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Nevertheless, although I am fully aware of the problems created by this statute, I cannot misconstrue the law as enacted by the Legislature to ameliorate the hardship on certain school districts, even though this would be a laudable result.

Therefore, it is my opinion that the words "adjusted valuation" as used in section 3 of Ind. Acts 1967, ch. 328, Burns § 28-2429b, mean "adjusted assessed valuation." The result is that the \$4.95 tax rate, adjusted by the factor established by the State Board of Tax Commissioners pursuant to Ind. Acts 1949, ch. 247, § 5, as last amended by Acts 1961, ch. 284, § 1, Burns § 28-1025, is the maximum rate which may be levied by a school corporation for its General Fund on each \$100 of the assessed valuation of taxable property in the school corporation.

OFFICIAL OPINION NO. 42

November 29, 1967

INDIANA AGENCY FOR THE BLIND—Administrative Procedures With Respect to the Federal Vocational Administration Act.

Opinion Requested by Dr. A. C. Offutt, State Health Commissioner.

I am in receipt of your recent inquiry for an opinion concerning the administrative structure of the Indiana Agency for the Blind. Your letter, in pertinent part, reads as follows:

"The Office of the General Counsel has advised the Vocational Rehabilitation Administration, Department of Health, Education, and Welfare, to seek clarifica-

tion of the administrative status of the Indiana Agency for the Blind. Specifically, they raise the question regarding the authority of the Director of the Agency to negotiate the State Plan as has been done in the past. This plan operates under the umbrella of the Federal Vocational Administration Act, FCA, Title 29, Secs. 31-42, inclusive. The Office of the General Counsel questions the definition of the 'sole agency to administer the plan.' The problem arises from the assignment made in Chapter 117, Acts of 1961, Indiana General Assembly (Burns 22-5117).

"May we, therefore, have your official opinion in answer to the question as to definition of the sole agency to negotiate the State Plan for Vocational Rehabilitation of the Blind pursuant to the provisions of the Federal Vocational Administration Act, FCA, Title 29, Secs. 31-42, inclusive, as amended?"

To answer your question it is necessary to trace the legislative history of that agency of the State of Indiana designated by the Indiana General Assembly to administer the Federal Vocational Administration Act, and that review can begin with Acts 1947, ch. 97. Section 9 of that Act, the same being Burns § 22-809, provides:

"SEC. 9. The State of Indiana does hereby, through its generally assembly, accept the provisions of an act of Congress entitled 'An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment,' approved June 2, 1920, and all amendments thereto, which said act and its amendments thereto provide, among other things that a state plan for vocational rehabilitation of the blind may be approved by the federal security administrator if submitted by a state blind commission, or other agency which provides assistance or services to the blind, having such authority to provide said blind with vocational rehabilitation; and the said board of industrial aid and vocational rehabilitation for the blind is

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hereby designated as the sole agency for the cooperation with the federal board, agency or administrator for the purpose of carrying out the provisions and purpose of said federal act as it pertains to vocational rehabilitation of the blind and is empowered and directed to cooperate with said federal board, agency or administrator in the administration of said federal act, and to direct the disbursement and administer the use of all funds provided by the federal government and this state for the vocational rehabilitation of the blind, and said board is hereby authorized to submit a state plan for the vocational rehabilitation of the blind to the federal board, agency or administrator pursuant to the provisions and requirements of said federal act."

The statute above clearly specifies that the Board of Industrial Aid and Vocational Rehabilitation for the Blind is to be the sole agency for the State of Indiana in the administration of the Federal Act, and is to submit the state plan for vocational rehabilitation of the blind to the proper Federal agency. The same 1947 Act, in its first section, created the Board of Industrial Aid and Vocational Rehabilitation for the Blind and specified the membership of said Board, thusly :

"SECTION 1. There is hereby created and established a board of industrial aid and vocational rehabilitation for the blind (hereinafter referred to as the board) consisting of the board of trustees of the Indiana school for the blind. Said board is hereby authorized and directed to carry out the powers and duties imposed by the provisions of this act."

The composition of the Board of Industrial Aid and Vocational Rehabilitation for the Blind was changed by Acts 1953, ch. 197, known as the Health Administration Act of 1953. The pertinent parts of that Act are as follows :

Section 103 :

"The Department of Health. There is hereby created in the state government, a Department of Health. The

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department shall consist of a director, an advisory health council, and such divisions, personnel and institutions as are created or transferred by this act or which according to the terms of this act may hereafter be transferred by executive order."

Section 106:

"Organization of Department. There are hereby created within the department the following three divisions to be known as: 1. Division of Mental Health 2. Division of Health and Preventive Medicine 3. Division of Medical Institutions. The Director may establish regulations governing the dismissal, termination, lay off, or suspension of an appointee or employee not inconsistent with this or other applicable acts. The Director, Commissioners, and Superintendents shall have the power to administer oaths, take depositions, and certify to official acts."

