1964 O. A. G.

OFFICIAL OPINION NO. 34

July 8, 1964

Hon. William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

This is in response to your request of April 15, 1964, for my Official Opinion concerning the Acts of 1963, Ch. 321, Sec. 2, and in answer to the following questions as submitted by you:

1. "Must the Indiana Common School Fund Building Commission, at the time an advancement is negotiated with a school corporation, fix the amount to be withheld from distribution to such school corporation in an amount of money not less than that which could be raised by a tax levy of seventy-five cents (.75) on the adjusted value of such consolidated school corporation, or, may such amount of withholding be fixed by such Commission at any amount which would guarantee the return of such advancement within a maximum period of 20 years.

2. "Does this Act apply to requests for advances from the Common School Fund Commission prior to the enactment of this Act where the respective school corporations which have received the approval from this Commission have not as yet received any advances from the Common School Fund."

The Acts of 1959, Ch. 379, Sec. 2, as found in Burns' (1963 Supp.), Section 28-186a, provides as follows:

"The Indiana common school fund building commissiion is hereby authorized to advance sums of money to consolidated school corporations from the Indiana common school fund to be used by such school corporations for the purchase of real estate, the construction of school buildings and the equipment of such buildings, subject to the limitations and conditions as prescribed in this act." (Our emphasis)
Although the “Indiana Common School Fund Building Commission” was created by another act, being the Acts of 1953, Ch. 141, as found in Burns’ (1963 Supp.), Section 28-164 et seq., the authority of the commission to advance moneys from the Indiana Common School Fund to a consolidated school corporation pursuant to the Acts of 1959, Ch. 379, is subject to all of the limitations and conditions as prescribed in that act as specifically provided in Burns’ 28-186a, supra. Various sections of the Acts of 1959, Ch. 379, supra, impose a number of eligibility requirements as a prerequisite to the commission’s authority to approve such advancements from the Indiana Common School Fund. For instance, the Acts of 1959, Ch. 379, Sec. 3, as amended by the Acts of 1963, Ch. 321, Sec. 1, as found in Burns’ (1963 Supp.), Section 28-186b, requires the applicant consolidated school corporation to raise, either by a bond issue or by a cumulative fund tax levy, or by both such bond and tax levy, a sum of money equivalent to “not less than” two per cent (2%) of the “adjusted assessed valuation” upon the property situated within its geographical district. As indicated in 1962 O. A. G., page 253, No. 48, the purpose of determining “adjusted assessed valuation” by means of a ratio study is to equalize, by some mathematical formula, the minimum amount of money which a school corporation must locally raise by a tax levy before such school corporation is eligible to receive state aid.

Another limitation or qualifying requirement imposed by Burns’ 28-186b, supra, is that the amount of an advancement made shall not exceed the sum of two thousand dollars ($2,000.00) per pupil accommodated in the new school building minus the sum of money raised by and made available to the local corporation.

1. The inquiry raised by your question No. 1 requires a determination of the purpose and effect of the Acts of 1959, Ch. 379, Sec. 4, as amended by the Acts of 1963, Ch. 321, Sec. 2, as found in Burns’ (1963 Supp.), Section 28-186c, which provides as follows:

“The money advanced pursuant to the provisions of this act may be advanced for any period of time not exceeding twenty [20] years, and the receiving school corporation shall be required to pay interest, at the
rate of not less than two and one-half per cent [2½%] and not more than four per cent [4%] per annum, on the unpaid balance. In order to guarantee the payment of any advancement made, the state of Indiana is hereby authorized but not limited to a withholding semi-annually from funds due to the school corporation an amount of money that could be raised by a tax levy of not less than seventy-five cents [75¢] on the adjusted valuation of the consolidated school corporation, the exact sum to be fixed by the Indiana common school fund building commission at the time the advancement is negotiated by the school corporation. If available, such money should first be withheld from the distribution of the state school tuition fund: Provided, That if such distribution is not adequate, then money may be withheld from the distribution of other school funds.”

