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OFFICIAL OPINION NO. 51

December 22, 1967

**EDUCATION—STATE BOARD OF VOCATIONAL AND
TECHNICAL EDUCATION—As Being Proper State
Agency to Receive Federal Funds in Administration
of Federal Vocational Rehabilitation Act.**

Opinion Requested by Hon. Roger D. Branigin, Governor.

This is in reply to your recent request for an Official Opinion which reads as follows:

Does the State Board of Vocational and Technical Education, created in 1965, to take effect January 1, 1966, succeed the Commission on General Education in its function and authority as the Board of Vocational Education with respect to the latter's authority over vocational rehabilitation?

Acts 1965, ch. 244, as found in Burns §§ 28-4951 through 28-4953, created the "State Board of Vocational and Technical Education" (hereinafter referred to as the "1965 Vocational Board").

The first section of the 1965 Act reads as follows:

"In order to receive federal funds which may now or hereafter be available and to divide and distribute such funds between the commission on general education of the Indiana State Board of Education and the board of trustees of the Indiana Vocational Technical College in a manner which will contribute most to vocational and technical education in Indiana, *there is hereby created and established a 'State*

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Board of Vocational and Technical Education' in Indiana, which board shall supersede the present state board of vocational education and shall assume and succeed to all its rights, duties, powers and privileges as are now provided under existing Indiana and federal laws." (Emphasis added.)

Section 3, Burns § 28-4953, specifies further:

"This state board of vocational and technical education is hereby designated, effective as of January 1, 1966, as the official instrument of the state to receive federal funds for vocational and/or technical education, training and retraining, and to carry out the provisions of the federal statutes relating thereto. *This State Board of Vocational and Technical Education shall be the designer for the administration of the state plan of vocational education and for the supervision of the administration thereof by local educational agencies.* All laws, orders and regulations in conflict herewith are hereby repealed effective as of January 1, 1966. Said board shall also be designated by the governor as the state agency to receive federal funds which may then or thereafter be available for vocational and technical education, training and retraining.

"The state board of vocational and technical education shall employ an executive officer, who shall be designated as the state director of vocational education." (Emphasis added.)

The first section of the 1965 Act specifically provides that the 1965 Vocational Board will supersede to *all* "rights, duties, powers and privileges" of "the present state board of vocational education." I have found no statute creating a board denominated the "state board of vocational education." However, errors in nomenclature can easily occur during a legislative session. The General Assembly is well aware of this problem, and has provided for its solution. Acts 1945, ch. 14, § 1, Burns § 1-203, specifically requires that when a board or commission of the state government is designated in

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a statute by an incorrect name, the name stated shall be construed to mean the properly or correctly named board or commission. See 1953 O.A.G., p. 144. Therefore, I must examine the state and federal statutes concerning vocational education and rehabilitation in order to determine the correct name of the board or commission which the 1965 Vocational Board succeeds. An examination of these statutes will also disclose the "rights, duties, powers and privileges . . . under existing Indiana and federal laws" to which the 1965 Vocational Board succeeds.

In 1920, the United States Government adopted an act to provide funds to the states for vocational rehabilitation. 41 Stat. 735, approved June 2, 1920 (hereinafter referred to as the "1920 Federal Vocational Rehabilitation Act"). The Act as amended may now be found in 29 U.S.C. §§ 31-42. Section 3 of the original act provided that a state, in order to receive benefits, must

"empower and direct the board designated or created as the State board for vocational education to cooperate in the administration of the provisions of the Vocational Education Act, approved February 23, 1917, to co-operate as herein provided with the Federal Board for Vocational Education in the administration of the provisions of this Act. . . ."

At the next session of the Indiana General Assembly held thereafter, the State of Indiana accepted the provisions of the federal act:

"SECTION 1. *Be it enacted by the general assembly of the State of Indiana*, That the State of Indiana does hereby, through its general assembly, accept the provisions and benefits of the 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 will observe and comply with all requirements of such act." Acts 1921, ch. 204, § 1, Burns § 28-4920.