Section 501:

"Organization. There is hereby created within the Department of Health a division to be known as the Division of Medical Institutions. Said division shall be composed of a Commissioner of Medical Institutions and such personnel as are necessary to perform the duties imposed upon said division or said commissioner by this act. . . ."

Section 503:

"Medical Institutions. The Commissioner in charge of the Division of Medical Institutions shall have complete administrative control and responsibility for the following institutions:

"Indiana State School for the Deaf.

"Indiana School for the Blind.

"Northern Indiana Children's Hospital.

"Southern Indiana Tuberculosis Hospital.

"Indiana State Sanitarium.

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“Indiana Soldier’s and Sailor’s Children’s Home.

“Indiana State Soldier’s Home.

“All the powers and duties of the respective boards of trustees of the above named institutions are hereby preserved, transferred to, and conferred on the Commissioner of this Division. . . .”

Section 505:

“Governing Boards Abolished. The governing body of each institution mentioned in Section 503 is hereby abolished and the term of its members hereby terminated.”

Section 701:

“Transfer of Powers to Commissioners. All powers and duties vested in or required of any board of trustees or any other body or officer abolished by the terms of this act are hereby continued in full force and effect and except as herein otherwise provided are hereby transferred to, vested in and imposed upon the Commissioner of the appropriate division of the Department of Health.”

In 1953 the Attorney General was asked to express an opinion as to the effect the above statutes would have on the Board of Industrial Aid and Vocational Rehabilitation for the Blind, special note being taken that that agency was administering the Federal plan. In 1953 O.A.G., p. 144, at 147, the Attorney General concluded:

“Therefore to specifically answer your question, it is my opinion that the Board of Industrial Aid and Vocational Rehabilitation for the Blind is the agency which is authorized by said law to rehabilitate the blind, and that that Board is composed of the Director of Medical Institutions of the Department of Health.”

The Director of Medical Institutions of the Department of Health continued to operate as the Board of Industrial Aid

and Vocational Rehabilitation for the Blind until 1959, at which time the title of the board was changed. Acts 1959, ch. 101, § 1, the same being Burns § 22-801, provides:

“SECTION 1. Section 1 of the above entitled act is amended to read as follows: Sec. 1. There is hereby created and established a board of industrial aid and vocational rehabilitation for the blind, hereinafter referred to as the board, consisting of the board of trustees of the Indiana school for the blind: Provided, That from and after the effective date of this amendatory act such ‘board of industrial and vocational rehabilitation for the blind’ shall be known as the ‘Indiana Agency for the Blind.’ The board of trustees of the Indiana school for the blind is hereby authorized and directed to carry out the powers and duties imposed by the provisions of this act. Wherever there is a reference in this act to the ‘board of industrial aid and vocational rehabilitation for the blind’ it shall mean the ‘Indiana Agency for the Blind.’”

While the 1959 Act speaks of the trustees of the Indiana School for the Blind, the Act cannot be interpreted as recreating that board of trustees. In *Thompson v. Mosberg*, 193 Ind. 566, 574, 139 N.E. 307, 310 (1923), the Indiana Supreme Court said:

“The recital in this manner, in an amendatory act, of language contained in the act amended, does not show a legislative intent to make any change in the law as expressed by the language so re-enacted; but the unchanged portions of the statute are continued in force, with the same meaning and same effect after the amendment that they had before. *Worth v. Wheatley* (1915), 183 Ind. 598, 604, 108 N.E. 958; *State v. Cates* (1897), 149 Ind. 46, 48, 48 N.E. 365; *Holle v. Drudge* (1920), 190 Ind. 520, 129 N.E. 229, 230.”

The Director of Medical Institutions was, in effect, the board of trustees of the Indiana School for the Blind prior to the 1959 Act, and he remained so subsequent to that Act.

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In 1961 the Indiana General Assembly again reorganized the Indiana Board of Health. Indiana Acts 1961, ch. 117, provides, in pertinent part, as follows:

Section 1; Burns § 22-5101:

“On July 1, 1961, the Division of Medical Institutions of the Department of Health, as created by Chapter 197 of the Acts of the Indiana General Assembly of 1953, shall be abolished.”

Section 3; Burns § 22-5103:

“There is hereby created within the State Board of Health an administrative unit for special institutions which shall be known as the ‘Administrative Unit for Special Institutions.’ ”

Section 4; Burns § 22-5104:

“The State Health Commissioner shall be the administrative head of the unit. . . .”

Section 18:

“The Indiana Agency for the Blind as created by Chapter 97 of the Acts of 1947, as the same has been amended, is hereby transferred to the Administrative Unit for Special Institutions, herein created. The advisory committee for the Indiana School for the Blind created by the provisions of this act shall also act as the advisory committee for the Indiana Agency for the Blind.” (This section was amended by Acts 1965, ch. 82, § 1, and can be found in Burns as § 22-5117. The amendment concerned the advisory committee and so need not be pursued further herein.)