(Our emphasis)

(The only change in the second sentence of Burns’ 28-186c, supra, effected by the 1963 amendment, was the substitution of “seventy-five” for “fifty.”)

Prior to a discussion of the meaning of Burns’ 28-186c, supra, the statement of a few cardinal principles of statutory interpretation is appropriate. In 26 I. L. E. Statutes § 101, it is stated:

“The construction of a statute is necessary only where the statute is ambiguous and of doubtful meaning, and if the language of a statute is plain and unambiguous there is no occasion for construction to ascertain the meaning of the statute; it must be accepted as the solemn declaration of the sovereign.

“An unambiguous statute must be held to mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted.”

Also, in 26 I. L. E. Statutes § 103, it is stated:

“In the absence of a statutory definition indicating a different legislative intention, the courts will assume that statutory words have their ordinary and popularly
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understood meanings. It will be presumed that all of the language used in the statute was intentionally used to effect the meaning of the act, and the Legislature intended each word used therein to be necessary to express its intention; it is not to be presumed that any word or part of a statute is meaningless and without a definite purpose * * *" (Our emphasis)

Referring to the precise provisions of Burns' 28-186c, supra, it will be seen from the first sentence that the duration of any advancement pursuant to the act "may" be for a maximum period "not exceeding twenty [20] years" but the first sentence also makes it plain that the period of such advancement may be for "any period of time" so long as it does not exceed twenty years. This conforms with the Acts of 1959, Ch. 379, Sec. 6, as found in Burns' (1963 Supp.), Section 28-186e, which provides, in part, as follows:

"* * * Any consolidated school corporation receiving an advancement under the provisions of this act shall agree to have the total amount of money so advanced plus the semi-annual interest deducted from the semi-annual distribution of state school tuition support for a period of not to exceed twenty [20] years or until all of the money so advanced has been so deducted * * *"

Referring to the second sentence of Burns' 28-186c, supra, it will be seen that the Legislature, in order to guarantee the repayment of any advancement made, has authorized a semi-annual withholding of an amount of money from funds due the school corporation. The standard for determining the amount of money to be withheld is specifically enunciated in such second sentence which states that it is that amount [of money]

"* * * that could be raised by a tax levy of not less than seventy-five cents [75¢] on the adjusted valuation of the consolidated school corporation, the exact sum to be fixed by the Indiana common school fund building commission at the time the advancement is negotiated by the school corporation * * *" (Our emphasis)
The term "not less than" is certainly a term which has a popularly understood meaning and, used in its ordinary sense, is subject to only one interpretation. It has been said that there is no distinction between the phrases "at least" and "not less than," each phrase meaning a mandatory minimum.


The relative scarcity of decisions by courts of appellate jurisdiction involving the meaning of the phrase "not less than" attests to the proposition that this phrase is one having an unwavering meaning, and, as stated above, can only mean "at least." Among the few decisions by courts of appellate jurisdiction involving the phrase "not less than" is the case of Paullus v. Fowler (1961), 59 Wash. 2d 204, 367 P. 2d 130, 136, holding that the phrase, as used in an option agreement providing for the payment of the purchase price for real and personal property in monthly installments, is one of limitation fixing a mandatory minimum amount of monthly payments, but that such phrase also granted to the purchaser the right to make larger monthly payments. The phraseology of Burns' 28-186c, supra, contained in the second sentence thereof, appears to have the same intended meaning in that the amount of money required to be withheld from the school corporation shall be that amount which could be raised by a tax levy of at least seventy-five cents on the adjusted valuation of the property within the geographical limits of the school corporation, but that the commission is not limited to requiring a repayment at such rate, but may demand the repayment at a greater rate, the exact sum to be determined by the commission at the time the advancement is negotiated.

