not purchase municipal revenue bonds issued pursuant to Acts of 1965, ch. 402.

OFFICIAL OPINION NO. 57

October 26, 1965

Mr. Richard L. Worley
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Worley:

I have your letter requesting an Official Opinion as follows:

"1. In view of Burns' Indiana Statutes (1948 Repl.), Volume 6, Part 2, Section 28-5141 et seq. and Acts of 1965, Chapter 307, Section 202, may a school corporation operating under laws of school cities operate the school lunch program either as a separate fund in the 'School Extra-Curricular Account', or as a separate fund in the official records and account of the school corporation in custody of the school corporation treasurer?

"2. Would your answer to Question No. 1 also apply to a school township?

"3. In view of Burns' 28-638 and Acts of 1965, Chapter 307, Section 202, must a school corporation (after July 1, 1965) operate the school textbook rental program as a separate fund in the official records and account of the school corporation in custody of the school corporation treasurer, or is it permissible to operate such a program as a part of the School Extra-Curricular Account under Burns' 28-5141 et seq.?

"4. If a school corporation operates a bookstore for the sale of textbooks, pursuant to Burns' 28-614, and incidental thereto sells workbooks, supplies and work materials necessary for the efficient use of such textbooks, shall the receipts from said sales be accounted for in the records and account of the school corporation?
treasurer, or may the receipts be handled as a separate fund in the School Extra-Curricular Account under Burns' 28-5141 et seq.?'"

Acts of 1965, ch. 307, § 202 (11) grants each school corporation the power—

“(11) To purchase text books, to furnish them without cost or to rent them to students. . . .”

Acts of 1945, ch. 312, § 2, as found in Burns IND. STAT. ANN., (1948), § 28-5142, reads as follows:

“The treasurer shall have charge of the collection, custody and disbursement of any funds which are collected and expended for the purpose of paying any expenses approved by the principal or teacher in charge of the school and which expenses may be incurred in conducting any athletic, social or other school function, other than functions conducted solely by any organization of parents and/or teachers, the cost of which [sic] shall be more than twenty-five dollars [$25.00] during the school year and which is not paid from public funds, and he shall keep an accurate account of all money so received and expended, showing the sources of all such receipts and the purposes for which such money was expended and the balance on hand, and a copy of such report shall be filed with the township trustee, board of school trustees or board of school commissioners, within two [2] weeks after the close of each and every school year together with all records and files of such extracurricular activities: Provided, however, That in schools having two [2] or more semesters in any one school year the treasurer of any such school shall file a copy of his financial report of receipts and disbursements with the township trustee, board of school trustees or board of school commissioners, within two [2] weeks after the close of each and every semester, and all records and files of such extra-curricular activities for the entire school year shall be filed with the last financial semester report of any one school year. A copy of such report is to be filed with and kept by the city superintendent.
OPINION 57

having jurisdiction and the county superintendent where he has jurisdiction. These records shall be permanent records for five [5] years, after which time they may be destroyed.” (Emphasis added.)

Acts of 1935, ch. 171, as amended, and as found in Burns IND. STAT. ANN., (1965 Supp.), § 28-638, permits school corporation officers to operate a textbook rental program and specifically provides as follows:

“Any board of school commissioners, board of school trustees, school township trustee, joint or consolidated school board, county board of education, or the governing body of any school corporation of this state may purchase from the publishers, at the net whole-sale or net contract price, any text-book or series of text-books selected by the state board of text-book commissioners and the local text-book committee of such cities, towns or such counties outside of cities and towns as provided by law, and rent said text-books or series of text-books to the pupils of their respective schools at an annual rental of not to exceed twenty-five [25] per cent of the retail price of said books.”

A question to be answered before deciding the manner of accounting for funds derived from the operation of a textbook rental program under Acts of 1965, ch. 307, supra, or Acts of 1945, ch. 312, supra, is whether or not the program is financed with public funds.

It is obvious that the textbook rental program is not a part of the school curriculum in the sense that it is designed for the benefit of the entire school population and participation therein is a prerequisite to advancement or graduation from the school. Students may decide to, or not to, rent books from the school bookstore without consequence. 1961 O.A.G., page 216, No. 36. In a like manner, the school official may decide to furnish the books to the students without cost, under the provisions of Acts of 1965, ch. 307, supra.

If the textbooks are purchased on consignment by the school corporation and rented to the student it is clear that the bookstore would not be financed with public funds and neither
would proceeds from the operation of the bookstore be impressed with a public interest.

In 1948 O.A.G., p. 97, No. 20, in classifying extra-curricular funds, the Attorney General, consistent with Acts of 1945, ch. 312, supra, states the following:

"The extra-curricular funds are separate and distinct. Even though the records may be examined by the state, the cost thereof is not taken from the fund and the sole authority over it is the principal, his appointees, the sponsor, and members of the organization or class. It is neither impressed with a public interest nor designed for a public use."

