

## OPINION 6

*consent or permit of the chairman of the state highway commission, and then only in accordance with the regulations prescribed by said commission: \* \* \*.*" (Our emphasis)

This section remains in full force and effect and is applicable to the State Highway Department of Indiana through the provisions of Burns' Section 36-173g, *supra*. In addition, the Department has the regulatory power granted in Burns' 36-162, *supra*, and 36-2952, *supra*, to insure the proper placement of such booths and protection against their becoming a traffic hazard or a nuisance.

Therefore, in my opinion, the State Highway Department has sufficient authority to grant permits for the placement of pay station telephone booths on State Highway Department rights of way where such placement can be justified in the public welfare and where the location of such a booth will not interfere with the primary use of the highway as a public thoroughfare. The exercise of this right by the State Highway Department would be subject to any agreement or agreements that might exist between the U. S. Department of Commerce or the U. S. Bureau of Roads with the State Highway Department in regard to highways for which the construction and/or maintenance costs are partially paid with federal aid.

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### OFFICIAL OPINION NO. 6

February 13, 1961

Honorable William E. Wilson  
Superintendent of Public Instruction  
227 State House  
Indianapolis 4, Indiana

Dear Mr. Wilson:

Your request of February 8, 1961, for an Official Opinion has been received and, in part, reads as follows:

"Vincennes University, through its Board of Trustees, is making application to the Federal Communications Commission for a license and permit to construct

on its campus and to operate a new television station to be used by it for educational purposes.

“In support of its said application the University is required to answer the following questions:

“(1) Is it a public, non-profit educational institution?

“(2) Is it an independently constituted educational Body, having autonomy in carrying out its educational program?

“(3) Is it legally empowered under its charter and statutory law to construct and operate said proposed television station, if it is granted authority to do so by the Federal Communications Commission?”

Vincennes University was chartered by an Act of the Second Session of the First General Assembly of the Indiana Territory approved November 29, 1806. Section 1 of said Act provides:

“Be it therefore enacted by the legislative Council and House of Representatives, That a University be, and is hereby instituted and incorporated within this Territory, to be called and known by the name, or style of the ‘Vincennes University’, That William Henry Harrison, John Gibson, Thomas T. David, Henry Vander Burgh, Waller Taylor, Benjamin Parke, Peter Jones, James Johnson, John Badollett, John Rice Jones, George Wallace, William Bullitt, Elias M’Namee, Henry Hurst, Genl. W. Johnston, Francis Vigo, Jacob Kuykendoll, Samuel M’Kee, Nathaniel Ewing, George Leach, Luke Decker, Samuel Gwathmey, and John Johnson, are hereby declared to be Trustees of the said University; that the said Trustees, and their successors, be, and they are hereby created a body corporate and politic, by the name of the ‘Board of Trustees for the Vincennes University,’ and are hereby ordained, constituted and declared to be forever hereafter, a body politic and corporate, in fact and in name, and by that name, they, and their successors, shall and may have continual succession, and shall be persons in law ca-

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pable of suing, and being sued, pleading, and being impleaded, answering, and being answered unto, defending, and being defended, in all courts and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever, and that they, and their successors, may have a common seal, and make, and alter the same at their pleasure, and also that they, and their successors, by the same name and style, shall be in law capable of purchasing, holding, leasing and conveying, any estate, real or personal, for the use of the said corporation, except as is herein after mentioned, so that the said Trustees shall not at any one time, hold or possess, more than one hundred thousand acres of land."

Acts of 1953, Ch. 22, in its preamble, declares in part, that :

"Whereas, by virtue of the aforesaid facts, Vincennes University is a public school corporation and a part of the educational system of the State of Indiana."

Section 1 of the last-referred to Act provides :

"The trustees of Vincennes University are hereby authorized and empowered from time to time, and as such trustees shall find a necessity therefor exists, to erect, construct, and complete buildings, structures and otherwise improve property owned by the university, and to equip, furnish, operate, control and manage said properties for the purposes of the or for the benefit of the university and the trustees are further authorized and empowered to acquire by purchase, lease, gift or otherwise, such property both real or personal as in the judgment of said trustees shall be necessary for such purposes. The said trustees are further authorized and empowered to use any real or personal property heretofore acquired by said trustees for such purposes. Title to all property so acquired including the improvements thereon shall be taken and held by and in the name of said trustees in their corporate capacities for the purposes of this act."

In an Official Opinion of this office, being 1960 O. A. G., page 196, No. 32, it was said at page 198 :

“In an Official Opinion of this office, being 1941 O. A. G., page 91, in determining that members of the faculty of Vincennes University are eligible to participate in the benefits of the Indiana State Teachers’ Retirement Fund Law, and in construing and applying for such purposes Acts of 1939, Ch. 138, Sec. 2, as amending Acts of 1931, Ch. 175, Sec. 6, as found in Burns’ (1948 Repl.), Section 25-2405a, it was said:

“Without discussing the interesting history of the legal status of Vincennes University, as presented in the statement which accompanied your letter, it may be said that Section 2 of Chapter 138, Acts 1939, in amending Chapter 175, Acts 1931, provides that upon acceptance of the provisions thereof, “any such university shall become and is hereby declared to be a public school corporation in and for the county in which it is located, and its corporate charter shall be deemed amended accordingly.” The Board of Trustees of Vincennes University accepted the provisions of this act by adoption of a resolution filed in the office of the Secretary of State March 17, 1939.

“In view of the provisions of the 1939 law, and the acceptance of its terms by the University, it seems clear that the University is definitely “a public school of this state,” and that the faculty thereof may properly become members of the Indiana State Teachers’ Retirement Fund.’

“The above Indiana statute is Acts of 1931, Ch. 175, as amended, as found in Burns’ (1948 Repl.), Section 25-3401 *et seq.* Section 3 of said Act, being Burns’ 25-3403, authorizes the county council in which such university is located, on petition of resident freeholders of the county, to grant public aid to such university and authorizes the fixing of the rate of the tax levy to be imposed on the property of such county, for such purposes, at not to exceed five cents on each one hundred dollars worth of taxable property.

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“Each of your questions must be answered in the affirmative for from the foregoing it is clear Vincennes University is a ‘public school of Knox County, Indiana,’ and would in my opinion come within the classification of a ‘public school’ made by the federal statute in question. Therefore, the Commission on General Education of the Indiana State Board of Education could follow the precedent of other states in interpreting such classes in Vincennes University as an extended secondary school for grades 13 and 14, and accordingly amend its plan, subject to the approval of the federal agency. In such event said classes in Vincennes University would, in my opinion, be eligible for participation under the federal statute and the amended state plan.”

From the foregoing, I am of the opinion your questions should be answered as follows:

1. Vincennes University is a public, nonprofit educational institution.
2. It is an independently constituted educational body having autonomy in carrying out its educational program.
3. It is legally empowered under its charter and statutory law to construct and operate for educational purposes said proposed television station, subject to the requirements of the Acts of 1953, Ch. 22, if it is granted authority to do so by the Federal Communications Commission.

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### OFFICIAL OPINION NO. 7

March 16, 1961

Honorable James S. Hunter  
State Representative  
3910 Carey Street  
East Chicago, Indiana

Dear Representative Hunter:

This is in answer to your letter of February 13, 1961, wherein you request an Official Opinion on the following questions: