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concerning a traffic violation. Subsection (b) of § 4 of the Act provides:

“The complaint or information form shall be used in traffic cases, whether the complaint is made by a peace officer *or by any other person. . . .*”

The complainant can place his signature in the space ordinarily used for the signature of the arresting officer.

OFFICIAL OPINION NO. 53

December 30, 1966

**INDIANA COMMON SCHOOL FUND—TREASURER OF
STATE—STATE BOARD OF FINANCE—Selling of
Investment Securities Before Maturity Date—
Obtaining Capital For Advancements to
Local School Corporation.**

Opinion Requested by Hon. Jack New, Treasurer, State of Indiana.

This is in reference to your request for my opinion on the following questions:

Can the State Board of Finance sell on the open market long term United States Government Bonds originally bought at face value with money constituting a part of the principal of the Indiana Common School Fund, when the sale will be made for an amount of money less than the face value of the bonds, (a) in order to invest the proceeds in United States government bonds bearing a higher interest rate but having a different maturity date, or (b) for the purpose of obtaining cash to make advancements to school corporations pursuant to Acts 1959, ch. 379?

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Your request indicated that, in your opinion, bonds can, from time to time, be purchased with the proceeds of a sale of investments which would yield to the Indiana Common School Fund a more lucrative return than would collection of interest and redemption at maturity of the bonds presently owned. You also stated that cash will be needed by the Fund in 1967 to make advances already committed to school corporations as authorized by the General Assembly in Acts 1959, ch. 379, as last amended by Acts 1965, ch. 210, Burns IND. STAT. ANN., §§ 28-186—186h, to the amount of \$8,000,000.00 to \$10,000,000.00. You have, in addition, received many other school corporation requests for advancements for which it is anticipated that no cash will be available during 1967 and 1968 from the Common School Fund.

I am fully aware of the paradoxical problems facing the State Board of Finance in the investment of the Fund. Approximately \$11,000,000.00 is invested in United States Series B bonds due in 1980, callable in 1975, bearing 2¾% interest. From time to time, it may become profitable to convert and sell these bonds at a price less than their acquisition price, and to reinvest the money in higher interest bearing bonds. Although sound business practice would seem to dictate the use of such sale and reinvestment, if the maturity dates of the securities to be sold and those to be purchased are different, an element of speculation is introduced into the transaction. Other states which, like Indiana, have officials knowledgeable in fiscal affairs managing their common school funds have faced the same issue, with differing results. See *In re Montana Trust & Legacy Fund*, 143 Mont. 218, 388 P. 2d 366 (1964) (could sell at less than purchase price, except for congressional township funds); *Schelle v. Foss*, 76 S.D. 620, 83 N.W. 2d 847 (1957) (could not sell at less than purchase price); *Parsons v. Diefendorf*, 53 Idaho 219, 23 P. 2d 236 (1933) (could not sell at all). The latter decision was based upon statutory provisions of Idaho; the other two were based upon constitutional provisions in the states involved. In all of these cases the courts exhibited sympathy for the financial crisis caused in part by a demand for school funds in times of tight money and high interest rates on the one hand, and, on the other hand, by statutory or constitutional provisions writ-

ten for the primary purpose of preserving the safety of the invested funds at all times.

The Indiana Common School Fund was created by § 2 of Art. 8 of the Indiana Constitution, which designates the funds and lands which belong thereto. Sections 3, 4, 6 and 7 of the same article read as follows:

“The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.” § 3.

“The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School fund, as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.” § 4.

“The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.” § 6.

“All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.” § 7.

Section 4, quoted above, imposes upon the General Assembly the responsibility of investing the common school funds which have not been entrusted to the counties, and § 1 of the same article imposes upon the Legislature the general responsibility to encourage “moral, intellectual, scientific, and agricultural improvement” and to provide for a “general and uniform system of common schools.”

Originally, under these sections of the Constitution, and by statute, the Common School Fund was distributed to the counties, which invested the money in real estate mortgages. See Acts 1865, ch. 1, Burns §§ 28-101, 28-104. Section 6 of Art. 8 makes each county a surety for the preservation of the fund entrusted to it, and for the annual interest thereon.

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Rosenbloom v. Hutchins, 222 Ind. 590, 55 N.E. 2d 315 (1944) ; *Board of Comm'rs v. State ex rel. Michener*, 122 Ind. 333, 24 N.E. 347 (1890). Counties were therefore required to pay interest on a defaulted loan until it was foreclosed, and to make up any deficiency after foreclosure. Even the Legislature cannot by statute, give up the state's right and duty to recover a portion of the Fund which is lost, as it may not "diminish" the Fund, *Board of Comm'rs v. State ex rel. Michener*, 120 Ind. 282, 22 N.E. 255 (1889).

In 1943, the General Assembly made the Treasurer of the State of Indiana exclusive custodian of that portion of the Common School Fund not held in trust by the counties, and permitted the counties to surrender to the Treasurer moneys of the Fund entrusted to them. The Legislature vested in the State Board of Finance "full and complete management and control of such funds and [it] is hereby authorized and directed to invest the common school funds . . . as herein-after provided." (Emphasis added.)

Section 9 of the 1943 Act, Burns § 28-158, reads in part as follows:

"The state board of finance shall direct all disbursement from the common school fund. . . . *All securities purchased for either of such funds shall be deposited with and remain in the custody of the board of finance, who shall collect all interest or other income accruing on such securities, when due, together with the principal thereof when the same matures and is due.*" (Emphasis added.)

