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the supervision of the court" as found in this proviso also strengthens the indication that it was not the legislative intent to require a license for such a detention home, the operation of which was so clearly placed under the supervision of the court.

The provisions of Burns' 22-2416, *supra*, require "any person, firm, corporation or association" to obtain a license. A juvenile court, in its judicial capacity, is not a person, firm, corporation or association.

Therefore, it is my opinion, that a detention home established by a juvenile court under the provisions of Burns' 9-3222, *supra*, is not required to be licensed under the provisions of Burns' 22-2416, *supra*.

OFFICIAL OPINION NO. 19

May 28, 1963

Mr. George E. Goodwin
Executive Director
Indiana State Highway Commission
100 North Senate Avenue
Indianapolis 4, Indiana

Dear Mr. Goodwin:

Your letter of April 9, 1963, requests my Official Opinion on the question presented which is as follows:

"Our Chairman, Mr. Cohen, has suggested that I ask you for an opinion as to whether it would be legal for the Indiana State Highway Commission, thru the State Finance Board, to make short term investments of State Highway Funds, as recommended by our Accounting Task Force. If such investment of fluctuating idle State Highway funds is determined to be legal, we would also want to know whether the interest earned would be credited to the Highway Fund."

Your question concerns highway funds which are received from two principal sources: (1) the motor vehicle highway

account and (2) the funds received from the Federal Government under the Federal Aid Highways Act.

The funds of the motor vehicle highway account are derived from special taxes and are distributed according to a statutory formula found in the Acts of 1941, Ch. 168, Sec. 3, as amended and found in Burns' (1949 Repl.), Section 36-2817. Subsection (d) of said section reads as follows:

“On the first day of April of each year and quarterly thereafter the remainder of the net amount in the motor vehicle highway account shall be credited to the state highway fund for the use of the state highway commission.”

Such special taxes constituting the motor vehicle highway account, when received, are paid to the Treasurer. Examples of this are the motor vehicle fuel tax, being the Acts of 1943, Ch. 73, as found in Burns' (1952 Repl.), Section 47-1532 *et seq.*, and particularly Section 47-1556, which provides that such taxes shall be deposited daily with the Treasurer when received. Also, the same procedure is followed in the fuel use tax as provided in the Acts of 1943, Ch. 74, Sec. 3, as found in Burns' (1952 Repl.), Section 47-1603. It is further noted that Section 36-2817(d), *supra*, provides that the Treasurer only credits such distributive share to the State Highway Fund and no change is made in the custody of the funds.

The funds received under the Federal Aid Highway Act are also received by the Treasurer. The Acts of 1933, Ch. 18, Sec. 27, as amended and found in Burns' (1949 Repl.), Section 36-127, states, in part:

“* * * The state treasurer is hereby authorized to receive any and all money due the state of Indiana, under the provisions of this act, and shall pay out the same on orders of the state auditor which shall be issued by said state auditor upon orders by the state highway commission.”

This is also true concerning any funds received as advances from the secretary of commerce, which are placed in the “Highway Right-of-Way and Construction Revolving Fund,”

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as provided in the Acts of 1957, Ch. 92, Sec. 1, as found in Burns' (1962 Supp.), Section 36-187.

The duty of the Treasurer of the State in regard to funds received by him are governed in part by the Acts of 1859, Ch. 138, Sec. 5, as found in Burns' (1951 Repl.), Section 49-1807, which reads as follows:

“The treasurer of state is expressly prohibited from loaning, using, or permitting any other person to use or deposit in any bank, or with any person or persons, or exchanging for other funds, except as permitted by this act, any of the moneys, funds, stocks or other property collected or received by him, or that may be paid or received into the state treasury, but shall safely keep all such moneys, funds, stocks, and other property until the same is directed to be paid out or transferred in the manner prescribed by law. And such treasurer is expressly prohibited from receiving, in any manner, for his own use, any interest, premium, gratuity, bonus or benefit whatever, by the disposition of or arising out of any money or property belonging to the state, or to any county, or to any fund of the state or counties, or of any loan obtained for the state or for any county; but whatever is so received shall, by him, be fully accounted for.”

and Acts of 1859, Ch. 138, Sec. 7, as found in Burns' (1951 Repl.), Section 49-1809, which reads, in part, as follows:

“The treasurer of state is expressly prohibited from paying any money out of, or transferring any money from, the treasury of state, except upon the warrant of the auditor of state; and the auditor shall examine, with care, every demand and claim presented for payment, and shall be satisfied that every claim is just, legal, and unpaid, before he shall allow, audit, or counter-sign it; and for that purpose, may require the affidavit of the claimant, or other evidence, and he shall require every claim to specify the particular items of indebtedness * * *”

One exception to the restriction imposed on the Treasurer arises from the Acts of 1941, Ch. 27, Secs. 1, 3, 6 and 8, as found in Burns' (1961 Repl.), Sections 60-310, 60-312, 60-315 and 60-317. Section 60-310, *supra*, creates a board of finance consisting of the Governor, Treasurer and Auditor of State. Section 60-312, *supra*, gives them supervision of fiscal affairs of the state and, to a certain extent, the public funds.

Section 60-317, *supra*, specifically gives this board the authority to invest on short term loans "trust funds" of the state, which are defined in Section 60-315, *supra*. Funds received from the Federal Government for the construction of highways are included in this definition of "trust funds," but, by the provision of Section 60-317, *supra*, such funds received from the Federal Government are specifically excluded from the "trust funds," which may be invested in short term loans.

No further authority of the board of finance is found to invest other funds of the State Highway Fund received from other sources, and since only those powers which are granted by statute may be exercised by any board or commission, they would not have such power. An examination of the Acts of 1961, Ch. 201, Sec. 5, as found in Burns' (1962 Supp.), Section 36-101c, which provides for the powers, responsibilities and duties of the highway commission, reveals no power on the part of the highway commission to invest any of the highway funds.

Therefore, it is my opinion that there is no authority for the state finance board to invest any of the State Highway Funds, regardless of their sources, in short term investments. Having arrived at this conclusion, it becomes unnecessary to answer your remaining questions.