

services except upon termination of the agreement with respect to a coverage group, i.e., the political subdivision.

See: 42 U. S. C. A. § 418, subsection (g).

In summary and conclusion, it has heretofore been established that the services of deputies sheriff in certain political subdivisions of this state have been covered by social security although service in a policeman's position may not be so covered; that services rendered by a county policeman are the same as those rendered by a deputy sheriff and are not identical with those rendered by a city policeman; that subsequent establishment of a retirement system covering positions previously covered by social security has no statutory effect on continuation of such coverage.

It is therefore my opinion that in any political subdivision already a coverage group subject to the provisions of the Federal Social Security Act and including the services of a deputy sheriff in the modification of the federal-state agreement applicable to such coverage group, the services of a county policeman in such political subdivision are likewise covered even though county policemen are also employee-beneficiaries of a pension trust.

OFFICIAL OPINION NO. 9

April 18, 1963

Hon. William E. Wilson
Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Wilson:

Your letter of April 8, 1963, requesting an Official Opinion has been received and reads as follows:

"I respectfully request an Official Opinion with reference to Chapter 149, Acts of 1963, on the following question:

"Does the Superintendent of Public Instruction of the State of Indiana have the responsi-

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bility and authority for specifying the agency or agencies which may make such required inspection of heating systems and gas lines?"

The Acts of 1963, Ch. 149, Sec. 1, provides as follows:

"The superintendent of each school corporation in this state shall cause to be made an annual inspection of all heating systems and gas lines leading into any building used for school purposes, said inspection to be made between June 1st and September 1st of each year."

Section 2 of said Act further provides:

"A report of the inspection herein provided for shall be made to the Superintendent of Public Instruction of the State of Indiana prior to September 1st of each year. The report shall be made on forms prescribed and approved by the Superintendent of Public Instruction."

The only other provisions of said act is the emergency clause to be effective June 1, 1963. It therefore appears that the specific requirements of the statute are that such an inspection be made between June 1st and September 1st of each year, and that a report thereof shall be made on or before September 1st of each year to the Superintendent of Public Instruction of the State of Indiana on forms prescribed and approved by the Superintendent of Public Instruction. No authority is therein given the Superintendent of Public Instruction for specifying the agency or agencies which may make such required inspection. In the absence of any specific authority, I do not believe any authority may be implied from the language used.

Where an office is created by statute, public officers may exercise only such powers as are expressly authorized by statute.

Blue v. Beach (1900), 155 Ind. 121, 131, 56 N. E. 89;
Department of Insurance v. Church Members Relief
Assoc. (1940), 217 Ind. 58, 60, 26 N. E. (2d) 51.

An exception to the above general rule is recognized where certain incidental powers are implied for the purpose of carrying out the express powers given a public officer.

State *ex rel.* v. Goldthait (1909), 172 Ind. 210, 216, 87 N. E. 133;

43 Am. Jur., Public Officers, § 250.

I do not find that the right to specify the agency by the State Superintendent of Public Instruction is necessary for the carrying out of any duties enjoined upon him by the statute, and therefore the right to so specify such agency would not come within the exception of the general rule above stated.

I am therefore of the opinion, that while the statute clearly contemplates the inspection be made by some person competent to make an inspection of all heating systems and gas lines leading into any such school building, that the right to specify the agency to make such inspection is not the responsibility of or within the authority of the State Superintendent of Public Instruction.

OFFICIAL OPINION NO. 10

April 19, 1963

S. T. Ginsberg, M.D.
Mental Health Commissioner
Department of Mental Health
1315 West 10th Street
Indianapolis 7, Indiana

Dear Dr. Ginsberg:

This is in answer to your letter of March 6, 1963, wherein you request an Official Opinion. Your question pertains to payment of costs of medical, surgical and hospital care for patients in state mental hospitals when it becomes necessary for such patients to be sent to a non-state hospital for special medical or surgical care or hospital care.

The Acts of 1947, Ch. 300, Sec. 4, as amended and found in Burns' (1951 Repl.), Section 52-1134, reads as follows: