

lative authority to enact such legislation as would place either of said plans in effect as a part of legislative control of rule-making by state agencies.

Inasmuch as the questions presented concern possible proposed legislation, I wish to emphasize that the answers contained herein are directed solely to the specific legal questions presented and are not to be construed, in any manner, as evidencing either the approval or disapproval by the Attorney General of the wisdom of such legislation.

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OFFICIAL OPINION NO. 21

May 24, 1960

Mr. F. J. Brown  
Secretary, Indiana War Memorials Commission  
Indiana War Memorial Plaza  
431 North Meridian Street  
Indianapolis, Indiana

Dear Mr. Brown:

This is in answer to your request of April 28, 1960, for my Opinion concerning disposition and use of interest accrued on a sum of money used to purchase property for war memorial purposes. Your letter quite adequately supplies the facts for a full consideration of your request and therefore is set out as follows:

“The State of Indiana, through the War Memorials Commission and Marion County Indiana through its Commissioners, purchased the First Baptist Church property located at Vermont and Meridian Streets, City of Indianapolis, Marion County, Indiana. The Deed was dated May 23rd, 1957.

“The purchase price paid was \$615,000.00. One half or \$307,500.00 was paid at that time and the balance of \$307,500 was placed in Escrow with the American Fletcher National Bank. They were instructed to buy Government Bonds with the money.

“Under our agreement with the Church Trustees, they were to vacate the premises in thirty (30) months

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and upon vacating, they would be paid the principal of \$307,500.00 with accrued interest up to the thirty (30) months. Any interest accruing after the thirty (30) month period had elapsed was to be paid to the War Memorials Commission by the Escrow Agent.

“We took possession of the property from the Church Trustees on April 14th, 1960. At this time they were paid their principal and accrued interest to a total of \$334,472.02. At the same time our Escrow Agent gave us, ‘The Indiana War Memorial Board of Trustees,’ a check in the amount of \$4,525.12 which represents the accrued interest on the Bonds due us.

“At a meeting of the Indiana War Memorials Commission held yesterday, April 27th, 1960, I was instructed to request an opinion from you as follows:

“Number 1—‘Should we, the War Memorials Commission, pay one half ( $\frac{1}{2}$ ) of this \$4,525.12 to the Marion County Commissioners since they furnished one half ( $\frac{1}{2}$ ) the money to purchase the Church Property?’

“Number 2—‘May we deposit this in a “Special Fund” so that it may be used for items we may need around the Memorial, or must it be deposited in the General Fund of the State of Indiana?’ ”

In regard to your first question I call your attention to the agreement referred to in your letter which was executed October 15, 1956, between the Board of Trustees of the Indiana World War Memorial, Board of Commissioners of Marion County, Indiana, and the Board of Trustees of the First Baptist Church. The last sentence of paragraph 1 found on page three thereof is as follows:

“All interest accruing beyond said thirty (30) months period shall in that event be paid by the escrow agent to the Trustees.”

The Trustees referred to in the above paragraph are the members of the Board of Trustees of the Indiana World War Memorial, the predecessor of the present Indiana War Memo-

rials Commission. Since the Agreement was executed by the Board of Commissioners of Marion County, as well as the other parties noted heretofore, said county is bound by the terms thereof. It is therefore evident that the county understood at the time of execution, as it must now, that the \$4,525.12 interest amount referred to in your letter as the interest accruing beyond the thirty months period was to belong to the said Board of Trustees alone, there being no provision in the Agreement indicating that said amount was to be shared with the county.

In regard to your second question your attention is called to the Acts of 1957, Ch. 218, Sec. 36, as found in Burns' (1959 Supp.), Section 59-1535, which reads as follows:

"All of the appropriations made under section 3 of chapter 270 of the Acts of 1955 are hereby continued in full force and effect and transferred to the Indiana War Memorials Commission to be expended in accordance with the provisions contained in said chapter 270 of the Acts of 1955."

Chapter 270 of the Acts of 1955 concerns the purchase of the First Baptist Church and the appropriation of money therefor. Section 3 thereof is, in part, as follows:

"SEC. 3. For the purposes of this act there is hereby appropriated the sum of eight hundred thousand dollars out of those funds which have accrued to the general fund of the state from the tax levied by the express provisions of Chapter 204, Section 3 of the Acts of the General Assembly of Indiana, 1945, approved March 6, 1945, and the unused balance of the appropriation authorized by section 2 of said Chapter 204 of said Acts of the General Assembly of Indiana, 1945."

Section 2 of Chapter 204 of the Acts of 1945 indicates the use to be made of the money appropriated from the fund created by Section 3 of said Chapter 204, Section 2 provides, in part, as follows:

"Said appropriation of two million five hundred thousand dollars shall be expended in the construction and the creation of such structure or structures as provided

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for in this act and for any and all other expenses connected therewith or otherwise provided for herein, *and any part of such amount so appropriated remaining shall be used in beautifying and maintaining such memorial place.*" (Our emphasis)

Thus it can be seen that the original intent of the Legislature was that any amount remaining after an expenditure of money appropriated for the purposes indicated in said Chapter 204 should be used in the beautification and maintenance of the memorial place which was the subject of the appropriation. The fact that the sum of money you are concerned with is interest accrued as a result of the appropriation rather than a part remaining from such appropriation is in my opinion a distinction without a difference and the use of such interest money would be within the legislative intent of Sec. 2 of Ch. 204 of the Acts of 1945.

In conclusion, it is my opinion that the accrued interest need not be shared with Marion County and that the amount may be used for beautification and maintenance purposes rather than be returned to the General Fund of the State of Indiana.

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### OFFICIAL OPINION NO. 22

May 26, 1960

Mr. Norval L. Martin  
Executive Secretary  
Indiana State Teachers' Retirement Fund  
145 West Washington Street  
Indianapolis, Indiana

Dear Mr. Martin:

This is in reply to your recent request for an Official Opinion, which reads, in part, as follows:

"At present we would like your opinion on whether or not FHA Title II Section 203 Mortgages, which are the typical single-family dwelling type of mortgage, could be properly purchased by the Fund; and secondly, whether the so-called Veterans Administration Mortgage loans could properly be purchased by our Fund."