Although it might be argued that § 1 of the statute granting the State Board of Finance "full and complete management and control" of the Fund authorizes sales of investments for the purpose of reinvestment, see *In re Montana Trust and Legacy Fund*, 143 Mont. 218, 388 P. 2d 366, 370 (1964), the grant of power is limited by the words "as hereinafter provided," and § 9, quoted above, specifies that the securities are to remain in the custody of the board, which may collect the principal when it matures and is due. This statute, in my opinion, authorizes only the redemption at maturity of securi-

ties held in your custody and does not authorize a prior sale, regardless of the purpose of the sale or the amount of the proceeds. See *Parsons v. Diefendorf*, 53 Idaho 219, 23 P. 2d 236, 238 (1933).

Since the passage of that Act, various programs have been enacted by the Legislature for the purpose of applying the Common School Fund to the assistance of schools. One of them is Acts 1953, ch. 141, as found in Burns §§ 28-163—174a. The General Assembly stated in § 1 thereof, Burns § 28-163, that the purpose of the statute was to assist school building programs. The State Board of Finance was authorized to purchase for the Common School Fund the bonds of school building corporations which were found to be safe and profitable investment by the Indiana Common School Fund Building Commission created by the statute. The Board of Finance was also required to “dispose of sufficient bonds, notes and securities” in which the Common School Fund was invested to purchase the bonds of said school building corporations, § 13, Burns § 28-174.

In 1957, my predecessor was asked whether government bonds bought at face value by the Common School Fund could be sold at their market value, which was less than face value, in order to purchase the bonds approved by the Commission pursuant to this statute. However, before the opinion was issued, the Attorney General was advised that the bonds were purchased at a discount so that the market value at the time of the proposed sale would not be less than the acquisition price. The Attorney General rule in 1957 O.A.G., No. 3, p. 7, that the 1953 statute did authorize the State Board of Finance to dispose of sufficient bonds to purchase the specified school building corporation bonds. He also stated that this procedure would not violate Article 8 of the Constitution, on the theory that (a) the state is not a guarantor of the Common School Fund, in contrast to the counties' responsibility for such funds, and (b) the principal of the Common School Fund which cannot be diminished is, at any given time, the market value of the securities in it. This Attorney General's Opinion was dated February 18, 1957. The General Assembly moved quickly to protect the Common School Fund from a loss.

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Effective February 27, 1957, § 13a was added to the 1953 Act, Burns § 28-174a. That section provides that if a sale of investments of the Common School Fund for the purpose of purchasing school building corporation bonds can be made for "less than the amount paid for them at the time of acquisition," the school building corporation and the Common School Fund may exchange bonds at the face value of the school building corporation bonds and the acquisition value of the bonds of the Fund.

The 1959 statute to which you referred provides for "advancements" to qualified school corporations, Acts 1959, ch. 379, as last amended by Acts 1965, ch. 210, Burns §§ 28-186—186h. No provision is made in that statute for the sale of investment securities to obtain money to make advancements, but Acts 1963, ch. 321, § 3, did add § 8a to the Act, Burns § 28-186h, to provide that twenty-five per cent (25%) of the total amount allocated to a school corporation could be allocated in United States Government securities *at par*.

You have advised me that at the present time school building corporation bonds are no longer being purchased by the Common School Fund pursuant to the 1953 Act previously discussed, but that the State Board of Finance is currently making advancements under the 1959 Act, as amended. As indicated above, neither that statute nor the 1943 statute giving the State Board of Finance management and control of the fund authorizes sale of investments of the Fund for any purpose.

Thus, it appears that the Legislature has nowhere specifically granted the State Board of Finance the authority to sell investments of the Common School Fund at less than their acquisition value; that the only sale of investments of the Fund specifically authorized is a sale made to secure funds to purchase school building corporation bonds pursuant to Acts 1953, ch. 141, as amended, and that in that instance, the General Assembly has provided an alternative to sale of securities for less than acquisition cost, which alternative would place any loss on the local school building corporation rather than on the Common School Fund.

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In conclusion, and in answer to your specific questions, (a) sale of investments of the Common School Fund made to reinvest the proceeds in bonds bearing a higher interest rate but having a different maturity date than the bonds sold is not, in my opinion, permissible under present Indiana statutes, although it may be sound business practice, and (b) securities in which the Common School Fund is invested may not be sold prior to their maturity date in order to obtain cash to make advancements to school corporations pursuant to Acts 1959, ch. 379.

OFFICIAL OPINION NO. 54

December 30, 1966

**MENTAL HEALTH—Three Methods of Discharge of Patients
from Mental Health Facility—Regular and Temporary
Commitments—Restoration Proceedings.**

Opinion Requested by Dr. J. R. Gambill, Deputy Mental Health
Commissioner.

I am in receipt of your letter requesting my opinion on various aspects of Chapter 338 of Acts 1955, and Chapter 359 of Acts 1957. Your specific questions were:

1. "Does a state mental hospital superintendent have the authority under Acts 1955, Chapter 338, Section 2, to discharge patients committed under Acts 1957, Chapter 359, Section 604?"
2. "If he does not have the authority to discharge patients, does it follow that he does not have authority to place patients on leave? Would he need to get permission from the court each weekend for patients to go home on visits?"