Honorable Jack A. Haymaker  
Treasurer of State  
242 State House  
Indianapolis, Indiana  

Dear Mr. Haymaker:

Your letter of April 8, 1959, has been received and reads as follows:

"Will you kindly furnish this office with your official opinion to the questions contained herein, relative to Chapter 379 of the Acts of 1959.

"Section 2 of said chapter authorizes the Indiana Common School Fund Building Commission to advance sums of money to consolidated school corporations from the Indiana Common School Fund.

"Section 6 of said chapter states such advancement out of the State School Tuition Fund shall not be an obligation of the school corporation within the meaning of the constitutional limitation against indebtedness.

"In view of the conflicting wording in section 2 and section 6 of the act, is such advancement, if made, to be from the Indiana Common School Fund or the State School Tuition Fund?

"If such advancement does not constitute an obligation of the school corporation within the meaning of the constitutional limitation against indebtedness, as stated in the act, does it constitute a proper use of the Common School Fund under the provisions of Article 8, Section 3, of the Constitution of Indiana?

"Does the provision for payment of interest as set out in section 4 of the act cause such advancement to be classified as a loan to the school corporation?"

Certain sections of Acts of 1959, Ch. 379, are here quoted in order to fully consider the questions presented:
"SEC. 2. The Indiana Common School Fund Building Commission is hereby authorized to advance sums of money to consolidated school corporations from the Indiana Common School Fund to be used by such school corporations for the purchase of real estate, the construction of school buildings and the equipment of such buildings, subject to the limitations and conditions as prescribed in this act.

"SEC. 3. In order to qualify for an advancement under the provisions of this act, the consolidated school corporation is required to raise, either by a bond issue or by a cumulative fund tax levy or by both such bond issue and tax levy, a sum of money equivalent to not less than two per cent of the adjusted assessed valuation of its geographical district; and any advancement so made shall not exceed the sum of sixteen hundred dollars ($1,600.00) per pupil accommodated in the new structure less the sum of money raised by and made available to the corporation.

"SEC. 4. The money advanced pursuant to the provisions of this act may be advanced for any period of time not exceeding twenty years, and the receiving school corporation shall be required to pay interest, at the rate of two and one-half (21/2) per cent per annum, on the unpaid balance. In order to guarantee the payment of any advancement made, the State of Indiana is hereby authorized but not limited to a withholding semi-annually from funds due to the school corporation an amount of money that could be raised by a tax levy of not less than fifty cents on the adjusted valuation of the consolidated school corporation, the exact sum to be fixed by the Indiana Common School Fund Building Commission at the time the advancement is negotiated by the school corporation. If available, such money should first be withheld from the distribution of the state school tuition fund: Provided, That if such distribution is not adequate, then money may be withheld from the distribution of other school funds."

"SEC. 6. Any such advancement out of the state school tuition fund shall not be an obligation of the school corporation within the meaning of the constitu-
tional limitation against indebtedness. Nothing herein contained shall relieve the board of school trustees of any consolidated school corporation, receiving an advancement under the provisions of this act, of any obligation under the laws of this state to qualify such school corporation for state school tuition; and such board of school trustees shall continue to perform all the acts necessary to obtain such funds. Any consolidated school corporation receiving an advancement under the provisions of this act shall agree to have the total amount of money so advanced plus the semi-annual interest deducted from the semi-annual distribution of state school tuition support for a period of not to exceed twenty years or until all of the money so advanced has been so deducted. The commission shall reduce the amount of each semi-annual distribution of state school tuition support to any consolidated school corporation which has received an advancement under the provisions of this act in an amount to be agreed upon by and between the commission and the consolidated school corporation.

“SEC. 7. Any consolidated school corporation receiving an advancement of state school tuition funds under the provisions of this act is hereby authorized to levy an annual tax on personal and real property located within the geographical limits of such school corporation for school purposes, at such rates as will produce revenue in an amount equal to the annual amount it would otherwise have received from the distribution of state school tuition fund for tuition purposes had such consolidated school corporation not received an advancement from such fund under the provisions of this act, which tax shall be in addition to any other tax authorized by law to be levied for school purposes. Such rate hereby authorized may be levied, in addition to the maximum rates prescribed by law, for each year during which state school tuition funds are authorized to be withheld from such school corporation.”

