94. . . .”

Although the Department of Financial Institutions Act admittedly does not require the votes of the individual Members to be recorded and, indeed, seems through the quoted above section to leave that issue to the discretion of the Members, the Legislature has spoken on this matter through a different enactment. Acts 1953, ch. 115, the same being Burns §§ 57-601 through 57-606, commonly known as the Hughes Anti-Secrecy Act, is concerned with access by the public to the records and proceedings of administrative agencies and other departments or subdivisions of government. Three portions of the Hughes Act relate directly to the proceedings of your Department, namely:

Section 2, Burns § 57-602, which provides in part:

“(2) The term ‘public proceedings’ shall mean the transaction of governmental functions affecting any or all of the citizens of the state by any administrative body or agency of the state, or any of its political subdivisions when such administrative body or agency is convened for the purpose of transacting the governmental function with which it is charged under any statute or under any rule or regulation of such administrative body or agency.”

Section 4, Burns § 57-604, which provides:

“Except as may now or hereafter be otherwise specifically provided by law, all public proceedings shall be open to any citizen of this state, and every citizen shall insofar as physical facilities permit, be permitted to observe such proceedings.”

Section 5, Burns § 57-605, which provides:

“Nothing in this act contained shall be construed to modify or repeal any existing law with regard to public records which, by law, are declared to be confidential. Nor shall anything in this act be construed to modify or repeal any existing law, rule or regulation, with regard to the holding of executive sessions by any administrative body or agency. Provided, however, that no administrative body or agency shall, under the guise of holding an executive session, conduct public proceedings in such a manner as to defeat the declared policy of this act as set forth in Section 1.”

Several opinions of the Attorney General have considered those portions of the Hughes Anti-Secrecy Act that apply to public records, but only one has considered public proceedings. That opinion, 1964 O.A.G., p. 199, involved the right of a private citizen to attend a meeting of a County Welfare Board in view of the fact that confidential records of various welfare recipients were frequently discussed at such meetings. The Attorney General held that any citizen had the right to attend the meeting, but did not have the right to examine and inspect the confidential records.

That opinion is not in point with the present question since it was concerned with the right of a public agency to keep secret various non-public documents concerning private citizens. (Section 32 of the Department of Financial Institutions Act, Burns § 18-229, forbids the public disclosure of certain items of information concerning individual financial institutions obtained by the Department.) Your question deals with the right of a public body to keep secret the official actions of the members of that body.

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Your particular question can best be answered by setting out the provisions of Section 1 of the Hughes Act, Burns § 57-601, which states:

“Pursuant to the fundamental philosophy of the American Constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Indiana that all of the citizens of this state are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those whom the people select to represent them as public officials and employees.

“To that end, the provisions of this act shall be liberally construed with the view of carrying out the above declaration of policy.”

While the foregoing could be considered merely a statement of policy, the specific reference to that statement in Section 5 of the Act, Burns § 57-605, set out above, forbidding the conduct of executive sessions in a manner that would defeat the declared policy indicates that the votes of the individual members, the “official acts of those whom the people select to represent them as public officials and employees,” should be recorded.

Which decisions are of sufficient import to require recording the individual votes, the thrust of your second question, can only be stated in general terms. The Anti-Secrecy Act speaks in terms of your department “transacting the governmental function with which it is charged under any statute or under any rule or regulation of [your department]” (§ 2, Burns § 57-602). Certainly the adoption of rules and regulations or the issuance or revocation of a permit to an individual institution would be such a governmental function. Whether or not to use Brand X paper for correspondence would not be such a governmental function. Between these two extremes is a broad range of decisions that must be individually classified. It would be advisable in making the individual classifications to lean

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toward recording the individual votes in view of Section 6 of the Act, Burns § 57-606, which provides in part:

“. . . and any public official who, under the guise of participating in an executive session of the administrative body or agency of which he is a member, attempts to defeat the purposes of this act as set forth in Section 1 hereof, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than \$50.00 nor more than \$500.00 to which may be added imprisonment in the county jail for a term not to exceed 30 days.”

Therefore, in answer to the question which you presented and based upon the authorities quoted herein it is my opinion that the Department may not withhold from the public or the Department records the count of votes or the identity of the Member casting the vote on the official acts of the Department.

OFFICIAL OPINION NO. 20

July 12, 1967

**OFFICERS—INDIANA STATE POLICE—Duty of Police
Officers to Inspect School Buses—Duty of
State School Bus Committee.**

Opinion Requested by Mr. Robert A. O'Neal, Superintendent,
Indiana State Police.

I am in receipt of your recent inquiry concerning the construction and effect of Acts 1967, ch. 317. Your specific questions were: