

OPINION 36

OFFICIAL OPINION NO. 36

August 7, 1961

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

Dear Mr. Wilson:

Your letter of July 27, 1961, has been received requesting an Official Opinion and reads as follows:

"I have a request from A. H. Blankenship, Superintendent of Schools, Gary, as to whether or not expenditures may be made from the Special School Fund for physical examinations of students participating in inter-scholastic athletic contests, and for the attendance of a physician at such athletic contests."

In the case of State of Indiana *ex rel.* Indiana High School Athletic Assn. *et al.* v. Lawrence Circuit Court (1959), — Ind. —, 162 N. E. (2d) 250, the Supreme Court of Indiana cited with approval quotes from decisions in the following cases: *Rockwell v. School Dist. No. 1* (1923), 109 Ore. 480, 220 Pac. 142; *Brine v. City of Cambridge* (1929), 265 Mass. 452, 164 N. E. 619; *Wright & Ditson v. City of Boston* (1930), 270 Mass. 338, 170 N. E. 72; an Official Opinion of the Attorney General of Ohio (Opinion of Atty. Gen. of Ohio [1933], Vol. 1, pp. 552, 558), and an Official Opinion of this office being 1948 O. A. G., page 94, No. 20, to the effect that physical education is included within the curriculum of the public schools while inter-scholastic athletic contests are extra-curricular activities. The former is for the benefit of all pupils and properly supported from public funds while the latter is a select number of pupils playing under the school name, and in the absence of statutory authority does not warrant the use of public funds. On page 255 of the N. E. citation the Supreme Court said:

"We believe the foregoing authorities are decisive of the question before us and that the right of plaintiffs under the Indiana Constitution and statutes to go to the public schools and receive education and training

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cannot properly be said to include inter-scholastic sports and games, viz: inter-school basketball as may be engaged in between picked teams of the various public, private and parochial schools constituting the membership of relator Athletic Association.”

Under the foregoing authorities and due to the fact the Indiana Legislature has failed to authorize such expenditures, I am of the opinion expenditures may not be made from the Special School Fund for physical examinations of students participating in inter-scholastic athletic contests, or for the attendance of a physician at such athletic contests.

Under the above authorities payment for any such services cannot be made from public funds, but must come from extra-curricular funds or donations.

OFFICIAL OPINION NO. 37

August 8, 1961

Mr. John T. Hatchett
Director of the Budget
State of Indiana
302 State House
Indianapolis 4, Indiana

Dear Mr. Hatchett:

In your letter dated June 23, 1961, receipt of which I have previously acknowledged, you have stated the following questions:

“Chapter 123, Acts of 1961, Section 14—Standards to Guide Executive Including Administrative Discretion—establishes certain restrictions regarding the use of an emergency or contingency appropriation.

“Chapter 298, Acts of 1961, Section 2, appropriates \$2,000,000 each year to the Budget Agency for the State Departmental and Institutional Contingent Appropriation which appropriation is qualified by the following paragraph: