1965 O. A. G.

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
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clearance, signed by the treasurer of the county, along with his 1965 tax receipt marked ‘Paid’, is the applicant eligible for a 1966 license?”

The applicable law in this matter is as follows:

“It shall be unlawful for any board, officer, or person to issue any license, as hereinafter defined, to any person who is a resident of this state, unless the applicant for such license shall, at the time when he or she applies for such license, and in addition to all other requirements prescribed by law, submit a receipt or other evidence showing that such applicant has paid all his or her poll and personal property taxes in full. ‘Other evidence’ in the case of all licenses issued by the bureau of motor vehicles shall mean a statement signed by the treasurer of the county in which the applicant is a resident, that the applicant has paid all poll and personal taxes assessed against such applicant; which shall include all delinquent personal property tax and poll tax or in the event that the applicant owns no personal property subject to taxation, or is not subject to poll tax, any county in the state in which the applicant resides, a signed statement from the assessor of the county in which the applicant now resides, certifying that such applicant has made an affidavit to the effect that he owes no delinquent personal property or poll tax in any county in the state of Indiana.” First paragraph of Acts of 1931, ch. 124, § 1, p. 488, as amended, as found in Burns IND. STAT. ANN., (1964 Supp.), § 42-102.

The intent of the above statute is to insure that all recipients of licenses shall have their poll and personal property taxes paid in full. However, the poll tax was repealed by Acts of 1965, ch. 234, § 2. Therefore, it will not be necessary for a license applicant, after the year 1965, to submit a receipt or other evidence showing that such applicant has paid all of his poll tax.

With the exception of poll taxes, the answer to your first question is in the affirmative, that is, each license applicant must submit receipts showing that such applicant has paid all of his or her personal property taxes in full.
In response to your second question, it is imperative that we consider a 1963 statute which states that no action or proceeding shall be commenced to enforce the collection of personal property taxes after ten years from the first Monday in May in the year in which such taxes first became due and payable, Acts of 1963, ch. 280, § 204, Burns IND. STAT. ANN., § 64-2059. This statute limits the time within which a county treasurer may institute legal proceedings to collect delinquent personal property taxes. (See 1965 O.A.G., page 271, No. 53.) Since Burns § 42-102, supra, provides that the license applicant has to submit a receipt or other evidence showing that such applicant has paid all of his or her personal property taxes in full, the effect of Burns § 64-2059, supra, is to make it mandatory that the license applicant submit a "receipt or other evidence" that his or her personal property taxes are fully paid for the prior ten years.

In 1964, it was necessary for county treasurers to search their records back for a period of ten years for the purpose of determining whether there were any delinquent taxes owing by the taxpayer. Providing the treasurer of the county found no delinquent personal property taxes owing, the treasurer then stamped and signed a certificate of tax clearance upon the 1964 tax receipt of the individual taxpayer. This tax receipt was then submitted by the taxpayer when he or she applied for a license. This necessarily meant that in some counties many taxpayers made applications for certificates of clearance at the same time thereby causing congestion in the court houses, long lines of taxpayers waiting to be cleared, and general chaos in the offices of the various county treasurers. The question now is whether this same procedure must be duplicated.

The law provides that the applicant "submit a receipt or other evidence" showing that such applicant has paid all of his or her personal property taxes in full to qualify for a license. This means that the applicant is eligible for a license if he or she submits paid "receipts" for the prior ten years, or submits "other evidence," that is, the certificate of clearance by the treasurer of the county, or a combination of the two.
With further reference to your Question No. 2, as to whether the latest tax receipts submitted by an applicant must contain a certificate of tax clearance signed by the treasurer of the county, it is my opinion that the latest tax receipt does not necessarily have to contain a certificate of tax clearance provided that the applicant submits his 1964 tax receipt clearance signed by the treasurer of the county in which the applicant is a resident, along with his or her 1965 tax receipt marked “Paid.”

In response to your Question No. 3, it is my opinion that a license applicant submitting his or her 1964 tax receipt bearing the certificate of tax clearance along with his 1965 tax receipt marked “Paid” fully complies with Burns § 42-102, supra, and is eligible to receive his or her license.

In the event the license applicant has lost his or her 1964 tax receipt bearing the certificate of clearance, then the applicant must either submit paid tax receipts for the prior ten years or obtain from the treasurer of the county another certificate of tax clearance stamped upon the 1965 tax receipt covering the previous ten years.

In conclusion, you are advised that a license applicant must submit evidence that all of his or her personal property taxes are paid in full for the prior ten years and this may be done by submitting tax receipts or by certificate of clearance signed by the treasurer of the county, or any combination of the two. If the taxpayer can show that his or her taxes have been paid in full in this manner, then it is not necessary to obtain another certificate of tax clearance on applying for his or her 1966 license.

The language used in Burns § 42-102, supra, is clear and unambiguous, as is the language of Burns § 64-2059, supra. It is obvious, after reading these statutes in pari materia, that the Legislature never intended to require taxpayers in this state to secure a tax clearance signed by the county treasurer each year. This would demand a ten-year manual search of the tax records by the county treasurer annually. The result reached herein, which is consistent with the intent of the Legislature, should relieve a portion of the seasonal burden on the office of the county treasurers. Also, many taxpayers who secured their ten-year clearance during the year 1964,
and still possess that certificate and still are residents of the same county, will not be required to make application for such clearance during the year 1965.

OFFICIAL OPINION NO. 59

October 27, 1965

Hon. Nelson G. Grills
State Senator
Suite 802 Board of Trade Building
Indianapolis, Indiana 46204

Dear Senator Grills:

I am in receipt of your recent letter, in which you request my Official Opinion concerning the jurisdiction of Justice of the Peace Courts in Proceedings Supplementary to Execution. Your question, paraphrased, may be stated thusly:

In proceedings supplementary to execution, can a Justice of the Peace of one county obtain jurisdiction over an employer-garnishee defendant in another county by sending interrogatories and orders to answer to him by certified mail?

All proceedings supplemental to execution, including garnishment, are regulated by Acts of 1881 (Spec. Sess.), ch. 38, §§ 592 to 599, as amended, the same being Burns IND. STAT. ANN., (1946), §§ 2-4401—2-4408. The question as to whether under this Act, a Justice of the Peace Court in any such garnishment has the authority to issue interrogatories was answered in the affirmative by this office in 1937 Opinions of the Attorney General, wherein it was said, at page 464, that:

"It is my conclusion that the intent of Section 2-4403 was to authorize a Justice of the Peace to issue an order for appearance to a garnishee defendant in cases otherwise within the jurisdiction of the Justice of the Peace."

Your present question is addressed to the problem of whether the case is "a case otherwise within the jurisdiction of Justice