Sections 3 and 4 of the 1921 Indiana Act (hereinafter referred to as the "1921 Indiana Vocational Rehabilitation Act"), Burns §§ 28-4922—28-4923, read as follows:

"SEC. 3. The board heretofore designated by law as the state board for vocational education to cooperate with the federal board for vocational education in the administration of the provisions of the vocational education act, approved February 23, 1917, is hereby designated as the state board for the purpose of co-operating with the said federal board in carrying out the provisions and purposes of said federal act providing for the vocational rehabilitation of persons disabled in industry or otherwise and is empowered and directed to co-operate with said federal board in the administration of said act of congress; to prescribe and provide such courses of vocational training as may be necessary for the vocational rehabilitation of persons disabled in industry or otherwise and provide for the supervision of such training; to appoint such assistants as may be necessary to administer this act and said act of congress in this state; to fix the compensation of such assistants 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 such persons. [Emphasis added.]

"SEC. 4. It shall be the duty of the state board, designated to co-operate as aforesaid in the administration of the federal act, and the industrial board of Indiana to formulate a plan of co-operation in accordance with the provisions of this act and said act of congress, such plan to become effective when approved by the governor of the state."

The 1917 Federal Act referred to is the 1917 Federal Vocational Education Act, to be found, as amended and supplemented, at 20 U.S.C. §§ 11-34. That federal act was accepted by the State of Indiana by Acts 1917, ch. 112, Burns §§ 28-4917—28-4919 (hereinafter referred to as the 1917

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Indiana Vocational Education Act). Section 3 of that Act, Burns § 28-4919, designated "the state board of education" as

" . . . the state board to carry out the provisions of said act so far as the same relate to the co-operation of the state and federal government and [it] shall have full power to take all necessary steps in the formulation of plans for the promotion of education in agriculture, in trades and industries, and to formulate and execute plans for the preparation of teachers of vocational subjects."

It seems clear that, although the state board of education was not given the title "state board of (or for) vocational education" (or indeed, any additional title at all), in the 1917 Indiana Vocational Education Act, it is the board described in section 3 of the 1921 Indiana Vocational Rehabilitation Act, Burns § 28-4922, as the "board heretofore designated by law *as the state board for vocational education to co-operate with the federal board for vocational education in the administration of the provisions of the vocational education act, approved February 23, 1917.*" (Emphasis added.)

The duties and functions of the state board of education referred to in the 1917 Indiana Vocational Education Act, concerning vocational rehabilitation had finally devolved, by the time of the approval of the Act creating the 1965 Vocational Board, upon the Commission on General Education of the State Board of Education. Tracing the succession of duties is somewhat tortuous, but a resumé of the statutes effecting the change is required in order that the duties and responsibilities concerning vocational rehabilitation of the commission on general education, acting as the state board for vocational education prior to the passage of the 1965 Act, can be understood.

A new state board of education was created in 1913 to aid in the establishment of vocational education in local Indiana schools, Acts 1913, ch. 24, Burns §§ 28-4901—28-4916. In addition, that Board had the powers and duties of the former state board of education, section 7, formerly Burns § 28-401. This state board of education was still in exist-

ence through 1921, and is the state board of education designated to cooperate with the federal government concerning vocational education by the 1917 Indiana Vocational Education Act and designated to cooperate with the federal government concerning vocational rehabilitation by the 1921 Indiana Vocational Rehabilitation Act.

In 1944 O.A.G., p. 35, the Attorney General concluded that the State Board of Education created in 1913 was the "board heretofore designated by law as the state board for vocational education" specified in section 3 of the 1921 Act, Burns § 28-4922. He concluded that that State Board of Education, acting as the state board for vocational education, was the proper agency to receive and disburse federal vocational rehabilitation funds.

"No other agency or organization is named by law to act in the same capacity. The law clearly provides that *all funds* provided by the Federal Government and this State for vocational rehabilitation shall be disbursed and administered by the State Board, i.e., The State Board of Education." 1944 O.A.G. at 36.

"My conclusion is that the *State Board of Education, acting as a State Board for Vocational Rehabilitation* has exclusive authority to direct the disbursement and administer the use of all Federal funds provided by the Federal Government for vocational rehabilitation in Indiana." 1944 O.A.G. at 37. (Emphasis added.)

