

1963 O. A. G.

OFFICIAL OPINION NO. 16

May 3, 1963

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

Dear Mrs. Gardner:

This is in response to your request for an Official Opinion pertaining to whether you have authority, as Auditor of State, to issue a State Warrant in the amount of two hundred fifty thousand dollars (\$250,000) against the Special Employment Security Fund for subsequent deposit to the Employment Security Administration Fund in accordance with Indiana Employment Security Board Resolution adopted March 27, 1963.

Your request for an Official Opinion is based upon the following facts: On Friday, March 29, 1963, the following instruments were presented to you by a representative of the Indiana Employment Security Division for action. Said instruments are as follows:

"FINAL RESOLUTION

"Adopted by the Indiana Employment Security Board
at its meeting of March 27, 1963

* * *

"WHEREAS, the Indiana Employment Security Division has inadequate facilities for the proper operation of its Indianapolis local office, and

"WHEREAS, adequate facilities for such purposes are not now available in the Indianapolis area, and

"WHEREAS, it is deemed advisable to erect a building that will properly care for the operation of the Indianapolis local office, and

"WHEREAS, it is deemed advisable to purchase land to serve as a site for said building, and

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"WHEREAS, the Indiana Employment Security Board finds that granted funds for such purpose are not available,

"NOW, THEREFORE, BE IT RESOLVED That the Indiana Employment Security Board does now appropriate Two Hundred Fifty Thousand dollars for the purchase of land as hereinbefore set forth and does now order the transfer of Two Hundred Fifty Thousand dollars from the Special Employment Security Fund to the Employment Security Administrative Fund and the Auditor of State is hereby directed to issue a warrant therefor.

"Upon motion of Mr. Byron, seconded by Mr. Summers, that said resolution be adopted, a vote is taken thereon and with all members present voting in favor thereof, the presiding officer declares said resolution duly adopted.

INDIANA EMPLOYMENT SECURITY BOARD

/s/ Wm. L. Yager	President
/s/ I. Lynd Esch	Vice-President
/s/ Albert L. Summers	Member
	Member
	Member

ATTEST:

/s/ Lewis F. Nicolini
(Secretary)

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2)
 "FORM A-12 Revised Dec. 1953
 Approved by State of Indiana
 State Board of CLAIM -- VOUCHER
 Accounts

Warrant No. _____

Claimant's
 Name Employment Security Division
 and 10 North Senate Avenue
 Address Indianapolis, Indiana

STATE AGENCY FILL IN. This form may be used only for claims chargeable to Services Other Than Personal.
 Account No.: 675-514.7
 State Agency: Employment Security Division
 Appr. Name: Special Empl. Sec. Fund

Furnished To

STATE AGENCY FILL IN

Object	Amount	Object	Amount	Object	Amount	Object	Amount
201		206		211		221	
203		207		212		280	
204		208		214		299	
205		209		220			

AMOUNT TO BE PAID
 \$250,000.00

Date	Item	Amount	✓
3/29/63	To obtain State Warrant drawn against the Special Employment Security Fund for subsequent deposit to the Employment Security Administration Fund in accordance with Employment Security Board Resolution attached.	\$250,000.00	

I certify that this claim is correct and valid, and is proper charge against the State Agency and Account Number indicated.

 /s/ Lewis F. Nicolini
 (Authorized Signature of State Agency)

Pursuant to the provisions and penalties of Chapter 155 Acts of 1953.

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date _____ X _____ Employment Security Division
 XX By _____

Your specific question is stated as follows:

"Does the Auditor of State, based upon the Final Resolution and Claim Voucher set out above, have authority to transfer two hundred fifty thousand (\$250,000) dollars from the Special Employment Security Fund to the Employment Security Administration Fund of the Indiana Employment Security Division?"

In order to more clearly understand the problem presented by the above stated facts, we think it proper to review the Acts of the General Assembly which created the Special Employment Security Fund. Said fund was created by the Acts of 1947, Ch. 208, Sec. 2601, as amended and found in Burns'

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(1962 Supp.), Section 52-1550, which reads, in part, as follows:

“There is hereby created in the state treasury a special fund to be known as the special employment security fund. All interest on delinquent contributions and penalties collected on and after April 1, 1945, under the provisions of this Act, together with any voluntary contributions tendered as a contribution to this fund, shall be paid into this fund * * * ”