Except for the one amendment noted above, the 1961 Act has not been altered. Thus, the Indiana Agency for the Blind is now under the jurisdiction of the Administrative Unit for Special Institutions, which is a subdivision of the State Board of Health, and of which the State Health Commissioner is administrative head.

The preceding history of legislative acts reveals the source of confusion in this area. That history shows the change in nomenclature of the agency from Board of Industrial Aid and Vocational Rehabilitation for the Blind to Indiana Agency for the Blind, and traces the changes and the composition of the governing body of that agency from the Board of Trustees of the Indiana School for the Blind through the Director of the Division of Medical Institutions to the Administrative Unit for Special Institutions and the State Health Commissioner. With this background we can now attempt to answer your questions.

Throughout the years one statute has remained constant. Acts 1947, ch. 97, § 9, the same being Burns § 22-809, the first statute set out above, is still in force and still provides that the Board of Industrial Aid and Vocational Rehabilitation for the Blind, now known as the Indiana Agency for the Blind, is the sole agency "for the cooperation with the federal board, agency or administrator for the purpose of carrying out the provisions and purpose of said federal act as it pertains to vocational rehabilitation of the blind," and the agency is still "authorized to submit a state plan for the vocational rehabilitation of the blind to the federal board, agency or administrator."

It should be noted that the 1961 Act did not abolish the Indiana Agency for the Blind as a separate agency, but rather changed the composition of the governing body of that agency from the Director of Medical Institutions to the Administrative Unit for Special Institutions. (Nor did the 1953 Act which made the Director of Medical Institutions the governing body abolish the Agency as a separate Agency.) Section 18 of the Act, *supra*, specifically transferred the Agency, rather than the functions of the Agency, to the Administrative Unit for Special Institutions, and also provided for an advisory committee for the Agency. The 1965 amendment of the provisions of that section pertaining to the Advisory Committee, noted *supra*, further indicates the legislative intent to consider the Agency a separate agency. Indeed, the Legislature regularly includes the Agency in its biennial budget and makes a specific appropriation to the Agency. (See, for example, Acts 1967, ch. 298, § 2, p. 1059.)

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There is also another section of the 1947 Act that has remained unchanged throughout the history above. Acts 1947, ch. 97, § 2, the same being Burns § 22-802, provides in part:

“The governor of the state shall appoint a director of vocational rehabilitation for the blind who shall also serve as secretary of the board and shall act under the direction of the board of industrial aid and vocational rehabilitation for the blind [now the Indiana Agency for the Blind and now governed by the Administrative Unit for Special Institutions] in carrying out the provisions of this act and the federal vocational rehabilitation act, insofar as said federal act pertains to the vocational rehabilitation for the blind. The salary and term of such director shall be fixed by the governor, and he shall be removable only for cause. . . .”

The office of Director has never been abolished, nor have the statutory duties of that office in relation to rehabilitation for the blind been altered. His prime function, indeed his only function, is to administer the Federal Rehabilitation Act under the direction and supervision of the governing body of the Indiana Agency for the Blind. The submission of the State plan to the proper Federal Agency is not inconsistent with that function, and there appears to be no reason why the Plan could not be submitted over his signature.

However, Section 9, *supra*, specifically provides that the governing body is “authorized to submit a state plan.” That language does not in my opinion prohibit the governing body from submitting the plan through the Director, but it could be so interpreted. Therefore, I would suggest that the plan bear the written approval of the governing body, the Administrative Unit for Special Institutions, evidenced by the signature of the State Health Commissioner who is administrative head of the Unit.

To summarize the answer to your question, the Indiana Agency for the Blind is the sole state agency authorized to negotiate the State Plan for Vocational Rehabilitation of the Blind pursuant to the provisions of the Federal Vocational Administration Act. The Plan should be negotiated by the

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Administrative Unit for Special Institutions of the State Board of Health acting in the capacity of governing body of the Indiana Agency for the Blind, and negotiated through the Director of the Indiana Agency for the Blind, who is the officer designated by statute to administer the Plan. It would be advisable to have the final Plan bear the written approval of the Administrative Unit.

OFFICIAL OPINION NO. 43

November 29, 1967

SCHOOLS—School Transportation Code—Legality of One Contract Providing for Several Routes—Power of State School Bus Committee to Inspect.

Opinion Requested by Hon. Richard D. Wells, Superintendent of Public Instruction.

This is in response to your recent letter requesting an Official Opinion concerning Acts 1965, ch. 260, known as the "School Transportation Code of 1965." Your questions have been interpreted as follows:

1. May a person who owns the school bus he drives and several other school buses bid for and sign a contract to transport school children over several routes and hire drivers for the other buses? If your answer is in the affirmative, under whose jurisdiction are the bus drivers so hired?

2. Is it legal for the state school bus committee to ask the driver of the bus at the time of an inspection thereof to show a copy of his contract with a school corporation as well as his certificate of ownership and driver's license?