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OFFICIAL OPINION NO. 8

April 24, 1959

Honorable T. M. Hindman  
State Examiner  
State Board of Accounts  
304 State House  
Indianapolis, Indiana

Dear Mr. Hindman:

Your letter of March 25, 1959, has been received and reads as follows:

“The above referred to act (Chapter 104, Acts 1959) pertains to the purchase of school buses and the financing and payment therefor. The act was approved by the Governor on March 9, 1959 and carries an emergency clause. A number of questions have been presented to us which we are unable to answer, so we would like your official opinion on the following questions:

“1. The act authorizes and empowers a school corporation to purchase ‘school buses.’ Does this authorization permit the school corporation to purchase under the provisions of the act

(a) Bus body and chassis;

(b) Bus body only;

(c) Chassis only?

“2. The act provides: ‘In the event the amount to be borrowed does not exceed the sum of Twenty Thousand Dollars the school corporation in lieu of issuing bonds as above provided may borrow the necessary funds to make the purchase from any financial institution in the State of Indiana.’ Is a school corporation limited to one such twenty thousand dollar loan, or could it make a loan for \$20,000.00 in 1959 payable over a six year period and in 1960 make an additional loan for \$20,000.00 for such purpose?

- “3. In the making of such loan is a petition of taxpayers necessary pursuant to Burns’ 64-313?
- “4. Are the school officials required to give notice of the filing of the petition and notice of the determination to issue the notes pursuant to Burns’ 64-313 and 64-1332?
- “5. Are the officials of township school corporations and/or school city or town corporations required to offer such notes at public sale?”

Chapter 104 of the Acts of 1959 provides as follows:

“SECTION 1. Any school corporation in the State of Indiana is hereby authorized and empowered to purchase school busses for the use of such school corporation. Any such purchase may be made for cash or on an installment conditional sale or mortgage contract running for a period of not exceeding six years, amortized in equal or approximately equal installments payable on July 1 and January 1 of each year; provided, that the interest, collection, finance and all other charges thereon shall not exceed four per cent per annum upon the balance from time to time remaining unpaid. Before any such conditional sale or mortgage contract is executed an appropriation for the amount of the purchase price shall be made in the manner now required for other appropriations, including, but not limited to, the giving of notice of a hearing on the appropriation, the right of taxpayers to appear and be heard on the appropriation, and the approval of the appropriation by the State Board of Tax Commissioners; but such appropriation shall not be limited by the fact that funds to pay the entire amount of such contract are not available or have not been levied at the time such appropriation is made. The first installment of principal and interest on any such contract shall become due on the January 1 or July 1 succeeding the first tax collection for which it is possible for the school corporation to levy a tax.

“SEC. 2. In the event it is determined by the school corporation to make such purchase for cash, such school

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corporation is hereby authorized to issue its bonds to provide funds for such purpose. Bonds issued pursuant to this Act shall be payable in such amounts and at such times as the school corporation shall determine, not exceeding six years from the date of issuance and shall be issued in the same manner as other bonds of such school corporation are issued and the provisions of all general laws relating to the filing of a petition requesting the issuance of bonds and giving notice thereof, the giving of notice of determination to issue bonds, the giving of notice of a hearing on the appropriation of the proceeds of the bonds and the right of taxpayers to appear and be heard on the proposed appropriation, the approval of the appropriation by the State Board of Tax Commissioners, the right of taxpayers to remonstrate against the issuance of the bonds and the sale of bonds at public sale for not less than the par value thereof, shall be applicable to proceedings under this Act. In the event the amount to be borrowed does not exceed the sum of Twenty Thousand Dollars the school corporation in lieu of issuing bonds as above provided may borrow the necessary funds to make the purchase from any financial institution in the State of Indiana. The school corporation shall execute and deliver to the institution a negotiable note or notes of the school corporation for the sum so borrowed which note or notes shall bear interest at a rate not exceeding four per cent per annum and shall be payable in equal or approximately equal installments on January 1 and July 1 of each year over a period not exceeding six years.

“SEC. 3. All purchases of school busses under the authority of this Act shall be made in the manner now or hereafter provided by law for the purchase of supplies for school corporations. If the amount involved be sufficient to require notice under the laws of the state for bids in connection with the purchase of any such school busses, the notice shall offer all bidders the opportunity of proposing to sell such school busses to the school corporation upon a conditional sale or mortgage contract. Any bidder proposing to sell under con-

ditional sale or mortgage contract shall state in his bid the proposed interest rate and terms thereof which interest rate and terms shall be considered by the school corporation in determining the best bid received. All bids submitted shall also specify the cash price at which the bidder proposes to sell such school busses to the school corporation in order that the school corporation may determine whether it is to the best interest of the school corporation to purchase the school busses on the terms of any conditional sale or mortgage contract proposed by the bidder or to purchase the same for cash if sufficient funds are available or can be borrowed pursuant to this Act."

