

effect, the O'Rourke case held that under Acts of 1899, Ch. 154, Sec. 21, as amended, and as now found in Burns' (1960 Repl.), Section 26-521, neither the board of county commissioners nor the county council had authority to provide for additional salary after the annual September meeting of the county council, unless an emergency exists. No emergency existed in that instance, nor has one been shown to exist here.

Therefore, it is my opinion that the salary increases herein provided shall be appropriated in the annual September meetings of the several county councils and shall become effective upon the first day of January, 1964.

OFFICIAL OPINION NO. 49

October 17, 1963

George A. Everett, Superintendent
Indiana State Police
301 State Office Building
Indianapolis, Indiana

Dear Superintendent Everett:

This is in reply to your request for an Opinion on the following question:

"Does Senate Enrolled Act No. 260 of the 1963 General Assembly affect the duties of the Trustee of the Indiana State Police Pension Fund as set out in the Acts of 1937, Ch. 54, as amended, (Burns' 1952 Repl., §§ 47-835 through 47-845, as amended), and if so, to what extent?"

Senate Enrolled Act No. 260 of the 1963 General Assembly being Acts of 1963, Ch. 398, Sec. 1, as found in Burns' (1963 Supp.), Section 31-507, reads as follows:

"In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for any trust heretofore or hereafter created, the trustee thereof shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discre-

OPINION 49

tion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures and other corporate obligations, stocks, preferred or common, and real estate mortgages, which men of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase."

Section 2 of the Acts of 1963, Ch. 398, specifically repeals the following statutes :

- (a) Acts of 1933, Ch. 40, Sec. 187, as last amended by Acts of 1939, Ch. 102, Sec. 3, as found in Burns' (1950 Repl.), Section 18-1205;
- (b) Acts of 1933, Ch. 40, Sec. 188, as last amended by Acts of 1937, Ch. 33, Sec. 22, as found in Burns' (1950 Repl.), Section 18-1206;
- (c) Acts of 1933, Ch. 40, Sec. 190, as last amended by Acts of 1937, Ch. 33, Sec. 23, as found in Burns' (1950 Repl.), Section 18-1208;
- (d) Acts of 1945, Ch. 184, Sec. 1, as last amended by Acts of 1957, Ch. 40, Sec. 1, as found in Burns' (1962 Supp.), Section 31-501 (and subsequently amended by the Acts of 1963, Ch. 356) ;
- (e) Acts of 1945, Ch. 184, Sec. 2, as amended by Acts of 1951, Ch. 155, Sec. 2, as found in Burns' (1949 Repl.), Section 31-502;
- (f) Acts of 1945, Ch. 184, Sec. 3, as found in Burns' (1949 Repl.), Section 31-503;

- (g) Acts of 1957, Ch. 87, Sec. 1, as found in Burns' (1962 Supp.), Section 31-504;
- (h) Acts of 1959, Ch. 123, Sec. 1, as found in Burns' (1962 Supp.), Section 31-505; and
- (i) Acts of 1959, Ch. 123, Sec. 2, as found in Burns' (1962 Supp.), Section 31-506.

Burns' 18-1205, 18-1206 and 18-1208, *supra*, are part of Article 2 of Part 4 of The Indiana Financial Institutions Act and expressly applicable to investments of "any bank or trust company" in any fiduciary capacity. Similarly, Burns' 31-501 to 31-506, *supra*, apply to investments of "every bank or trust company authorized under the laws of the State of Indiana or of the United States of America, when acting in a fiduciary capacity."

The Indiana State Police Pension Fund, established pursuant to the Acts of 1937, Ch. 54, as amended, as found in Burns' (1952 Repl. 1963 Supp.), Sections 47-835 through 47-845, is a "trust fund" provided by a "pension trust" agreement, and administered by a "trustee" who, according to Burns' 47-835, *supra*, paragraph (b), may be

"* * * either one or more corporate trustees or the treasurer of state serving under bond."

While it is noted that a corporate trustee named as trustee of the Indiana State Police Pension Fund would necessarily have been a bank or trust company subject to laws specifically repealed by the Acts of 1963, Ch. 398, no such restriction would have applied to the treasurer of state acting as trustee, except that Burns' 47-835, *supra*, paragraph (h), subparagraph (10), subjects the state police "pension trust" to the following limitations:

"The trust fund shall not be commingled with any other funds and shall be invested only in accordance with Indiana laws for the investment of trust funds, together with such other investments as may be specifically designated in the trust agreement * * *."

It is apparent that the Legislature enacting the Acts of 1937, Ch. 54, had knowledge of the Acts of 1933, Ch. 40, as

OPINION 49

existing law for the investment of trust funds, and that such Legislature intended the provisions of that and subsequent "Indiana laws for the investment of trust funds" to apply to investment of the assets of the police pension trust, even though its trustee might be neither a bank nor trust company.

Town of Brownsburg v. Trucksess et al. (1933), 98 Ind. App. 322, 329, 185 N. E. 315.

In arriving at this conclusion, however, it is to be noted that the Indiana State Police Pension Fund is a public trust (1954 O. A. G., pages 39, 40 to 41, No. 12), which fact subjects it to other restrictions than those particularly applicable to corporate trustees investing private funds, as, for example, the Indiana Constitution, Art. 11, Sec. 12, which reads as follows:

"The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association."

Although Section 2 of the Acts of 1963, Ch. 398, *supra*, expressly repeals certain statutes pertaining to investments of corporate fiduciaries, there is nothing in the title nor in Section 1 of such Act, as found in Burns' 31-507, *supra*, which would limit its provisions to corporate trustees.

Under the Indiana State Police Department Pension Trust Agreement of 1937, as amended, and effective March 14, 1963, the Treasurer of State of Indiana is the "Trustee," and investments specifically designated in the Agreement are set out on page 14, in paragraph 20, in part, as follows:

"The Trustee with the approval of the Department shall invest, reinvest and manage the Pension Fund for the purchase of, or payment of the following:

"(a) Such investments as the Trustee may be authorized to invest trust funds under the laws of the State of Indiana."

The Indiana State Police Department Pension Trust Agreement, paragraph 20, *supra*, also specifically authorizes investment of its trust funds in life insurance policies, annuities and loans, unspecified in the Acts of 1963, Ch. 398, which, in essence, substitutes the so-called Prudent Man Rule for detailed specifications of authorized investments set out in prior law. Though, the statute lists some investments therein, it is unlimited in generality of application. Therefore, in making investments named in the Agreement, as well as others, the Trustee of the Indiana State Police Pension Trust must, under Burns' 31-507, *supra*:

“* * * exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs * * *.”

In summary and conclusion, it is my opinion that the duties of the Trustee of the Indiana State Police Pension Fund are affected by the Acts of 1963, Ch. 398, which concerns the degree of care a trustee must exercise in acquiring, retaining, selling and managing property for any trust, but such enactment does not change the limitations otherwise applicable.

OFFICIAL OPINION NO. 50

November 6, 1963

Mr. Merton Stanley, Chairman
Public Service Commission of Indiana
901 State Office Building
Indianapolis, Indiana

Dear Mr. Stanley:

Your recent letter requesting an Official Opinion reads as follows:

“The Acts of 1913, Chapter 76, Section 92, as found in Burns' Indiana Statutes, Section 54-505, provide:

“* * * Any public utility may issue notes for proper purposes and not in violation of any pro-