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weight and horsepower of passenger motor vehicles on the certificate of registration of such vehicles.

OFFICIAL OPINION NO. 32

September 1, 1967

**SCHOOLS—Payment of Rentals Pursuant to Leases
Executed by School Corporations.**

Opinion Requested by Mr. Richard L. Worley, Chief Examiner,
State Board of Accounts.

This is in answer to your letter of April 24, 1967, which requests an opinion concerning the funds of Indiana public school corporations, and reads in part as follows:

“Pursuant to Chapter 335, Acts 1967, lease rental payments shall be made from the Debt Service Fund. Also pursuant to Chapter 352, Acts 1967, lease rental payments shall be made from the Debt Service Fund. However, pursuant to Burns 28-1108 (Chapter 69, Acts 1965) one of the specified purposes of the Cumulative Building Fund is to provide funds for the leasing or renting of existing real estate suitable for school classroom purposes.

“Several school corporations are now in the process of preparing budgets for the 1968 calendar year. We have had several inquiries, and we expect more during the budget hearings within the next few weeks, as to whether lease rental agreements may be paid from the Cumulative Building Fund.”

Two Indiana statutes authorize Indiana public school corporations to contract for the lease of school buildings con-

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structed by lessor corporations, by use of leases with options to renew and to purchase, Acts 1947, ch. 273, as amended and supplemented, Burns §§ 28-3220—28-3233 (hereinafter referred to as the "1947 Building Act"), and Acts 1957, ch. 275, Burns §§ 28-3239—28-3249 (hereinafter referred to as the "1957 Building Act"). Each requires an annual school tax levy of any amount required to pay the annual rent for leases entered into under the Act, § 11 of the 1947 Act, as amended by Acts 1949, ch. 177, § 3, Burns § 28-3230, and § 9 of the 1957 Act, Burns § 28-3247. The two 1967 statutes to which you refer are amendments to these sections. Chapter 335 (House Enrolled Act 1452) Burns; § 28-3230, amends Section 11 of the 1947 Building Act to provide that rents for leases made pursuant to that Act shall be paid from the school's Debt Service Fund (or, at the option of the school corporation, the General Fund, in the case of the first payment made under the lease). Chapter 352 of the 1967 Act (House Enrolled Act 1885) Burns; § 28-3247, amends Section 9 of the 1957 Building Act to require that lease contract rent payments under that Act be made from the school's Debt Service Fund. Both 1967 Acts are effective January 1, 1968, except that for the purposes of preparing budgets and levying taxes for the calendar year 1968, the Acts became effective July 1, 1967. Neither of these Acts purports to change the payment of rents due under leases made pursuant to any other statute.

The 1967 amendments to the 1947 and 1957 Building Acts do not establish or define either the "General Fund" or the "Debt Service Fund" of a school corporation. However, they were two of a group of bills prepared by the Commission to Study the Statutes, Rules and Regulations Governing Indiana Local School Budgeting and Accounting Procedures which was created by Acts 1965, ch. 470, for the purpose of studying and proposing consolidation and simplification of local school budgeting and accounting procedures.

The three major bills prepared by the Commission were ch. 320 of the 1967 Acts (House Enrolled Act 1431, hereinafter referred to as the "Debt Service Fund Act"), Burns; § 28-2428, which requires public school corporations to create a Debt Service Fund; ch. 328 (House Enrolled Act 1441) Burns; § 28-2429, requiring creation of a General

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Fund by such corporations (hereinafter referred to as the "General Fund Act"); and House Bill No. 1433 (hereinafter referred to as the "Cumulative Fund Bill"), which failed to pass in its original form, but which would have, had it been passed as introduced, required schools to establish a Cumulative Fund. (House Enrolled Act 1433, ch. 238, as finally enacted, creates a commission to study public post-high school education.)

The Debt Service Fund Act became effective for budgeting and tax levy purposes on July 1, 1967, and will be effective for other purposes on January 1, 1968. It reads in part as follows:

"SEC. 2. The governing body of each school corporation in the State of Indiana *shall establish* a Debt Service Fund *for the payment of all debt and other obligations arising out of funds borrowed or advanced for school buildings when purchased from the proceeds of a bond issue for capital construction or a lease to provide capital construction. The term 'debt service' shall include, but not be limited to lease rental obligations, school bonds and coupons and civil bonds obligations assumed by school corporations reorganized pursuant to Chapter 202, Acts of 1959, as amended, but shall not include emergency and temporary loans obtained for benefit of any other fund. All receipts and disbursements heretofore authorized by law for school funds and tax levies for the Lease Rental Fund, Bond Fund, Sinking Fund and Civil Bond Obligation Fund shall, on and after January 1, 1968, be received in and disbursed from the Debt Service Fund. Any balances remaining in said funds on January 1, 1968, shall be transferred to the Debt Service Fund.*

"SEC. 3. A tax levy *shall be established* by the governing body of each school corporation for the 1968 calendar year and all succeeding calendar years sufficient to pay all debt service obligations. If the advertised levy is insufficient to produce revenue to meet all debt service obligations for any calendar year, the state board of tax commissioners is hereby *authorized*

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to establish a levy greater than advertised, if necessary, to meet such obligations." (Emphasis added.)

Although section 2 states that the term "debt service" shall include "lease rental obligations," it is preceded by a statement that the fund is established to pay "all debt and other obligations arising out of . . . a lease to provide capital construction." (Emphasis added.)

It seems clear to me that the Legislature intended the Debt Service Fund to provide payments of debts incurred in the acquisition of school buildings. The General Assembly included in that category rents due under the types of leases authorized by the 1947 and 1957 Building Acts, *i.e.*, those leases which permit a school corporation to have built for it, to use and eventually to purchase a new school building, even in those instances where the school corporation cannot issue bonds to construct a building itself at the time the lease is made, because it has reached its constitutional debt limitation. See *Becker v. Albion-Jefferson School Corp.*, 235 Ind. 204, 132 N.E. 2d 269 (1956). That the 1967 General Assembly specifically amended the 1947 and 1957 Building Acts to provide that payment of rent for buildings leased pursuant to those acts *shall* be made from the Debt Service Fund reinforces my opinion. The provisions of the Debt Service Fund Act, and the 1947 and 1957 Building Acts prior to their 1967 amendment, all require that an annual tax *shall* be levied in an amount sufficient to pay all obligations subject to those Acts. This is another indication that the Debt Service Fund is intended to be used to pay previously approved and incurred debts for capital construction, whether by purchase or long-term lease with option to purchase. (Section 3 of the Debt Service Fund Act *authorizes* the State Board of Tax Commissioners to increase a tax levy, when necessary, to an amount sufficient to meet obligations of the Debt Service Fund of a school. Chapter 272 of the 1967 Acts [Senate Enrolled Act 233], signed by the Governor on the same day he signed the Debt Service Fund Act, March 11, 1967, *requires* the State Board of Tax Commissioners to review tax levies for debt service obligations and to increase insufficient levies. Chapter 272 also provides that in case of default by a school corpora-

tion on a debt service obligation, state funds otherwise distributable to the defaulting school may be withheld and paid to the creditor.)

The third statute to which you refer in your question, Acts 1945, ch. 57, § 1, as last amended by Acts 1965, ch. 69, § 1, Burns § 28-1108 (hereinafter referred to as the "Cumulative Building or Sinking Fund Act"), authorizes all schools to create a "cumulative building or sinking fund" to provide funds for any or all of the following purposes:

"1. To provide the original capital cost for the construction and equipment of new school buildings for classroom purposes.

"2. To provide funds for the acquisition of land and improvements . . . Provided further, That the provisions of the subsection shall also apply to . . . the acquisition of lands with existing buildings thereon for the purpose of conversion by remodeling for school classroom purposes. . . .

"3. To provide the original capital cost of equipping and/or of remodeling and equipping for school classroom purposes any building presently used for school purposes.

"4. To provide funds for the leasing or renting of existing real estate suitable for school classroom purposes.

"5. To provide funds for the acquisition of any land to be used as a street, road, sidewalk or means of ingress or egress, and to provide funds for the improvement of any land so acquired; and also to provide funds for the improvement or construction of any street, road, sidewalk or means of ingress or egress to any property, used for school purposes . . . and also to provide funds, when available, for the installation of a water supply and/or sewer systems, including water and/or sewer conduits both on and off any property owned by the school corporation.

"6. To provide funds for the original capital costs of school site improvements. . . ."

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The third major bill of the 1965-67 Study Commission previously referred to, the Cumulative Fund Bill, which failed to pass as introduced, proposed to amend the above quoted section to limit rent payments from the Cumulative Fund which it would have created to those of an "emergency" nature, payment being limited to a period of one year or less.

Section 3 of the Cumulative Building or Sinking Fund Act, as last amended by Acts 1961, ch. 270, § 1, Burns § 28-1110, authorizes an annual tax levy of a maximum of \$1.25 on each \$100 of taxable personal and real property for no more than twelve years to provide a cumulative building or sinking fund. (The 1967 Cumulative Fund Bill proposed to amend this section also, to permit a higher tax levy, subject to the approval of the State Board of Tax Commissioners.)