Sections 4 and 5 of said Act make the same applicable to all school corporations and declare an emergency that the act be in full force and effect from and after its passage.

1. In answer to your first question, I am of the opinion the words "school busses" means both the bus body and chassis. The statute does not contain a definition of such words enlarging their meaning so such terms must be taken in their plain, ordinary and usual sense. 2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201.

2. In answer to your second question, I am of the opinion a school corporation is limited to one such \$20,000.00 loan during the period for which it is to be financed as it is clear the Legislature, by providing the ceiling of \$20,000.00, has thereby intended to restrict the amount of such loan, and it has not provided that the same may be done annually. Having failed to make such provision for an annual loan, I do not believe a construction is warranted to permit a loan in such amount to be made annually.

3. In answer to your third question, it is evident from the numerous detailed provisions contained in Sections 2 and 3 of said Act that the provisions of general law relative to issuance of bonds and creating of indebtedness must be complied with, including rights of taxpayers to be heard and remonstrate as provided in Acts of 1937, Ch. 119, Sec. 7, as amended, as found in Burns' (1951 Repl.), Section 64-313, and Acts of 1919, Ch. 59, Sec. 201, as amended, as found in Burns' (1951 Repl.), Section 64-1332. Therefore, a petition of taxpayers,

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pursuant to Burns' Section 64-313, *supra*, is necessary for the issuance of such notes.

4. For the reasons given in the answer to your question number 3, I am of the opinion notice of the filing of the petition and notice of the determination to issue the notes must be had pursuant to the provisions of Burns' Section 64-313 and 64-1332, *supra*.

5. In answer to your fifth question, I do not find either of the foregoing sections of Burns' statutes requires a school corporation to offer such notes at public sale, nor do I find any other statute making such requirement. The statute under consideration in Section 2 provides such school corporation may borrow the necessary funds "from any financial institution in the State of Indiana," and, therefore, I am of the opinion such notes are not required to be offered at public sale.

In connection with the foregoing, attention is called to the fact that under Section 3 of said Act, the laws of the state concerning the requirement of bids shall be complied with. This has reference to Acts of 1945, Ch. 99, as amended, as found in Burns' (1951 Repl.), Section 53-501 *et seq.*, where any purchase of more than \$1,000 is required to be made pursuant to bids. Since it is apparent that any purchase of a school bus would exceed that amount, the procedure contemplated under Sections 2 and 3 of the quoted statute is that the school corporation, by resolution, determines to purchase such school busses and advertises for bids to be made under the provisions of this act. It is apparent that upon receiving such bids, the school corporation has neither the funds available to accept such bids when received nor to contract immediately regarding the same. The school corporation must determine from the bids received which bids are to be acted upon as such bids are required to state the conditional sale, mortgage contract or cash price and terms, together with the interest rates, so that the school corporation may determine which is the best bid received, and, therefore, whether it shall proceed to purchase such busses by conditional sales contract, mortgage contract, or issue bonds or notes for the cash purchase of such busses. When this has been done, the ordinary procedures, above referred to, as required by Burns' Sections 64-313 and

64-1332, *supra*, must be complied with. Also, an appropriation would be necessary for at least the amount of money to be expended in the current year before contracts for such busses are executed.

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OFFICIAL OPINION NO. 9

April 29, 1959

Honorable Robert S. Webb  
Public Service Commission of Indiana  
401 State House  
Indianapolis 4, Indiana

Dear Mr. Webb:

This is written in answer to Past-chairman John W. VanNess' letter of March 5, 1959, which requested an Official Opinion on the subject of stock-splits and stock dividends by a public utility corporation, which letter reads, in part, as follows:

"A. Do the Indiana General Corporation Laws (Burns' 25-201 *et seq.*) and/or the Indiana Public Service Commission Act (Burns' 54-501 *et seq.*) provide for the issuance by the public utility corporations of its stock for the purpose of:

1. Stock Dividends
2. Stock-splits

"B. Do the Indiana General Corporation Laws (Burns' 25-201 *et seq.*) and/or the Indiana Public Service Commission Act (Burns' 54-501 *et seq.*) provide for the issuance by the public utility corporations of its stock in dividends in consideration of a transfer from its earned surplus account to its capital account.

"C. Does this Commission, in the absence of a specific enumeration by the Legislature that such stock dividend issues may be made by public utility corporations, have the authority to interpret the said acts as either authorizing or not authorizing such stock dividend issues and such stock-splits."