The duties of the State Board of Education, in its role as "state board for vocational education," were assigned to the Indiana Department of Education in 1933 by executive order of Governor Paul V. McNutt, pursuant to Acts 1933, ch. 4, the State Executive-Administrative Act. Each of the previously cited acts on vocational education and vocational rehabilitation were specifically referred to. See "An Executive Order Effecting a Reorganization of State Government of Indiana," by Paul V. McNutt, Governor, effective April 15, 1933 (available in pamphlet form at the Indiana State Library).

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In 1941, section 1 of ch. 182 of the 1941 Acts amended section 7 of the 1913 Act (formerly Burns § 28-401). The State Board of the Department of Education was abolished and its powers and duties transferred to the State Board of Education created by the amendment, outside the Department of Education established by Governor McNutt in 1933. However, this amendment was one of the acts which empowered the Lieutenant Governor of Indiana to make appointments to boards within the executive branch of the government, and was found unconstitutional in *Tucker v. State*, 218 Ind. 614, 35 N.E. 2d 270 (1942). The result achieved was that the board remained outside the Department of Education, but vacancies created by the unconstitutional appointments of the Lieutenant Governor were filled by the Governor. 218 Ind. at 702-704.

In 1945, the State Board of Education was reorganized again, Acts 1945, ch. 330, Burns §§ 28-405 through 28-409. That Act created a new Indiana State Board of Education, and terminated the former State Board of Education. The new board was composed of three (3) commissions:

“ . . . a commission on general education to consist of six (6) appointive members and the state superintendent of public instruction, a commission on textbook adoption to consist of six (6) appointive members and the state superintendent of public instruction, and a commission on teacher training and licensing to consist of six (6) appointive members and the state superintendent of public instruction. The state superintendent of public instruction shall be the chairman of the Board of each commission. . . .

“all powers and duties of the predecessor state board of education . . . are hereby and shall be transferred, distributed, and assigned to the board and commissions created in this act. . . .” Act, section 1, Burns § 28-405. (Emphasis added.)

Nowhere in the 1945 Act is vocational education or vocational rehabilitation expressly mentioned. However, the Commission on General Education was given all powers of the

former State Board of Education not specifically delegated to one of the other two commissions created by the Act:

“The commission on general education shall exercise all the powers and duties heretofore exercised by the state board of education except those hereinafter assigned to the commission on teacher training and licensing and the commission on textbook adoptions.” Act, section 2, Burns § 28-406.

The powers exercised by the State Board of Education concerning vocational education and rehabilitation are not specifically assigned to the Commission on Textbook Adoptions or the Commission on Teacher Licensing and Training, and are not inherent in the duties which are specifically assigned to those boards. That the Commission on General Education succeeded to the powers of the former State Board of Education in its role as State Board for Vocational Education, including rehabilitation, is clear. The State Board of Education is charged with the duty “to coordinate the work of the various commissions so as to bring about an effective and an [sic] unified school program and to make determination in matters of jurisdiction between such commissions in accordance with law, but *all actions of the commissions within their respective jurisdictions shall be final.*” (Emphasis added.) 1945 Act, section 1, Burns § 28-405.

The 1920 Federal Vocational Rehabilitation Act has been substantially amended and revised in 1943, 29 U.S.C. §§ 31-41. Among other changes made, § 32 of 29 U.S.C. was amended to permit a state to maintain a separate agency for federal cooperation concerning rehabilitation of the blind. Acts 1945, ch. 327, designated such a separate state agency. By section 6 of that Act, amending section 14 of ch. 59 of the 1915 Acts, the following transfers of power were made:

“Any and all of the powers, rights and liabilities heretofore conferred upon the *state board of education* to administer vocational rehabilitation to the adult blind, and any and all rights of said *state board of education* to administer state, federal or any other funds for the prevention of blindness and vocational

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rehabilitation of the adult blind, shall, from and after the passage of this act, no longer be so administered by the *state board of education*, but shall be administered only by and shall become a part of the powers, rights, and liabilities of the board of industrial aid and vocational rehabilitation for the blind." (Emphasis added.)