All of the provisions of the Cumulative Building or Sinking Fund Act concerning the purposes for which the fund may be collected, with the possible exception of the paragraph numbered 4 concerning rent payments, make it clear that the purpose of that Act is to provide a method for schools to collect and accumulate in advance of need a fund from which capital improvements and equipment may be purchased. The tax levy provision and its limitation to a twelve year term are also consistent with an advance accumulation of money for building construction or equipment acquisition purposes.

Special provision has been made for a school corporation which has been accumulating funds under this Act but thereafter decides to lease a building from an Indiana corporation pursuant to the 1947 Building Act rather than to construct such building itself. Acts 1951, ch. 122, § 1, as last amended by Acts 1955, ch. 280, § 1, Burns § 28-1111, expressly permits a school corporation having a cumulative building and sinking fund to *invest* such fund in the preferred stock of a school building corporation organized to build a school building within the limits of the school corporation's taxing district under the 1947 Building Act and acts supplemental thereto. After a school corporation has entered into a contract with such a building company, it may transfer part or all of its cumulative building and sinking fund to either a special fund for equipment of the leased building, or to a special fund for the purchase of the leased school building.

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The paragraph numbered 4 of the Cumulative Building and Sinking Fund Act permitting payments for leasing or renting real estate from that fund could be literally construed to include every type of rent payment authorized by law. So interpreted, however, this Act would conflict with the three 1967 Acts which amend the 1947 and 1957 Building Acts and create the Debt Service Fund, respectively, insofar as the 1967 Acts require certain rents to be paid from the Debt Service Fund. To the extent to which there is a conflict, of course, the 1967 statutes, as the latest expression of the Legislature, will prevail, and amend the earlier Cumulative Building and Sinking Fund Act by implication. *Home Owners' Loan Corp. v. Wise*, 215 Ind. 445, 19 N.E. 2d 737 (1939).

The repealer section of the Debt Service Fund Act reads in part as follows, leaving no doubt that the Legislature intended it to prevail over earlier acts in conflict with it:

“SEC. 6. Any law or part of law that is not amended to comply with the legislative intent expressed by the provisions of this act, which law or part of law has governed school corporation authorization for levying taxes for debt service as provided by this Act shall be deemed to refer to the procedures herein provided in this Act.

However, Acts which may be interpreted to conflict should be harmonized when possible to give full force and effect to both, *Combs v. Cook*, 238 Ind. 392, 151 N.E. 2d 144 (1958). Because the word “existing” was used in the paragraph numbered 4 of the Cumulative Building and Sinking Fund Act to describe the leased real estate, and because of the apparent general purpose of that Act, discussed *supra*, it is my opinion that the Cumulative Building and Sinking Fund Act can be interpreted to authorize rent payments from a fund created pursuant to it only when the leasing or renting of space is required because funds being accumulated are not as yet insufficient to construct or remodel a building, or a contemplated building is not completed, or another situation has arisen requiring leases or rentals which are not an alternative method of capital construction of school buildings.

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The directions in the Debt Service Fund Act are quite specific and mandatory that school corporations with the specified debts and obligations "shall" establish a Debt Service Fund and shall establish a tax levy to pay such debts and obligations. However, it must be noted that the General Fund Act (which must be construed with the Debt Service Fund Act because the two are obviously interrelated and part of a single plan, as previously set out herein, to reform school accounting methods) reads in part as follows:

"SEC. 4. Any lawful school expenses payable from any other fund of the school corporation, *including* without limitation *debt service* and capital outlay, may be budgeted in and paid from the General Fund." (Emphasis added.)

Therefore, there will no doubt be occasions on which the payments otherwise required to be made from a school corporation's Debt Service Fund may be made from its General Fund.

In consideration of all of the factors enunciated above, it is my opinion that for the calendar years beginning January 1, 1968:

(1) Rent for school buildings leased pursuant to the 1947 and 1957 Building Acts, as amended by chs. 335 and 352, respectively, of the Acts of 1967, Burns §§ 28-3230 and 28-3247, must be paid from a school's Debt Service Fund pursuant to the Debt Service Fund Act or from the school's General Fund pursuant to (a) § 4 of the General Fund Act or (b) § 11, as amended in 1967, of the 1947 Building Act (the initial year's payment of rent).

(2) Any other authorized payments which are a "debt arising out of a lease to provide capital construction" must be paid from the school's Debt Service Fund pursuant to the Debt Service Fund Act or from the General Fund pursuant to § 4 of the General Fund Act.

(3) Rent owed pursuant to leases not included in (1) and (2) above may be paid from a school's cumulative building and sinking fund pursuant to the Cumulative Building and Sinking Fund Act.