The Acts of 1947, Ch. 208, Sec. 2601, *supra*, as originally enacted, limited the maximum accumulation of the funds to ten thousand dollars (\$10,000) and provided, in part, as follows:

“* * * That any excess in said fund over and above the sum of ten thousand (\$10,000) dollars at and on the first day of any calendar quarter in any year shall revert and be immediately transferred and paid to the employment security trust fund and shall thereupon become an integral part of said fund * * * ”

The Acts of 1955, Ch. 317, Sec. 12, amended Sec. 2601, *supra*, as found in Burns' (1962 Supp.), Section 52-1550, and eliminated the maximum accumulation of monies in said Special Employment Security Fund and did not provide for the transfer of any monies to the Employment Security Trust Fund. As a consequence of this unlimited accumulation there was, on or about March 29, 1963, an approximate balance of four hundred thirty thousand dollars (\$430,000) in the Special Employment Security Fund.

The 1963 Legislature under the provisions of House Enrolled Act No. 1483 which was signed by the Governor on March 14, 1963, contained an emergency clause, making the effective date of the Act April 1, 1963, [Acts of 1963, Ch. 373] placed a maximum limitation of twenty-five thousand dollars (\$25,000) on the Special Employment Security Fund. All funds in excess of the twenty-five thousand dollars (\$25,000) on the first day of any calendar month are to revert and be immediately transferred and paid to the Employment Security Trust Fund by the terms of said House

Enrolled Act No. 1483, *supra*, said Employment Security Trust Fund being the fund out of which benefits are paid to eligible claimants.

Since the last amendment of Section 2601 by the Acts of 1955, Ch. 317, Sec. 12, the funds in the Special Employment Security Fund have accumulated so that as of March 29, 1963, there was approximately four hundred thirty thousand dollars (\$430,000) in the fund. By virtue of House Enrolled Act No. 1483, *supra*, all of this fund, excepting only a balance of twenty-five thousand dollars (\$25,000) would be transferred to the Employment Security Trust Fund on April 1, 1963, to be used for the payment of eligible claimants. Just prior to the effective date of House Enrolled Act No. 1483, *supra*, that is, on March 29, 1963, the Employment Security Board presented their Final Resolution and Claim Voucher to the Auditor's Office for the transfer of two hundred fifty thousand dollars (\$250,000) of these funds to the Employment Security Administration Fund. This serves as a brief summary of the factual events leading to the presentation of the Final Resolution and Claim Voucher to your office and your request for this Opinion.

The authority or lack of authority to transfer the two hundred fifty thousand dollars (\$250,000) rests in the interpretation of said Sec. 2601, *supra*, as amended by the Acts of 1955, Ch. 317, Sec. 12, as found in Burns' (1962 Supp.), Section 52-1550, *supra*. An examination of said section reveals no authority to make such transfer and in fact such a transfer is expressly prohibited under the above cited section. The prohibition is contained in the following words of said section:

“* * * The monies in this fund shall be continuously available to the board for expenditure in accordance with the provisions of this section, and shall not lapse at any time *or be transferred to any other fund*
* * *” (Our emphasis)

The Resolution, hereinbefore set out, contains the following words:

“* * * NOW, THEREFORE, BE IT RESOLVED
That the Indiana Employment Security Board does now

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appropriate Two Hundred Fifty Thousand dollars for the purchase of land as hereinbefore set forth and *does now order the transfer of Two Hundred Fifty Thousand dollars from the Special Employment Security Fund to the Employment Security Administrative Fund* and the Auditor of State is hereby directed to issue a warrant therefor * * *” (Our emphasis)

Likewise, the Claim Voucher, hereinbefore set out, in support of the transfer of said funds contains the following words:

“To obtain State Warrant *drawn against the Special Employment Security Fund for subsequent deposit to the Employment Security Administration Fund in accordance with Employment Security Board Resolution attached. \$250,000.00*”

It appears that both the Resolution and the Claim Voucher in support thereof are in direct violation of the prohibition of the statute which says that the funds contained in the Special Employment Security Fund “* * * shall not * * * be transferred to any other fund * * *”

Further, it is noted that the provisions of the Acts of 1953, Ch. 155, Secs. 1, 2 and 3, as found in Burns’ (1961 Repl.), Sections 61-116, 61-117 and 61-118, respectively, have not been followed. Burns’ 61-116, *supra*, reads, in part, as follows:

“No warrant or check shall be drawn by a disbursing officer of the state or any of its political subdivisions in payment of any claim unless the same has been fully itemized and its correctness properly certified to by the claimant, or some authorized person in his behalf and filed and allowed as now provided by law * * *”

In addition, Burns’ 61-117, *supra*, provides that the certification shall be in the following form:

“I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due,

after allowing all just credits, and that no part of the same has been paid.”

