

OPINION 14

OFFICIAL OPINION NO. 14

August 12, 1966

**EDUCATION—Function of Indiana Scholarship Act—  
Power of State Scholarship Commission to Receive  
Federal Funds—Power of Commission to  
Insure Repayment of Scholarship  
Loans.**

Opinion Requested by Mrs. Josephine Ferguson, Executive Secretary, State Scholarship Commission.

I have your recent letter requesting an Official Opinion as follows:

“Acts 1965, Chapter 157, the Indiana Scholarship Act, created a State Scholarship Commission. That Commission would like an official opinion from the Attorney General determining whether the State Scholarship Commission has legislative authority to establish a reserve fund to be used for guaranteeing the repayment of loans made by private financial institutions to eligible students for educational purposes. Related questions must also be resolved as follows:

“1. If it is determined that the Commission may establish such a reserve fund, may the sums appropriated to the Commission for awarding scholarships to Indiana students be diverted to said reserve fund?

“2. By certain provisions of Federal Public Law 89-329, the ‘Higher Education Act of 1965,’ Federal funds are available to the State of Indiana for establishing a reserve fund guaranteeing private financial institutions the repayment of loans made to eligible students. Is the State Scholarship Commission authorized by Acts 1965, Chapter 157, to receive such

federal funds to establish the required reserve fund and administer such a program pursuant to Indiana and federal laws and regulations?

"3. Assuming that the Commission is authorized to receive federal funds to establish the state program on behalf of Indiana students, may the Commission use any of its state appropriations to administer such a federal and state program?

"4. Is the Governor of Indiana authorized by state law to designate the State Scholarship Commission as the state agency to establish a state loan agency which will set up a reserve fund for the purpose of guaranteeing loans to students and thereby administer the stated federal program; and if so, may the Commission use a portion of its state appropriated funds to defray the administrative costs thereof?"

Acts 1965, ch. 157, as found in Burns IND. STAT. ANN., §§ 28-5755—5766, the Indiana Scholarship Act, is clear and unambiguous. The application of rules of statutory construction to interpret its meaning is unnecessary. The Act creates a State Scholarship Commission of twelve persons appointed by the Governor of Indiana. The powers of the State Scholarship Commission are clearly set out by § 5 of the Act, Burns § 28-5759, and its duties are precisely stated therein, indicating that it deals only with the granting of scholarships. No mention is made of any power to make loans or to guarantee on default the repayment of loans made to students by private lending agencies. From the Act as a whole it appears that scholarship grants are to be made to needy students to increase their opportunities for higher education.

By Acts 1965, ch. 157, § 14, the Legislature appropriated "the sum of \$500,000 to the State Scholarship Commission for its use, so far as necessary, in carrying out the purposes of this act during the biennium ending June 30, 1967." You will note that the appropriated funds are specifically designated to and for carrying out "*the purposes of this act.*" Those purposes, clearly set out in the body of the Act, do not include making or insuring loans. Although no stated sum was allocated for administrative expenses, it appears to have been the

## OPINION 14

intent of the Legislature that a reasonable part of the \$500,000 would be used for the administrative costs of the Act, but not to administer any other program.

Acts 1897, ch. 115, as found in Burns IND. STAT. ANN., § 61-207.

26 I. L. E., States, § 87, p. 193.

1954 O.A.G. 65, No. 19.

1952 O.A.G. 198, No. 46.

1945 O.A.G. 499, No. 116.

The Indiana Scholarship Act itself does not specifically authorize the commission to receive funds from the federal government for any purpose. However, Acts 1947, ch. 178, as found in Burns IND. STAT. ANN., §§ 61-1301—1305, dealing with federal government appropriations, empowers the state, or any political subdivision thereof, to the extent authorized by the Indiana Constitution and not prohibited by law "to accept the provisions of any law of the Congress of the United States of America, or any rule, regulation, order or finding made pursuant thereto, now or hereafter enforced, which, upon acceptance, authorizes the state, or any political subdivision thereof, to cooperate with the federal government, or to receive benefits for itself or any of its citizens; and the state, or any political subdivision thereof, is hereby authorized and empowered to do any and all acts, and to make any rule, regulation, order, or finding that may be necessary to cooperate with the federal government or to effectuate the purposes of any federal law." Section 2 of this latter act, Burns IND. STAT. ANN., § 61-1302, states further that in instances where no state agency has the statutory authority "to cooperate with the federal government or to effectuate the purposes of such federal law, and it is a matter which the state has the power or authority to do, then the governor may designate or appoint an officer or agency to administer, cooperate with, and effectuate the purposes of such federal law, and such officers or agency so designated or appointed with the approval of the governor shall administer the same."

Briefly, Federal Public Law 89-329, denominated the "Higher Education Act of 1965," by Title IV, Part B, § 422, 20

U.S.C. § 1072, makes federal funds available for participating states to establish a reserve fund for a state program insuring the repayment of loans made by private lending agencies to students who qualify under that law. The federal funds are denominated "advances" and are subject to repayment "within such period as the Commissioner may deem to be appropriate in each case in the light of the maturity and solvency of the reserve fund for which the advance was made." The program may be administered by a state agency authorized to do so under Indiana statutes. Since no state agency, including the State Scholarship Commission, is authorized by statute to administer the specified provisions of the Higher Education Act of 1965, it is my opinion that under Acts 1947, ch. 178, *supra*, the Governor of Indiana by executive order may designate the State Scholarship Commission as the state agency to administer the federal act under rules and regulations not inconsistent with the federal act or with Indiana law.

Article 10, § 5 of the Constitution of Indiana reads as follows:

"No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay the interest on the State Debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense."

That provision of the Constitution forbids the creation of an obligation of the state for which no appropriation is made at the time of its creation from funds already in existence, or prospective and subject to appropriation. 1962 O.A.G. 342, 345, No. 62.

Although no debt of the state in violation of this section of the Constitution is created by an advancement which the state is not legally obliged to repay, see *Allen v. Van Buren Township*, 243 Ind. 665, 686, 184 N.E. 2d 25, reh. den. 192 N.E. 2d 316, 317 (1962), the State Scholarship Commission cannot create a legal obligation of the State of Indiana to repay "advances" made by the federal government and expended by the State of Indiana in administering the federal loan insurance program.

## OPINION 15

Neither can the State Scholarship Commission create a legal obligation of the State of Indiana by agreeing, as part of a program insuring the repayment of loans, to buy defaulted loans from lenders, except to the extent that such purchases may be made from funds advanced by the federal government.

In summary, it is my opinion that the State Scholarship Commission is not authorized by Acts 1965, ch. 157, to establish a reserve fund to be used for insuring the repayment of loans made by private financial institutions to eligible students for educational purposes nor may the Commission's appropriated funds be diverted to such a reserve fund. Furthermore, the State Scholarship Commission has not been authorized by said Act to accept federal funds to implement any federal program. The Governor of Indiana, however, by executive order as heretofore outlined, may designate the State Scholarship Commission as the state agency to receive federal funds and as the state agency to administer the loan insurance program here considered, but none of the funds appropriated by Acts 1965, ch. 157, may be used to defray the administrative costs of such a program.

---

### OFFICIAL OPINION NO. 15

August 15, 1966

#### **STATE OFFICERS—LIEUTENANT GOVERNOR— Entitlement of Expense Allowance for Members of General Assembly.**

Opinion Requested by Hon. Robert L. Rock, Lieutenant Governor.

I am in receipt of your recent inquiry as to whether, as President of the Senate, you are entitled to the \$20.00 per day