If the bookstore rental program is financed with public funds the moneys received from the operation of the bookstore must be shown on the official records and account of the school corporation in the custody of the school corporation treasurer. If the bookstore rental program is not financed with public funds the moneys received from students because of the operation of the program may be accounted for as a part of the school extra-curricular account under Acts of 1945, ch. 312, §§ 1-5, as found in Burns IND. STAT. ANN., (1948), §§ 28-5141—28-5195, since said moneys are not public funds and will not be impressed with a public interest.

Thus, the receipts from a school textbook rental program which is financed without the use of public funds but instead is operated by receiving books and supplies on consignment; or with the proceeds of gifts and contributions, or with student moneys, need not be accounted for on the official records and account of the school corporation in the custody of the school corporation treasurer. Instead, the receipts from the operation of the textbook rental program may be handled in the school extra-curricular account.

By an emergency clause dated June 1, 1965, Acts of 1965, ch. 307, § 202, became Indiana school law, providing school corporations in part with specified authority and powers as follows:

"(10) To provide a lunch program for a part or all of the students attending the schools of the school
corporation, including but not limited to the establishment of kitchen, kitchen facilities, kitchen equipment, lunch rooms, the hiring of the necessary personnel to operate such program and the purchase of any material and supplies therefor, charging students for the operational costs of such lunch program, fixing the price per meal or per food item; to operate such lunch program as an extra-curricular activity, subject to the supervision of the governing body; to participate in any surplus commodity or lunch aid program.

“(11) To purchase text books, to furnish them without cost or to rent them to students, to participate in any text book aid program, all in accordance with applicable law.”

Acts of 1965, ch. 307, also contains the following applicable provisions:

“SEC. 102. Applicability. This act shall be applicable to all school corporations as defined in Sec. 103, except school townships.

“SEC. 103. Definitions. As used in this act, the following terms shall have the following meanings:

“(a) ‘School corporation’ shall mean any local public school corporation established under the laws of the State of Indiana, including but not limited to school cities, school towns, metropolitan school districts, consolidated school corporations, county school corporations, community school corporations and united school corporations, excluding, however, school townships.

*  *  *

“SEC. 601. Powers Not in Limitation. Except for Sections 301, 303 and 304, the powers given each school corporation in this Act and the limitations on such powers set out in this Act, shall not be construed to limit the power or authority of such governing body given by any other law.

“SEC. 602. Supplemental Nature of the Act. Except as provided in Sec. 601, this Act shall be supplemental and in addition to all other laws. The powers
given to any school corporation under this Act shall be in addition to those given by any other law and shall not be subject to any limitations set out therein, or to comply with the provisions thereof, except to the extent provided herein by specific reference to a designated statute or the law relating to a given subject, and all laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict.

"SEC. 603. Construction of Act. This Act shall be liberally construed to permit the governing body of school corporations to conduct its affairs in a manner consistent with sound business practice to the ends that the authority of the governing body shall be clarified and that it shall be permitted to operate with the maximum efficiency consistent with accountability."

From the statutory provisions cited immediately above it is evident that in its applicable portions Acts of 1965, ch. 307, does not apply to school townships, that it is supplemental to existing school laws, that school laws in conflict therewith are repealed, and that the legislature intended the act should be liberally construed to allow the governing bodies of school corporations to function efficiently subject to said act in conjunction with other school laws.

You will also note from the foregoing that Acts of 1965, ch. 307, § 602, clearly shows the intention of the 1965 Legislature to make the provisions of said act supplemental to all former laws which are not repealed unless they conflict with provisions of ch. 307.

Thus, taking all of the foregoing into consideration, and since Acts of 1965, ch. 307, by § 102, expressly excludes school townships, Indiana township corporations must continue to operate school lunch programs under the same laws and requirements applicable prior to the enactment of 1965 school laws.

With respect to all other Indiana public school corporations, however, we now find Acts of 1965, ch. 307, § 202(10), applicable along with former laws and as heretofore noted said section provides in part as follows:
The above provision permits the school lunch program to be operated as an extra-curricular activity if subject to the supervision of the governing body which is defined as follows:

“(b) ‘Governing body’ shall mean the board or commission charged by law with the responsibility of administering the affairs of a school corporation, including but not limited to, a board of school commissioners, metropolitan board of education, board of school trustees or board of trustees; and ‘member’ shall mean a member of such governing body.” (Acts of 1965, ch. 307, § 103(b).)

Although the 1965 statute provides that the school lunch program may be operated as an extra-curricular activity it differs from the extra-curricular activities fund accounts contemplated by Acts of 1945, ch. 312, as found in Burns IND. STAT. ANN., (1948), §§ 28-5146—28-5155, authorizes school boards to operate school lunch programs in schools under their jurisdiction or to allow by contract or appointment for a sponsoring agency to operate such school lunch programs. Specifically, § 4 of said Act, as found in Burns IND. STAT. ANN., (1948), § 28-5149, states the following:

“School boards are hereby authorized to operate, or by the appointment of a sponsoring agency provide for the operation of school lunch programs in schools under their jurisdiction, contract with respect to food, services, supplies, equipment, and facilities, for the operation of such programs, and use therefor funds disbursed to them under the provisions of this act, gifts, and other funds received from the sale of school lunches under such programs.”

