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OFFICIAL OPINION NO. 51

October 4, 1961

Mr. W. H. Skinner, Director
Personnel Division, State of Indiana
Department of Administration
803 State Office Building
Indianapolis 4, Indiana

Dear Mr. Skinner:

I have your letter of August 24, 1961, which states as follows:

“House Enrolled Act No. 224, Chapter 215 put the Department of Civil Defense under the State Personnel Act. This was necessary in order that Indiana might participate in the ‘Federal Contributions for Civil Defense Personnel and Administrative Expenses.’

“It is also necessary that employees of county departments of Civil Defense be under a merit system or civil service if the county is to participate in this ‘matching fund’ program.

“The Personnel Division is now being asked to service the merit system under the State Personnel Act for those counties wishing to participate in the Civil Defense Program.

“We respectfully submit the following questions for your consideration:

- “1. In this instance, can the Personnel Division enter into an agreement with a county for the purpose of ‘administration of personnel?’
- “2. If so, who would be the responsible authority in the county government?”

In answering your specific questions, may I draw your attention to Acts of 1941, Ch. 139, Sec. 2 (a), as most recently amended, as found in Burns’ Indiana Statutes (1961 Temp. Supp.), Section 60-1302 (2), which defines the phrase “state service” for purposes of the “State Personnel Act” as follows:

“(2) ‘State service’ means all public services in all offices and employments in the following named institutions and agencies (except members of boards and commissions of the following named institutions and agencies and except the chief administrative officer of each of the following named institutions and agencies, but not excepting directors of county departments of public welfare and health officers of local full-time health departments): The Northern Indiana Children’s Hospital, the Northern Indiana Hospital for the Insane, the Larue D. Carter Memorial Hospital, the Central State Hospital, the Logansport State Hospital, the Richmond State Hospital, the Evansville State Hospital, the Madison State Hospital, the Indiana Village for Epileptics, Indiana State Sanitorium, Southern Indiana Tuberculosis Hospital, the Indiana State School for the Deaf, the Indiana School for the Blind, the Fort Wayne State School, the Indiana Boys’ School, the Indiana Girls’ School, the Indiana Women’s Prison, the Indiana State Prison, the Indiana Reformatory, the Indiana State Farm, Indiana State Soldiers’ Home, Indiana Soldiers’ and Sailors’ Children’s Home, Muscatatuck State School; board of industrial aid and vocational rehabilitation for the blind; the state board of health, including local full-time health departments participating in state aid; state department of public welfare, including county departments of public welfare; Indiana employment security division; Indiana council for mental health; and Indiana library and historical department; *the department of civil defense excluding any county civil defense organization and any other local civil defense organization created pursuant to the provisions of chapter 268 of the Acts of the Indiana general assembly of 1951 [§§ 45-1516—45-1535], as amended*: also the personnel provided for in paragraph (3), subsection (a) of sec. 7 [§ 60-1307] of this act.” (Our emphasis)

As you will note from the quoted portion of Burns’ 60-1302 (2), *supra*, county civil defense organizations and other local defense organizations are specifically excluded from the provisions of the “State Personnel Act”; and, therefore, em-

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ployees of such organizations are not under the state merit system.

May I also draw your attention to Acts of 1941, Ch. 139, Sec. 37, as found in Burns' (1951 Repl.), Section 60-1337, which provides that the Director of the Personnel Division may enter into agreements with political subdivisions of the state for the purpose of furnishing services and facilities of the division and which states as follows:

“Subject to the rules, the director may enter into agreements with any municipality or political subdivision of the state to furnish services and facilities of the division to such municipality or political subdivision *in the administration of its personnel on merit principles*. Any such agreement shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the director. All municipalities and political subdivisions of the state are hereby authorized to enter into such agreements.” (Our emphasis)

It is the apparent and clear meaning of Burns' 60-1337, *supra*, that the agreements authorized thereby with municipalities or political subdivisions for services in administration of personnel on merit principles can only be made in cases where merit systems have been established by law, since Burns' 60-1337, *supra*, clearly contemplates a *servicing* of municipalities and political subdivisions of the state in this respect.

The “Civil Defense Act of 1951,” the same being Acts of 1951, Ch. 268, as amended and supplemented as found in Burns' (1952 Repl., 1961 Supp.), Section 45-1516 *et seq.*, establishes a state department of civil defense and also provides for the establishment of county civil defense organizations. Section 9 (a) of the “Civil Defense Act of 1951,” *supra*, as found in Burns' 45-1524 (a), *supra*, provides for the establishment of county civil defense organizations and provides as follows:

“(a) Each county of this state is hereby authorized and directed to establish and maintain a ‘county civil defense advisory council’ and a county civil defense

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organization in accordance with the state civil defense plan and program. Each political subdivision within each county is authorized and directed to organize local civil defense organizations and activities in accordance with the county and state civil defense plan and program and under the direction of the county civil defense organization."

From a reading of the entire "Civil Defense Act of 1951," *supra*, it is apparent that the same does not provide for any type of merit system or civil service to cover employees of county or other local civil defense organizations.

In summary, it is my opinion that because the "Civil Defense Act of 1951," *supra*, does not establish any type of merit system for the employees of county or local civil defense organizations and because the "State Personnel Act," *supra*, specifically excludes county and local civil defense organizations from its provisions, agreements between the Director of the Personnel Division and municipalities or political subdivisions for services in administration of personnel on merit principles cannot be made. It becomes unnecessary, therefore, to answer your second question.

OFFICIAL OPINION NO. 52

October 4, 1961

Mr. William J. Layton, Secretary
Indiana State Board of Barber Examiners
1003 State Office Building
Indianapolis 4, Indiana

Dear Mr. Layton:

This will acknowledge receipt of your letter requesting an opinion as to whether or not the Indiana State Board of Barber Examiners should refuse to issue licenses to persons who are inmates of the state penal institutions in Indiana.

Your letter reads, in part, as follows:

"The Indiana State Board of Barber Examiners has before it a large number of requests for renewal of