In determining the legislative intent courts may take into consideration other statutes in pari materia, whether passed before or after the act in question.
In determining the legislative intent in the enactment of the foregoing statute, it is considered necessary not only to consider all of the provisions of said statute but also to consider prior statutes which unquestionably influenced this legislation. By Acts of 1953, Ch. 141, as found in Burns' (1957 Supp.), Section 28-163 et seq., the Legislature created the Indiana Common School Fund Building Commission whereby it authorized it to make loans of the Common School Fund of the state to school building corporations who had entered into long term leases with local school corporations for the purpose of purchasing bonds of such building corporations that had failed to sell on the open market. The act particularly requires the commission to make all necessary determinations to safeguard such investments so that the Common School Fund of the state shall remain inviolate consistent with the requirements of Article 8, Section 3 of the Constitution of Indiana. Since this admonition is contained in the act creating such commission, it would be equally subject to cognizance by it in any action taken by said commission in relation to any advancements made from the Common School Fund under the statute under consideration.

Another statute to be considered is the Veterans' Memorial School Construction Act, being Acts of 1955, Ch. 312, as found in Burns' (1957 Supp.), Section 28-175 et seq., under which there was created a Veterans' Memorial School Construction Fund to be administered by the Commission on General Education of the Indiana State Board of Education. Moneys in such fund were authorized to be advanced by said Commission to local school corporations meeting the detailed requirements of said statute, for their use in constructing, remodeling or repairing school buildings, to be in the nature of an advancement of state tuition support to such school corporation. Such advancements were to carry an interest rate of one per cent, and the fund was to be reimbursed by deductions made over a period of years from future state tuition distribution.

The present statute under consideration is intended to operate substantially in the same manner, and for the same
purpose, as the Veterans' Memorial School Construction Act, except for the use of the Common School Fund of the state for the purpose of making such advancements. The advancements are to be made by the Indiana Common School Fund Building Commission with reimbursement from withholdings to be had from the future distribution, primarily from the State Tuition Fund, and if that is not sufficient then from the distribution of any other school funds.

An examination of Acts of 1959, Ch. 379, clearly shows the legislative intent that the money is to be advanced by the Indiana Common School Fund Building Commission from the Indiana Common School Fund. This is clearly stated in Section 2 of the statute. A conflict in language occurs in the first sentence of Section 6 of said Act which states "any such advancement out of the state school tuition fund shall not be an obligation of the school corporation within the meaning of the constitutional limitation against indebtedness." An examination of Section 6 of this Act shows that many of its provisions, including this particular provision, have literally been copies from Section 8 of the Veterans' Memorial Construction Act, being the Acts of 1955, Ch. 312, Sec. 8, as found in Burns' (1957 Supp.), Section 28-182. In drafting such legislation the author has evidently failed and neglected to substitute the words "Indiana Common School Fund" for the words used "state school tuition fund." This makes applicable certain rules of statutory construction hereinafter stated.

In considering a like situation where a statute had stated certain funds reverted to the "state," when in fact the intent was to the "estate" of a teacher, and in holding such correction could be made by construction, this office in 1949 O. A. G., page 384, No. 100, at pages 385 and 386, cited and applied the following authorities:

"In the case of Storms v. Stevens (1885), 104 Ind. 46 at page 50, the court announces the following rule:

"In the construction of statutes, the prime object is to ascertain and carry out the purpose and intent of the Legislature. To do this, the words used in the statute should be first considered in their literal and ordinary signification. But if by giving them such a signification the
the meaning of the whole statute is rendered doubtful, or is made to lead to contradictions or absurd results, the whole statute must be looked to, and the intent as collected therefrom must prevail over the literal import of terms and detached clauses and phrases. Mayor, etc., v. Weems, 5 Ind. 547; Smith v. Moore, 90 Ind. 294, 304, and cases there cited.'