This explains the purpose of the phrase, "but not limited to," in said second sentence, in that the state is not limited to withholding funds due the school corporation only in an amount of money that could be raised by a tax levy of not less than seventy-five cents on the adjusted valuation, but at least that amount of money must be withheld,—the question of whether the repayment is to be effected at a faster rate than the fixed minimum rate being within the discretion of the commission so long as the advancement is repaid, with inter-
est, in a period of time not exceeding twenty years. It is this authority to negotiate for a faster rate of repayment that is referred to in the Acts of 1959, Ch. 379, Sec. 6, as found in Burns' (1963 Supp.), Section 28-186e, which provides, in part, as follows:

"* * * The commission shall reduce the amount of each semi-annual distribution of state school tuition support to any consolidated school corporation which has received an advancement under the provisions of this act in an amount to be agreed upon by and between the commission and the consolidated school corporation."

The above provision means simply that the commission and school corporation may agree upon the amount of the reduction or withholding from the semiannual distribution of state school tuition support—so long as that amount is in conformity with the requirement that the withholding be at least equal to the amount of money which could be raised if a seventy-five cent tax were levied upon the adjusted assessed valuation and so long as the total amount of the advancement, together with interest, is repaid by means of the withholding process before the expiration of the maximum twenty-year period. However, the last sentence of Burns' 28-186e, above-quoted, cannot be construed to authorize the commission to fix the amount of withholding from the semiannual distribution without taking into account the other limitations and conditions imposed by each and every other section of the act—particularly the explicit requirement contained in the second sentence of Burns' 28-186c, *supra*, which sentence requires that the withholding shall be at least in an amount of money that could be raised by the application of a seventy-five cent levy upon the adjusted assessed valuation of the property within the geographical limits of the school corporation. To hold that the last sentence of Burns' 28-186e, *supra*, alone controls, would be to utterly disregard one of the most basic fundamentals of statutory interpretation—that an act should be construed so as to give force and effect to each and every section, provision and phrase thereof. If the rule were otherwise, it would be possible for citizens, and in this case an
administrative body of state government, to conform to one or more sections of an act, but to totally disregard other sections of the same act. The resulting confusion from such a practice is one of the basic reasons for the rule, and, as applied in this case, for the commission to construe the phrase, “not less than,” in Burns’ 28-186c, supra, in the second sentence, as not requiring a mandatory minimum amount to be withheld, would not be supported by any reason whatsoever.

Moreover, it is significant that both the 1959 and 1963 Regular Sessions of the General Assembly used the same phrase, “not less than,” and the fact that the hypothetical tax levy used in Burns’ 28-186c, supra, second sentence, was increased from fifty cents, as originally provided in the 1959 Act, to seventy-five cents in the 1963 Act, is indicative of a legislative intention that such advancements be required to be repaid at a faster rate than previously provided. Also, the fact that the rate of interest to be paid upon such advancements, being the absolute rate of two and one-half per cent per annum under the 1959 version, was amended to provide that such advancements should bear interest at a rate of not less than two and one-half per cent nor more than four per cent per annum, is indicative of the legislative intent to impose more rigid conditions upon the borrowing school corporation than previously existed, so that the state will not only receive the repayment of the advancements at a faster rate, so as to be available for other school corporations, but also so that the state may receive a return on such advancements at a greater rate of interest which more nearly corresponds with the prevailing rate of interest applicable to loans of this character made by private lending institutions.

Furthermore, if additional argument in corroboration of the above-stated conclusion were necessary, the following would seem to foreclose any doubt as to the correctness of that conclusion. Comparison of the act with which we are here dealing (Acts of 1959, Ch. 379, as amended) with the act concerning the “Veterans Memorial School Construction Fund” (being the Acts of 1955, Ch. 312, as found in Burns’ [1963 Supp.], Section 28-175 et seq.) discloses a marked similarity, not only in the purpose of each of said acts to effect advancements from the particular fund involved in each act, but also
similarity in the provisions of each of said acts, a great many of which are identical to one another. The noticeable similarity between said acts was referred to in 1959 O. A. G., page 104, No. 22, which also concerns the Acts of 1959, Ch. 379, wherein it was stated, at p. 108:

"* * * An examination of Section 6 of this Act shows that many of its provisions, including this particular provision, have literally been copies from Section 8 of the Veterans' Memorial Construction Act, being the Acts of 1955, Ch. 312, Sec. 8, as found in Burns' (1957 Supp.), Section 28-182 * * *"

Referring to the Acts of 1955, Ch. 312, Sec. 8, as amended, as found in Burns' (1963 Supp.), Section 28-182, it will be seen that advancements made pursuant to that act are to be repaid in a period not to exceed twenty years by means of a semiannual withholding from the semiannual distribution of state school tuition support and the commission is to reduce the amount of such distribution of state school tuition support to any school corporation which has received an advancement under that act in an amount to be agreed upon by and between the commission and the school corporation. However, at no place in said Section 8 of the Acts of 1955, Ch. 312, as amended, nor in any other place in said act concerning advancements made from the Veterans Memorial School Construction Fund, is there any language stating that the rate of repayment by the withholding process shall be at least a minimum sum to be computed by some formula other than the mere requirement that the advancement be repaid before the expiration of twenty years. While, as 1959 O. A. G., page 104, No. 22, discloses, the Acts of 1959, Ch. 379, contains many provisions which have been literally copied from the Acts of 1955, Ch. 312, supra, concerning advancements from the "Veterans Memorial School Construction Fund," in the draft of the 1959 statute, it was apparently felt necessary to provide for a mandatory minimum rate of repayment, for in the second sentence in Section 4 of Ch. 379 of the Acts of 1959, the language was inserted providing that the repayment schedule be agreed upon whereby the advancement must be repaid by a withholding semiannually of an amount of money computed by the application of a tax levy of not less than seventy-five
cents on the adjusted valuation of the property within the geographical confines of the consolidated school corporation.

Furthermore, because the repayment of the advancement made is guaranteed by the withholding process, the applicant school corporation is not required to physically repay the amount prescribed by the withholding formula. Moreover, any part, or all, of the amount so withheld may be recouped at the will of such school corporation by the levy of a tax in an amount to be determined by it as specifically provided by the Acts of 1959, Ch. 379, Sec. 7, as found in Burns' (1963 Supp.), Section 28-186f, which reads as follows:

"Any consolidated school corporation receiving an advancement of state school tuition funds under the provisions of this act is hereby authorized to levy an annual tax on personal and real property located within the geographical limits of such school corporation for school purposes, at such rates as will produce revenue in an amount equal to the annual amount it would otherwise have received from the distribution of state school tuition fund for tuition purposes had such consolidated school corporation not received an advancement from such fund under the provisions of this act, which tax shall be in addition to any other tax authorized by law to be levied for school purposes. Such rate hereby authorized may be levied, in addition to the maximum rates prescribed by law, for each year during which state school tuition funds are authorized to be withheld from such school corporation." (Our emphasis)

It is recognized that the effect of this interpretation will be to require school corporations, the assessed valuation of the property therein which is of a considerable sum, to repay the amount of the advancement sooner than in the case of other school corporations, the assessed valuation of the property therein which is relatively low. An examination of the records concerning school corporations which had made applications for advancements under this statute, and the applications of which had been approved as of January 2, 1964, discloses that by applying the mandatory minimum hypothetical tax rate of
seventy-five cents to the adjusted assessed valuation of the individual school corporations, such will result in a repayment of the state advancement in a period as short as one and one-half years in one instance and as long as eighteen years in another instance, such duration of time depending, of course, upon both the amount of the advancement sought and the assessed valuation of the property within the particular school corporation involved. Of the thirteen advancements to consolidated school corporations, approved by the commission as of January 2, 1964, but as to which no advancements have yet been made, the average number of years in which such school corporations would have to repay such advances would be approximately seven years. Thus, apparently the Legislature intended that the so-called wealthier school corporations, i.e., those whose assessed valuation is high, should by reason thereof be able to repay the advancement in much less time than the so-called poorer school corporations, i.e., those whose assessed valuation is low. This apparent legislative intent of favoring consolidated school corporations which have a lesser assessed valuation is clearly evidenced by the Acts of 1959, Ch. 379, Sec. 8, as found in Burns’ (1963 Supp.), Section 28-186g, which provides:

“Priority of advancements made under the provisions of this act shall be made to the consolidated school corporations which have the least amount of adjusted assessed valuation per pupil in average daily attendance.”

