

1961 O. A. G.

licenses by these different agencies of state government, except to the extent of any specific provision thereon appearing in said 1961 statute.

Since I find no specific provision in the 1961 statute requiring any change in the manner of issuance of licenses by your Board, other than a change from an annual to a biennial license, I am of the opinion said statute should be considered *in pari materia* and that your Board should continue to issue licenses on the same basis and procedure specified in Acts 1947, Ch. 254, as to the professions above enumerated in the 1961 statute, and within your jurisdiction, except that the same be issued biennially, instead of annually.

OFFICIAL OPINION NO. 71

December 12, 1961

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

Dear Mr. Wilson:

Your letter of November 29, 1961, has been received and reads as follows:

“1. Can payment of Transfer Tuition claims for education of children of State Employees living on State Property be made from State funds under the provisions of Chapter 247 of the 1955 Acts in cases where the State Property on which such children reside is located in one county and the school which they attend is located in an adjoining county; provided it can be shown that attendance at the school in question is more economical and more convenient for such children?

“2. Can payment of such claims be made in cases where the residence of children of a State employee is located on a State Property and such children attend school in the school corporation where said State Prop-

OPINION 71

erty is located, but the State employee works at a State Institution located in an adjoining county?"

Acts of 1955, Ch. 247, Sec. 1, as found in Burns' (1961 Supp.), Section 28-3725, provides as follows:

"In all cases where any person in the employment of the state lives on property owned by the state, any child of such person, who is of school age and who attends any school corporation in the county in which such person is employed, whether a school of the corporation in which such child resides or a school of any other school corporation in the county, shall be considered as a transferred child and the transfer tuition of such child shall be paid out of the general fund of the state without further appropriation, on allowance by the state superintendent of public instruction, at the same charge and to the same effect as is prescribed by law for tuition when a child is transferred from the school corporation in which he resides to another school corporation: Provided, That no provision in this act [this section] shall apply to cases where any person in the employment of the state lives on property owned or operated by Indiana University, Purdue University, Indiana State Teachers College, or Ball State Teachers College." (Our emphasis)

The above statute provides that in certain situations the children of state employees attending school shall be considered as transfer students and the transfer tuition shall be paid out of the general fund of the state. The statute then specifically sets forth certain requirements that must be met before the statute is applicable, which are as follows:

1. The parent must be employed by the state and must live on property owned by the state other than certain excepted property.
2. The child must attend a school corporation in the county in which the parent is employed although the school corporation may be any one of those within that particular county.

1961 O. A. G.

Under present conditions, it may result in the fact that the statute is more restrictive than intended by the Legislature but it is clearly and specifically worded and we cannot change it by construction. This is a problem of the Legislature.

Article 10, Section 3, of the Constitution of Indiana, provides:

“No money shall be drawn from the Treasury but in pursuance of appropriations made by law.”

Therefore, in my opinion, both of your questions must be answered in the negative. My answers are:

1. If a child resides on state property in one county and attends school in another county, the transfer tuition may not be paid out of the state general fund.

2. If a child attends school in the county in which his parents reside on state owned property but where the state employee works at a state institution located in an adjoining county, then his transfer tuition may not be paid out of the state general fund.