

1963 O. A. G.

would now appoint two members to the library boards of towns included in the new school district, even though all or some of the members of the school board are not residents of the library district.

OFFICIAL OPINION NO. 36

August 21, 1963

Judge Frank V. Dice, President
Indiana War Memorials Commission
World War Memorial
Memorial Plaza
Indianapolis, Indiana

Dear Judge Dice:

This is in response to your letter of August 1, 1963, wherein you request an Official Opinion. Your specific request is stated as follows:

“Does the Indiana War Memorials Commission have authority to receive gifts and donations of funds from those desiring to contribute to the establishment, maintenance and enlargement of a War Museum at the Memorial Place?”

“If the above question is answered in the affirmative, how are the funds to be handled?”

The creation, powers and duties of the Indiana War Memorials Commission are provided for in the Acts of 1957, Ch. 218, as found in Burns' (1961 Repl.), Section 59-1501 *et seq.* “Memorial Place,” referred to in your letter describes the land on a part of which is erected the Memorial Building, wherein the War Museum is located. Section 8 of said 1957 Act as found in Burns' (1961 Repl.), Section 59-1508 reads, in part, as follows:

“Said commission is hereby authorized and directed to erect and maintain in the city of Indianapolis * * * a suitable structure or structures *to commemorate the valor and sacrifice of the soldiers, sailors and marines*

OPINION 36

of the United States, and of all others who rendered faithful, loyal, heroic and self-sacrificing service, at home and overseas, in the great World War, and to provide therein a place or places of meeting and headquarters for organizations of soldiers, sailors and marines or any other patriotic societies or associations, and for the keeping of records, archives, documents, flags, mementoes and relics and for other public meetings and other public purposes, in order to inculcate a true understanding and appreciation of the duties, benefits and privileges of American citizenship, inspire patriotism and respect for the law, to the end that peace may prevail, good will be promoted, justice be administered and established, public order maintained, and liberty and freedom under the law, perpetuated.” (Our emphasis)

The above language is clearly indicative of the legislative intent to authorize the acquisition, maintenance and safe-keeping of such items as “records, archives, documents, flags, mementoes and relics,” which items are clearly the usual and accepted articles to be received, maintained and exhibited in a War Museum.

My information is that the Memorial Building was designed and constructed to provide ample space for a War Museum therein. A museum has been started and now contains a considerable amount of material which has been given for museum purposes and, in addition, contains material on a permanent loan basis, from various groups and the Defense Department. I am advised that it is the desire of the Commission to further the establishment, maintenance and enlargement of this museum through a utilization of financial assistance from certain benevolent, charitable and philanthropic organizations.

The Acts of 1957, Ch. 218, Sec. 9, as found in Burns' (1961 Repl.), Section 59-1509, under the powers granted the Commission, includes the following:

“5. To receive donations, gifts, devises and bequests, and to use the same in connection with and furtherance of the purposes of this act.”

It will be noted that such donations or gifts are to be used "in connection with and furtherance of the purposes of this Act." The purposes of this act as they may relate to the establishment and maintenance of the War Museum are clearly within the intent of the Legislature as shown in Burns' 59-1508, *supra*.

Therefore, in answer to your first question, it is my opinion that so long as the donations are received in the name of Indiana War Memorials Commission and if there are no unlawful obligations imposed upon the Commission or the State of Indiana in consideration for the transfer of the gift, then the Commission does have the power to receive donations, gifts, devises and bequests for the purpose of the establishment, maintenance and enlargement of a War Museum at Memorial Place.

Let us next turn to your second question. Inasmuch as your first question has been answered in the affirmative, your second question is: "How are the funds to be handled?" This question is answered specifically by the provisions of the Acts of 1947, Ch. 279, Sec. 23, as found in Burns' (1961 Repl.), Section 60-1823, which provides as follows:

"All receipts from any source coming into the possession of any state agency shall be deposited with the state treasurer each day or as soon as practicable after the same is received, unless otherwise provided by law, and at the end of each calendar month each agency shall file a report of all receipts deposited since the last previous report, which report shall show the disposition thereof. Said report shall be submitted to the director of auditing by the depositing agency. All moneys so received by the treasurer during any month shall be credited by him and by the director of auditing to the proper funds not later than the fifth day of the following month." (Our emphasis)

In my 1956 O. A. G., page 39, No. 10, I considered three questions, two of which were very similar to your questions, pertaining to the acceptance of gifts and the handling of funds so collected, by the Wilbur Wright Birthplace Commission.

OPINION 36

Following my quoting of Burns' 60-1823, *supra*, I made the following statement:

"It is clear from the provisions of the above quoted statute that any gifts of money received by the Wilbur Wright Birthplace Commission must be deposited with the State Treasurer *and should be deposited to a separate trust fund* for the purpose of constructing and establishing the memorial." (Our emphasis)

It is imperative that the State Treasurer establish a separate trust fund for the Commission in order that funds drawn will not be from the general treasury of the state, which would violate the Indiana Constitution, Article 10, Section 3, which provides as follows:

"No money shall be drawn from the Treasury but in pursuance of appropriations made by law."

In my 1956 O. A. G., No. 10, *supra*, after quoting the above constitutional provisions, I stated on page 43, as follows:

"*If the donations are maintained in a separate trust fund by the State Treasurer*, it would appear that when they are needed for use they will not be drawn from the general treasury as contemplated by the constitutional provision. *It seems logical that the money is actually appropriated and authority given to expend it by the donor at the time such gift is transferred from the donor's possession and control.* Therefore, it is my opinion that gifts donated for the specific purpose of constructing and establishing such memorial may be expended for that purpose without further legislative action or approval." (Our emphasis)

Therefore, in answer to your second question, it is my opinion that such gifts should be placed in a trust and agency account for the Indiana War Memorials Commission, by the State Treasurer. Thereupon, such funds may be expended, by the Commission, as outlined above and in accordance with all laws of the state controlling the expenditure of state funds after appropriation.