However, irrespective of the reason behind the requirement, and further, irrespective of the effect thereof and the possibly undesirable result as applied to larger and wealthier school corporations, the fact remains that in determining the meaning of Burns’ 28-186c, supra, second sentence, there is no alternative to the conclusion herein reached that “an amount of money that could be raised by a tax levy of not less than seventy-five cents [75¢] on the adjusted valuation of the consolidated school corporation” can only be construed to mean that such an amount of money, so computed, is a mandatory minimum required to be withheld semiannually from the funds due to the school corporation. (Our emphasis) Moreover, the language which requires this obvious conclusion cannot be de-
leted nor altered except by the Legislature itself. It cannot be presumed that the legislative enactment of 1959 (setting forth a mandatory 50¢ minimum) and the 1963 amendment thereto (increasing the mandatory minimum to 75¢) were mere nullities, intended by the Legislature to be without force and effect.

2. Referring to your second question, it would seem that it requires a determination of whether the changes in the Acts of 1959, Ch. 379, Sec. 4, effected by the Acts of 1963, Ch. 321, Sec. 2, affect advancements approved by the commission prior to the effective date of the 1963 amendment but wherein no part of such advancements has yet been paid from the common school fund. In other words, because the Acts of 1963, Ch. 321, contains no emergency clause nor other provision respecting the time of its taking effect, and because the same is effective pursuant to the Indiana Constitution, Art. 4, Sec. 28, on August 12, 1963, your question is whether the mandatory minimum rate of repayment prescribed by the 1963 Act applies with respect to those applications for advancements which were approved prior to August 12, 1963 and as to which such advancements have not, as yet been made.

In approaching a consideration of the problem presented by your second question, reference is made to 1956 O. A. G., page 95, No. 22 (concerning the Acts of 1955, Ch. 312) and 1959 O. A. G., page 104, No. 22, supra (concerning the Acts of 1959, Ch. 379). Although the 1956 Opinion concerns the Veterans Memorial School Construction Fund and the 1959 Opinion concerns the Indiana Common School Fund, each Opinion discusses the nature of advancements to school corporations from said funds pursuant to the acts therein involved and holds that such advancements are not, in the strict sense, an indebtedness of the recipient school corporations within the meaning of the Indiana Constitution, Art. 13, Sec. 1. The basis for that conclusion in said Opinions is such payments are more in the nature of advancements, rather than loans, of a portion of that revenue which the state ordinarily would thereafter, over a period of years, distribute to school corporations as state support to the public school system of the state. Said Opinions further hold that such advancements are to be liquidated by deductions from future state support, so that such advancements may be
said to constitute a prepayment of anticipated future state school support.

