

channels to the public clearly places these channels under the jurisdiction of the State of Indiana as set forth in the aforementioned acts because, upon dedication, they become public waters and a part of the public waters of the lakes to which the channels are connected subject only to riparian rights legally determined.

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OFFICIAL OPINION NO. 23

May 19, 1961

Mr. Arthur Campbell, Chairman  
Board of Correction  
804 State Office Building  
Indianapolis 4, Indiana

Dear Mr. Campbell:

This is in reply to your request for an Official Opinion relative to the administration of the program of state aid for the support of court probation services.

Acts of 1959, Ch. 272, Sec. 1, as found in Burns' (1959 Supp.), Section 9-2910, established a program enabling the state to give financial aid to support the court probation services of the several counties. Other sections of the 1959 Act deal with the purpose, limitation on the amount of aid, procedure for obtaining the aid, and finally Section 6 thereof appropriates the sum of \$250,000 to finance the program.

Section 3 of the 1959 Act, *supra*, as found in Burns' (1959 Supp.), Section 9-2912, reads as follows:

“State financial aid to courts, may be granted only upon the condition that such courts use the services of certified probation officers. The Department of Correction, with the approval of the State Budget Committee, may approve and grant state financial aid to any court, up to, but not in excess of fifty per cent [50%], in cases of financial distress and extreme need for probation services; and, may decrease the amount of state aid when financial, and other relevant, conditions appear to warrant such decrease. Provided, That if the amount of state aid covers fifty per cent [50%]

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of the total cost of such probation services, such a proportion of aid shall not continue for a longer period than two [2] years.”

Acts of 1961, Ch. 343 is known as the “Department of Correction Act of 1961” and Section 22 of this Act deals with the program of state aid for the support of court probation services. Section 22 reads as follows:

“SEC. 22. The provisions of Chapter 272 of the Acts of the General Assembly, 1959, are continued in effect and the state aid in support of court probation services is transferred and assigned for administration to the director of the division of probation of the Department of Correction.”

Based upon the above background information, your letter asks the following questions with respect to Acts of 1961, Ch. 343, Sec. 22:

- “1. Does this Section change the time limitation of two years’ participation of a given county?
- “2. If the participation is less than fifty (50%) per cent of total funds expended in probation matters in a given county, is there any time limitation applicable?
- “3. If a county has participated for two (2) years to the extent of fifty (50%) per cent of the total funds involved in a given county, can the county participate after the two (2) year period, if the participation is less than fifty (50%) per cent?”

Section 22 of the Acts of 1961, Ch. 343, *supra*, merely continues in effect the provisions of the Acts of 1959, Ch. 272, *supra*, including all the limitations set forth in the 1959 Act.

I have examined the Appropriation Act of 1961 as found in Acts of 1961, Ch. 298, and also the “Department of Correction Act of 1961” and do not find any further appropriation for this program of state aid to court probation services. The absence of any new or additional appropriation would tend to substantiate the conclusion that the Legislature intended the limitations as to time and amount, as well as the total appro-

priation available, to continue under the 1959 Act subject only to the terms of administration established by Section 22 of the "Department of Correction Act of 1961." In other words the limitation and procedural requirements of the Acts of 1959, Ch. 272, *supra*, are still applicable to the aid now administered by the newly created Department of Correction pursuant to the Acts of 1961, Ch. 343, *supra*.

In answer to your first question therefore, it is my opinion that Acts of 1961, Ch. 343, Sec. 22, *supra*, would not have the effect of changing the two year period of participation.

Your second question asks whether or not those counties which have not participated to the extent of fifty per cent (50%) for two years can continue to receive aid by virtue of the Acts of 1961, Ch. 343, *supra*. As I have already stated, it is my opinion that the 1961 Act does nothing more than establish the administration of this aid program under the direction of the Department of Correction as it is formulated by the 1961 Act. Therefore, the terms of the 1959 Act are still applicable and any county which has received less than fifty per cent (50%) in aid from the state could continue to receive aid as needed until the fund is exhausted so long as they have not reached the maximum of fifty per cent (50%) for a period of two years. Thus, under the 1959 Act the two year limitation applies only to those counties receiving fifty per cent (50%).

I do not believe Burns' 9-2912, *supra*, leaves much doubt as to its meaning with respect to how long a county can receive aid when the state has furnished fifty per cent (50%) of the total cost of probation services. The provision clearly states that if the county has received fifty per cent (50%) for two years they cannot receive that same amount for any additional period of time.

But it is only the fifty per cent (50%) total that is limited by the two year period, there being no express prohibition against the receipt of a lesser amount by such county after the two year period has expired.

Since the Acts of 1961, Ch. 343, *supra*, did not change, alter or modify the provisions of the 1959 Act, the limitation is still controlling. Therefore, in answer to your third question

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it is my opinion that a county which has received fifty per cent (50%) of the cost of its probation services from the state for a period of two years can only receive an approved amount less than fifty per cent (50%) until the funds are exhausted.

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### OFFICIAL OPINION NO. 24

May 22, 1961

Honorable Matthew E. Welsh  
Governor of Indiana  
206 State House  
Indianapolis, Indiana

Dear Governor Welsh:

I have heretofore acknowledged receipt of your request for my Official Opinion in answer to the following eight specific questions of statutory construction concerning certain 1961 legislation which provided for substantial changes in the functioning of the executive branch of our state government:

“1. Section 4a of the Department of Administration Act gives the Department of Administration the duty to ‘execute and administer all appropriations made by law.’ Sections 1b and 12 of the Budget Agency Act appear to give a similar duty to the State Budget Agency. Are these provisions conflicting and, if so, which agency has the duty to execute and administer all appropriations made by law?

“2. Section 4 j of the Department of Administration Act gives the Department of Administration control over the personnel function of the various state agencies. A similar function is given to the State Budget Agency by Section 13b of the Budget Agency Act. In view of the fact that the entire area of responsibility of the Budget Agency appears to be granted to the Department of Administration, which agency has the final responsibility for executing these powers?

“3. Section 6 of the Highway Commission Act gives the Highway Commission’s Division of Personnel the