The quoted section refers to the Indiana State Board of Education (the board created in 1945). However, the Attorney General, in an interpretation of this statute in 1945 O.A.G., p. 173, consistently referred to the superseded board as "the State Board of Vocational Education." He also indicated that the agreement between the federal government and the State of Indiana concerning vocational rehabilitation was entered into on behalf of the state by "the State Board of Vocational Education." He stated that "the authority of the State Board of Vocational Education to administer such vocational rehabilitation program in cooperation with the Federal Administrator under the federal statute, has been withdrawn by the Legislature of Indiana, and that said State Board of Vocational Education has been thereby deprived of any power or authority to so carry on such function as far as the adult blind are concerned." 1945 O.A.G. at 179. (In 1947, this Act was replaced by Acts 1947, ch. 97, Burns §§ 22-801—22-815. Section 6, Burns § 22-813, is substantially like the section of the 1945 Act quoted above. I have recently traced subsequent developments in this area in my Official Opinion No. 42 of 1967, p. 290, *supra*.)

In 1957 the Attorney General of Indiana concluded that "the General Commission of the State Board of Education, acting as the Board of Vocational Education," was the state agency authorized to cooperate with the federal authorities in administering the vocational rehabilitation program and establishing rehabilitation facilities in the State of Indiana pursuant to 1943 and 1954 amendments to the 1920 Federal Vocational Rehabilitation Act, Pub. Law 565, 29 U.S.C. §§ 31-42. 1957 O.A.G., p. 3.

The State Board of Education created by the 1945 Act recognized the jurisdiction of the Commission for General

Education over vocational rehabilitation. At page 29 of *The Administrative Handbook for Indiana Schools* issued by the State Superintendent of Public Instruction in 1961, under the heading "Division of Vocational Education," the following appears:

"(a) By law the State Board of Education is the State Board for Vocational Education. By unanimous agreement of the State Board of Education, the Commission on General Education is the State Board for Vocational Education."

(Although, in my opinion, the first sentence is incorrect, the state board of education did operate properly in that it authorized the proper body, the Commission on General Education, to act as the State Board for Vocational Education.)

The Commission on General Education, acting as the State Board for Vocational Education, governed the activities of the Division of Vocational Rehabilitation. See paragraph (b) on page 41 of 1961 *The Administrative Handbook for Indiana Schools, supra*:

"The Division operates in accordance with the accepted statutes and a plan entered into between the Federal government and the State of Indiana. The State Board for Vocational Education is the official board governing the activities of the Division."

Thus, in 1965, at the time of the enactment of Acts 1965, ch. 244, the Commission on General Education was in charge of vocational rehabilitation in the State of Indiana, and had been denominated administratively since its creation as the "state board for vocational education" when performing functions in that field. Its predecessor, the State Board of Education created in 1913, had been referred to, both by statute and administratively, as the "state board for vocational education."

There can be no doubt that in using the words "the present state board of vocational education" in section 1 of Acts 1965, ch. 244, Burns § 28-4951, the General Assembly intended to refer to the Commission on General Education of

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the Indiana State Board of Education in its role as a State Board of or for Vocational Education. Therefore, pursuant to Acts 1945, ch. 14, § 1, Burns § 1-203, the words "present state board of vocational education" must be construed to mean the Commission on General Education acting as State Board of or for Vocational Education, including its functioning as the State Board for Vocational Rehabilitation.

Therefore, it is my opinion that the State Board of Vocational and Technical Education (the 1965 Vocational Board) created by Acts 1965, ch. 244, Burns §§ 28-4951—28-4953, has succeeded to the rights, duties, powers and privileges of the Commission on General Education of the State Board of Education in its function and authority as State Board of Vocational Education with respect to the latter's authority over vocational rehabilitation. The transferred rights, duties, powers and privileges include those granted by the 1921 Indiana Vocational Rehabilitation Act, Acts 1921, Burns §§ 28-4920—28-4925, as it may have been amended and supplemented.

OFFICIAL OPINION NO. 52

December 26, 1967

ATTORNEYS—Person Not Admitted to Bar Acting for Self— Acting for Others.

Opinion Requested by Hon. David Rogers, State Senator.

I am in receipt of your request for an Official Opinion on the following question:

"Is it lawful for a person not admitted to the practice of law to appear for and represent a person other than himself in proceedings before a Justice of the Peace?"