

a new area of the law, and, therefore, is difficult to characterize. As a result there has been some movement to bring supervision of CATV under direct authority of state public service commissions. For example in Connecticut the Legislature conferred jurisdiction in the Public Utilities Commission of Connecticut and gave a specific definition to "community antenna television companies." Conn. G. S. ch. 289, §§ 16-330—16-333. A similar bill was introduced in the New Jersey Legislature but failed to pass. N.J. Senate Bill No. 206.

The most comprehensive legislation proposed was a bill submitted in the 1965 session of the Oklahoma Legislature. (Okla. Senate Bill No. 353). Its defect was an attempt to also cover television translators and the Legislature was therefore, advised by the Attorney General of Oklahoma that it violated the Commerce Clause. *Op. Atty. Gen. Okla.*, No. 65-224 (1965). See also Note, 79 Harv. L. Rev. 366 (1965).

It is therefore, clear that precise treatment and regulation of CATV must await legislative action where a clear policy can by statute, be enunciated. In the meantime, since economic interests cannot await this pronouncement and are, therefore, generating questions which must be answered, I have arrived at these stated conclusions. Admittedly it is the application of statutes designed for regulation and control of similar activities but not exactly in the nature of CATV. They will, nevertheless, have to suffice until more precise legislation can be enacted.

OFFICIAL OPINION NO. 76

December 31, 1965

Mr. Robert E. Martin

Interim Director, Indiana Vocational Technical College

Old Trails Building

309 West Washington Street

Indianapolis, Indiana

Dear Mr. Martin:

Recently you requested an Official Opinion on the following question:

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“Is the Indiana Vocational Technical College subject to the provisions of the Administration Act of 1961 or is it independent therefrom as are universities and colleges which are specifically exempted from the provisions of the Act?”

Acts 1961, ch. 269, as found in Burns IND. STAT. ANN., (1961 Repl.), §§ 60-101—60-114, created the Indiana Department of Administration and is known as the Administration Act of 1961.

A review of the Administration Act of 1961 reflects that it was apparently the intention of the Legislature to bring all state government institutions and agencies and their personnel under the jurisdiction of the Department of Administration, but Section 2 of the Act provides that the administration of the Act “shall in no manner affect the separate departments of state government which by law or the Constitution of the State of Indiana are now under the jurisdiction and are the responsibility of other state elected officials.”

It will be further noted that Section 15 of said Administration Act as found in Burns IND. STAT. ANN., (1961 Repl.), § 60-114, in part states the following:

“ . . . nor shall the provisions of this act, except section 4 [§ 60-104] (a), apply to the state colleges and universities.”

Burns IND. STAT. ANN., § 60-104 (c) in providing that the Department of Administration shall “maintain, equip, and keep in a state of repair the state capitol building, state office buildings, and other premises owned or leased by the state for the use of any department, board, commission, or institution” excepts “the state colleges and universities, state hospitals, or institutions, the control of which is vested by law in some other agency.”

In the 1961 O.A.G. #24, on page 24, the Attorney General properly states that “we have many rules of statutory construction, but they are all aids to the determination of legislative intent . . . this does not mean that the intent that may have been expressed by a single or several members of the

General Assembly is controlling, but rather that the intent of the General Assembly as a whole must be ascertained."

In reading the Administration Act of 1961, it seems apparent that it was the legislative intent to give the Department of Administration jurisdiction over all and "any department, board, commission, or institution" of the State of Indiana unless excepted from the provisions of the Act.

It may be argued that the Indiana Vocational Technical College is exempt from the provisions of the Administration Act of 1961 as another state college. However, Acts 1963, ch. 371, § 2 (a) as added by Acts 1965, ch. 219, and as found in Burns IND. STAT. ANN. (1965 Supp.), § 28-5011, provides that "a new state educational institution" is hereby created "to be devoted primarily to non-collegiate non-credit practical or vocational . . . training." Although by the Act it may be denominated a "college," nowhere is it specified that it will be an additional "college" exempt from the provisions of the Administration Act, since in exempting colleges and universities the exemption applies "to *the* state colleges and universities" which would indicate the colleges and universities then in existence. This position is further substantiated by Acts 1945, ch. 110, § 6, as found in Burns IND. STAT. ANN., (1961 Repl.), § 60-617, providing for the division of procurement and supply, now within the Department of Administration by the Administration Act of 1961, which states that the division of procurement and supply of the Department of Administration "shall not apply to the purchases for the state highway commission, for Purdue University, for Indiana University, for Ball State Teachers College, for the Indiana State College," without exempting all state colleges and universities as a class, thus indicating that those not named would be subject to the provisions of the division of procurement and supply.

Moreover, some question exists as to whether the institution created and presently denominated as the "Indiana Vocational Technical College" may be by definition classified as a college or university, since as heretofore noted same is "to be devoted primarily to non-collegiate non-credit practical or vocational . . . training."

The position may also be advanced that since the Indiana Vocational and Technical College is designated as "a body

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corporate and politic" by the act which created it [Acts 1963, ch. 371, § 5, as found in Burns IND. STAT. ANN., (1965 Supp.), § 28-5014], that as such it was not intended that it be subject to the jurisdiction of the Administration Act of 1961. In rebuttal to this position it should be pointed out that the Administration Act of 1961 makes no such clear distinction with respect to whether a body corporate and politic as an instrumentality and agency of the State of Indiana should be excluded from the provisions of the Act. On the contrary, as previously pointed out herein Section 15 of said Administration Act as found in Burns IND. STAT. ANN., (1961 Repl.), § 60-114, in part, provides that the provisions of the act shall not apply to the state colleges and universities with the exception of "section 4 (Sec. 60-104 (a))", thus making the colleges and universities subject to the provision of the Administration Act which reads as follows:

"Execute and administer all appropriations made by law in the manner and according to the provisions therefor as provided by law, and execute and administer all provisions of law which impose duties and functions upon the executive department of government including particularly executive investigation of state agencies supported by appropriations, and the assembly of all required data and information for the use of this department, and the legislative division."

Generally speaking, state colleges and universities are bodies corporate and politic within the State of Indiana and as such are instrumentalities and agencies of the State of Indiana.

Indiana State Toll Bridge Commission v. Minor, 236 Ind. 193, 139 N.E.2d 445 (1957).

Acts 1929, ch. 38, section 1, as found in Burns IND. STAT. ANN., (1948 Repl.), § 28-5202.

1 R.S. 1852, ch. 114, section 2, as amended and as found in Burns IND. STAT. ANN., (1948 Repl.), § 28-5302.

From the foregoing it may not be clearly stated that all bodies corporate and politic within the state which are instrumentalities and agencies of the State of Indiana are

excluded from the provisions of the Administration Act of 1961. It is for the Legislature to specify by expression whether a newly created instrumentality and agency of the State of Indiana should be exempted from the provisions and the jurisdiction of the Department of Administration. This the Legislature has not done in creating the Indiana Vocational and Technical College, and until the Legislature expresses its intent to exclude the Indiana Vocational and Technical College from the provisions of the Administration Act of 1961, it must be presumed that it is subject to the applicable provision of that act.