The provisions of Burns' 61-116, *supra*, prohibit the drawing of a warrant in payment of any claim, “unless the same has been fully itemized and its correctness properly certified to by the claimant.” The Claim Voucher set out above clearly shows that there has been no itemization of this claim, but just a general request for the transfer of the two hundred fifty thousand dollars (\$250,000).

In addition, the certification required by Burns' 61-117, *supra*, as shown by the Claim Voucher set out above has not been completed. Thus, there has not been a compliance with the requirements of said section.

Therefore, it is my opinion that you have no authority as Auditor of State to issue a warrant transferring two hundred fifty thousand dollars (\$250,000) from the Special Employment Security Fund of the Employment Security Division to the Employment Security Administration Fund of the Employment Security Division.

OFFICIAL OPINION NO. 17

May 13, 1963

Mr. William F. O'Neill
State Service Officer
Veterans' State Service Department
100 N. Senate Avenue
Indianapolis 4, Indiana

Dear Mr. O'Neill:

Your letter of April 30, 1963, has been received requesting an Official Opinion on the following question:

“Does the principal of a public school have the authority to order a dental examination for children who are to be enrolled for the first time?”

After considerable research, I fail to find any statute specifically authorizing school officials to require children to sub-

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mit to a dental examination who are to be enrolled for the first time. There are many statutes concerning the duties of school physicians and school nurses in relation to the pupil's health. The closest approach to the question of examination of teeth is found in Acts of 1911, Ch. 200, Secs. 1 and 2, as found in Burns' (1948 Repl.), Sections 28-3601 and 28-3602, which provide as follows:

28-3601 "All school trustees and township trustees are herewith permitted and recommended to institute medical inspection of school children at any time the said trustees may require teachers to annually test the sight and hearing of all school children under their charge, the said tests and uses thereof to be made according to the rules hereinafter authorized."

28-3602 "The term 'medical inspection,' as used in this act, shall be held to mean the testing of the sight and hearing of school children *and the inspection of said children by school physicians for disease, disabilities, decayed teeth or other defects which may reduce efficiency or tend to prevent their receiving the full benefits of school work.*" (Our emphasis)

However, it is emphasized that the foregoing requirements set forth in Burns' 28-3601 and 28-3602, *supra*, are to be accomplished by the school physician. The Acts of 1911, Ch. 200, Secs. 3 and 4, as amended and found in Burns' (1962 Supp.), Sections 28-3603 and 28-3604, provide for the employment of a school physician and prescribe the school physician's duties.

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

Blue v. Beech (1900), 155 Ind. 121, 131, 56 N. E. 89;

Department of Insurance v. Church Members Relief Assn. (1940), 217 Ind. 58, 60, 26 N. E. (2d) 51;

Chicago etc. R.R. Co. v. Public Service Commission (1943), 221 Ind. 592, 594, 49 N. E. (2d) 241.

I am therefore of the opinion a principal of a public school does not have authority to order a dentist to examine children who are to be enrolled for the first time.

OFFICIAL OPINION NO. 18

May 23, 1963

Mr. Albert Kelly, Administrator
Department of Public Welfare
701 State Office Building
Indianapolis 4, Indiana

Dear Mr. Kelly:

This is in response to your letter of May 16, 1963, which reads as follows:

“Your official opinion is requested regarding the question of whether or not a detention home established by a juvenile court under the provisions of Burns’ Revised Statutes Sec. 9-3222 is required to be licensed under the provisions of Burns’ Revised Statutes Sec. 22-2416.”

In answering your question, it is essential that the provisions of the two statutes which you have cited be considered in relation to each other. The first of these being the Acts of 1945, Ch. 356, Sec. 22, as found in Burns’ (1956 Repl.), Section 9-3222, which reads in part as follows:

“* * * Provision shall be made for the temporary detention of children in a *detention home to be conducted as an agency of the court*, or the court may arrange for the boarding of such children temporarily in private homes, subject to the supervision of the court, or may arrange with any authorized institution or agency, to receive for temporary care children within the jurisdiction of the court.

“*Where a detention home is established as an agency of the court* it shall be furnished and carried on, as far as possible, as a family home in charge of a super-