Acts of 1965, ch. 307, § 202(10), here repeated for emphasis simply and clearly states the following:

“SEC. 202. Specific Powers. In carrying out the school purposes of each school corporation, its gov-
1965 O. A. G.

erning body acting on its behalf shall have the follow-
ing specific powers:

* * *

“(10) To provide a lunch program for a part or
all of the students attending the schools of the school
corporation, including but not limited to the estab-
lishment of kitchens, kitchen facilities, kitchen equip-
ment, lunch rooms, the hiring of the necessary person-
nel to operate such program and the purchase of any
material and supplies therefor, charging students for
the operational costs of such lunch programs, fixing
the price per meal or per food item; to operate such
lunch program as an extra-curricular activity, subject
to the supervision of the governing body; to partici-
pate in any surplus commodity or lunch aid program.”

Although stated in slightly different language Acts of
1965, § 202(10), by the clause “. . . to operate such lunch
program as an extra-curricular activity, subject to the super-
vision of the governing body . . .” apparently authorizes
a school corporation to keep school lunch program funds and
income in the extra-curricular activities account or fund, but
in the same breath expressly imposes an obligation and duty
upon the concerned governing body (the board of school
trustees) to supervise the fund insofar as it concerns the
school lunch program.

Acts of 1965, ch. 307, grants and specifies powers which
school corporations, excluding school township corporations,
may exercise. It should be pointed out that these specific
powers are granted to the school corporations and as such to
the boards of school trustees and that along with these powers
said boards must assume the usual responsibility and ac-
countability imposed upon them for the operation of the
schools in general. Thus, I am of the opinion that although
school lunch program funds along with the income and dis-
bursements therefrom may be maintained in and with the
extra-curricular fund account, accountability therefor is im-
possed upon board of school trustees as are other fund ac-
counts operated subject to the powers granted in Acts of
As to your fourth question, Acts of 1921, ch. 68, § 3, as found in Burns IND. STAT. ANN., (1948), § 28-614, provides as follows:

"The board of schoolbook commissioners, boards of school trustees, township trustees, county boards of education, or boards of school commissioners are hereby authorized to purchase textbooks from publishers at the net wholesale or net contract-price, and sell said books to the pupils at the net wholesale or contract-price, plus the cost of handling the books; which shall not exceed twenty [20] per cent of the net wholesale or net contract-price."

The sale of textbooks by a school corporation to students under § 28-614, may not be treated as an extra-curricular activity subject to a school extra-curricular activity fund, unless such textbook sale program is not operated with public funds. Textbooks and incidental supplies if purchased by a school corporation pursuant to § 28-614, supra, with public funds are impressed with a public interest, so are the proceeds from the sale of the books and supplies. Therefore, the receipts from said sales must be accounted for in the records of the school corporation in custody of the school corporation treasurer, but not as budgeted funds. If the books and supplies are not purchased with public funds but the program is operated with student money, the receipts therefrom may then be accounted for in the school extra-curricular fund.

In summary, my answer to your question number one is that school corporations may operate their school lunch programs by accounting for the funds therefor through a separate fund on the official records and account of the school corporation in custody of the school corporation treasurer, or with the exception of township school corporations, by the use of the extra-curricular activity fund subject to the supervision and control of the governing body.

Your question number two is answered by the answer to question number one and by Acts of 1965, ch. 307, which specifically excludes school township corporations from its provisions.
With respect to questions number three and four and for the reasons heretofore set out, a school corporation may operate a school textbook rental program as a part of the extracurricular account under Acts of 1965, ch. 312, as found in Burns IND. STAT. ANN., (1948), §§ 28-5141—28-5145, and the proceeds from the operation of a school textbook sell program must be accounted for in the records and accounts of the school corporation in custody of the school corporation treasurer, if the textbook purchase program is financed with public funds.

OFFICIAL OPINION NO. 58
October 26, 1965

Mr. Ernest Bixel
Commissioner
Bureau of Motor Vehicles
401 State Office Building
Indianapolis, Indiana

Dear Mr. Bixel:

This is in response to your letter of recent date requesting an Official Opinion regarding the following three questions:

“1. Whether it shall be lawful for any board, officer, or person to issue any license, as defined in Burns 42-102, to any person who is a resident of this State if at the time when he or she applies, for such license, and in addition to all other requirements prescribed by law, he or she submits receipts showing that such applicant has paid all of his or her property poll and personal taxes in full?

“2. If the answer to (1) is yes, then what are the limitations on the receipts so submitted with respect to number and form, and must the latest tax receipt so submitted contain a statement signed by the treasurer of the county in which the applicant is a resident that the applicant has paid all personal and poll taxes assessed against such applicant?

“3. In the event an applicant for a license submits his 1964 tax receipt bearing the certificate of tax