

Therefore, the answer to the question presented by your request for an Official Opinion is that when gross receipts are received by a municipality through its wholly-owned utility from sales made to consolidated school corporations, the gross receipts derived from said transactions are taxable under the provisions of the Indiana Gross Income Tax Act and the regulations adopted pursuant thereto.

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OFFICIAL OPINION NO. 46

July 11, 1962

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

Dear Mr. Wilson:

Your letter of June 29, 1962, has been received requesting an Official Opinion on the following question:

“May school busses be used to transport 4-H Club members and leaders to meetings and events which are educational in nature and which are approved by local school administrators?”

School bus contracts are let by competitive bid under the provisions of Acts 1945, Ch. 210, as amended, as found in Burns' (1948 Repl., 1962 Supp.), Section 28-3930 *et seq.*, or Acts 1957, Ch. 150, as amended, as found in Burns' (1962 Supp.), Section 28-3938 *et seq.* Such school bus contracts constitute the school bus driver an independent contractor.

1954 O. A. G., page 148, No. 41.

Ordinarily such contracts are only given for a specific route and specified services. They may be altered or extended with a pro rata increase in cost for any additional miles of travel thereby occasioned. The school bus driver is required to furnish insurance covering the operation of said bus in an amount satisfactory to the school officials. Under other statutes consideration is extended them as to the cost of the purchase of their license plates and numerous requirements are made by

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statute regarding the equipment for and the operation of said school busses.

Acts 1935, Ch. 303, Sec. 2, as found in Burns' (1948 Repl.), Section 28-3906, provides as follows:

"No school-bus designated as such under the definition of this act or any previously enacted law, or any law hereafter enacted, shall be used upon any highway in the state of Indiana for any private purpose, or for any purpose other than that for which it is under contract, except that such school-bus may be used for group movements to and from athletic games, contests, or other school functions under the direct auspices of the public schools or for such other purposes as may be approved by the committee created by section nine of this act, on recommendation of the trustee or board of trustees of the school corporation."

In the recent case of *State ex rel. I. H. S. A. Assn. v. Lawrence Circuit Court et al.* (1959), 240 Ind. 114, 121 to 124, 162 N. E. (2d) 250, it was held that the playing of basketball by teams representing a school under the auspices of the Indiana State High School Athletic Association did not constitute a "school function" in that a school function normally represented classes within the school curriculum normally available to all children in a particular class, such as physical education as distinguished from a team consisting of a few members from a large school.

In addition to the foregoing, it is conceded that normally a school year is nine months but that agricultural teachers are employed on a twelve months basis and may have regular classes in or out of the school building. If so designated as part of the school curriculum by the school officials, such agricultural classes would be a proper school function of the school within the meaning of the last quoted statute and the membership of the classes in 4-H Club work might be extensive enough to include the use of the busses for the purposes referred to in your question. However the statutes relative to the common schools of Indiana, grades kindergarten to twelve inclusive, do not make any specific reference to 4-H Clubs as such. From the foregoing, I am of the opinion no authority is given by

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statute for the use of school busses to transport 4-H Club members and leaders to meetings and events educational in nature, even though approved by the local school administrators, unless it is a "school function" within the meaning heretofore considered.

The last-referred-to statute does authorize the use of school busses "for such other purposes" as may be approved by the State School Bus Safety Committee, on recommendation of the trustee or board of trustees of the school corporation. In the event such authorization is given under any of these factual situations, it should be ascertained that liability insurance in a proper amount covers the use of such vehicles for such purposes.

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OFFICIAL OPINION NO. 47

July 13, 1962

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

Dear Mr. Kelly :

This is in reply to your letter of June 12, 1962, in which you request my Official Opinion on the following question :

"May County Departments of Public Welfare award old age assistance as provided for in The Welfare Act of 1936, as amended, upon an application made by the guardian of a person who has been adjudicated a mentally ill person and committed to a State Psychiatric Hospital and who may be released therefrom and prior to the restoration of his civil rights or mental health?"

Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 32, as last amended by Acts 1961, Ch. 183, Sec. 1, and as found in Burns' (1962 Supp.), Section 52-1201, relates to eligibility of aged persons to receive old age assistance. Specific qualifications are set out with respect to citizenship, age, residence, income and transfer of property. In addition to the foregoing, subparagraph (e) of the section contains the following language :