It should be noted that the problem presented by your second question would not have arisen if agreements had been finalized between the commission and the applicant school corporations prior to August 12, 1963. Thus, if agreements had been then finalized, the minimum rate of withholding would be in an amount of money that could be raised by a tax levy of not less than fifty cents (50¢) on the adjusted valuation of such consolidated school corporations, which was the law in effect prior to August 12, 1963. I am reliably informed, however, that in those situations in which money was not actually advanced to school corporations prior to August 12, 1963, the applicant school corporations did not enter into final agreements prior to such date. The reason for not having, prior to August 12, 1963, entered into the form of agreement which the commission has used appears to have been the fact that moneys are not ordinarily drawn from the Indiana Common School Fund pursuant to the Acts of 1959, Ch. 379, as amended, until after construction of a new school has commenced and the immediate need arises for the payment of such construction as it progresses. Thus, your second question resolves itself into a determination of the status of the obligations of the parties upon the mere approval, by the commission, of an advancement but prior to the entering into an agreement by the school corporation and prior to the receipt of moneys from the common school fund. To determine the effect of such mere approval, I have examined the “Petition to Indiana Common School Fund Building Commission for Advancement Pursuant to Chapter 379, Acts 1959” and the “Work Sheet for Indiana Common School Fund Building Commission Petition.” In those cases in which the formal agreement used by the commission has not been entered into, it would seem that the mere application by the school corporation for such advancement and the approval by the commission constitutes nothing more than a representation to the school corporation that it is eligible to receive such an advancement in the future if it so desires. Thus, it may proceed with construction of the new school facility knowing that money for the payment of the school, equal to the maximum amount of
advancement authorized, will be available from such source. This does not, however, appear to be an obligation on the part of the school corporation to take such advancement from the common school fund, but, instead, the school corporation may choose to secure the moneys for such school construction from other sources or might even decide not to proceed with the planned construction.

Even though, for the purposes of the Indiana Constitution, Art. 13, Sec. 1, such advancement is not a loan in the strict sense of the term, the mere approval by the commission of a school corporation’s petition for an advancement from the common school fund amounts to nothing more than the establishment of the eligibility and right of the applicant school corporation for such future advancement and is comparable to the establishment of a line of credit with a private lending institution whereby the applicant may, in the future, make loans according to the rates of interest and other provisions which are applicable at the time such obligation is definitely incurred.

Although the advancement from the common school fund to school corporations pursuant to the Acts of 1959, Ch. 379, is not a loan within the meaning of the Indiana Constitution, Art. 13, Sec. 1, nevertheless, the act requires a repayment thereof, by means of the semiannual withholding process according to a specified schedule and with interest, the detailed terms of which must be agreed upon by the parties. As a consequence, in those situations in which such agreement was not finalized prior to the effective date of the Acts of 1963, Ch. 321, which was August 12, 1963, it follows that the commission has no authority, subsequent to said date, to agree to a repayment schedule at any lesser minimum rate than that prescribed by the express terms of the 1963 amendment to the Acts of 1959, Ch. 379. Thus, for answer to your second question, it is my opinion that in those instances in which the standard for the semiannual withholding from funds due the school corporation was not agreed upon prior to August 12, 1963, advances made from the common school fund pursuant to the Acts of 1959, Ch. 379 must be subject to the terms of that act, as amended by the Acts of 1963, Ch. 321. Therefore, the requirement of the Acts of 1963, Ch. 321, Sec. 2, that the
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semiannual withholding be in "an amount of money that could be raised by a tax levy of not less than seventy-five cents (75c) on the adjusted valuation of the school corporation" would necessarily apply. (Our emphasis)

OFFICIAL OPINION NO. 35

July 9, 1964

Hon. Dorothy Gardner
Auditor of State
238 State House
Indianapolis, Indiana

Dear Mrs. Gardner:

This is in response to your letter of July 2, 1964, wherein you request an Official Opinion relative to the distribution of funds from the Motor Vehicle Highway Account Fund. In your letter you cite the Acts of 1941, Ch. 168, Sec. 3, as last amended in 1949, and found in Burns' 1949 Repl.), Section 36-2817, and State Appropriation Acts for the legislative sessions of 1957, 1959, 1961 and 1963.

Your specific question is stated as follows:

"In arriving at the net amount of funds to be distributed between cities, towns, counties and the State Highway Commission in accordance with the above mentioned statute, should I deduct 50% of the amount appropriated for the state police from the total amount available in the Motor Vehicle Highway Account or 75% of such amount?"

The point of law raised by your letter is whether the Appropriation Acts, supra, supersede the statutory provisions found in Burns' 36-2817, supra. The pertinent parts of these citations read as follows:

36-2817 "The money collected for the motor vehicle highway account fund and remaining after refunds and the payment of all expenses incurred in the collection thereof, and after the deduction of any amount ap-