"In the case of State ex rel. 1625 E. Washington Realty Co. v. Markey, Judge (1936), 212 Ind. 59 at pp. 65 and 66, the court adopted and followed the following rule as announced in 25 R. C. L., Sec. 227, p. 978 that:

"'"Legislative enactments are not more than any other writings to be defeated on account of mistakes, errors or omissions, provided the intention of the legislature can be collected from the whole statute. Where one word has been erroneously used for another, or a word omitted, and the context affords the means of correction, the proper word will be deemed substituted or supplied. This is but making the strict letter of the statute yield to the obvious intent."' 25 R. C. L., Sec. 227, p. 978; Gustavel v. State (1899), 153 Ind. 613, 54 N. E. 123.'

"On page 66 of the opinion the court in the last referred to case also approves the statement made by the court in the case of State v. Brodigan (1914), 37 Nev. 245, 141 Pac. 988:

"'"Where, from a reading of the entire act, certain words necessary to give it complete sense have manifestly been omitted, courts, under well-established rules of construction, are permitted to read the same into the act in order that the law may express the true legislative intent."'"

To the same effect see 1945 O. A. G., page 188, No. 40 and 1951 O. A. G., page 65, No. 25, where on page 67 of the Opinion it is stated:

"In the case of Kos v. State ex rel. Metzler, supra, at pages 120 and 121 of the opinion, the court said:
"A careful consideration of the language and terms of the entire act, and its legislative history through all of the amendments, and of the objects and purposes to be accomplished, and of sound public policy, which does not permit of rewards for misconduct above those offered for good conduct and faithful service to the public, precludes the conclusion that the Legislature intended to depart from the provision of the clause as originally adopted, and, by deliberately omitting the words, "in excess," substitute a different provision which the literal language of the published act seems to imply * * *

"When a legislative intention in the first instance is plain and clear, and consistent with ordinary rational conceptions, and it is established that by typographical error its intention was not correctly reported in the published Acts, and where it is so obvious that there is no room for disagreement among reasonable men that the wording of the reenactments followed the published act, rather than the original language of the enrolled act, only because of inadvertence or mistake, courts are not required to perpetuate the error and ascribe to the Legislature an intention which it obviously never had. * * *

"It has been decided that where a word has been omitted and the context affords the means of correction, the proper word will be deemed substituted or supplied. This is by making the strict letter of the statute yield to the obvious intent.

"Gustavel v. State (1899), 153 Ind. 613, 617;

"State ex rel. v. Markey, Judge, supra;

"1949 Ind. O. A. G. 384, Official Opinion No. 100."

It has further been held that it will not be presumed that the Legislature intends an absurdity, and such result will be avoided if the terms of the act admit of it by reasonable construction.

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Marks v. State (1942), 220 Ind. 9, 18, 40 N. E. (2d) 180.

From the foregoing, I am of the opinion the advancement contemplated by the foregoing statute is to be made from the Indiana Common School Fund and that in reading Section 6 of said Act where the words "state school tuition funds" appears in the first line thereof, it should be construed to read "Indiana Common School Fund."

In answer to your second question, I am of the opinion such advancement of funds does not constitute an obligation of the school corporation within the meaning of the constitutional limitation against indebtedness. This was specifically held in 1956 O. A. G., page 95, No. 22, as applied to the Veterans' Memorial School Construction Fund. After quoting Sections 8 and 9 of the Veterans' Memorial Statute, being Acts of 1955, Ch. 312, Secs. 8 and 9, as found in Burns' (1957 Supp.), Sections 28-182 and 28-183, supra, said Opinion on pages 97 to 99 says:

"It is to be noted from the above quotation from said statute that the Legislature has declared its intent that any such advancement out of the state school tuition fund shall not be an obligation of the school corporation within the meaning of the constitutional limitation against indebtedness.

"While such a declaration in and of itself does not conclude the question, it is entitled to some weight and consideration in determining the effect of an advancement made to a school corporation pursuant to the formula therein prescribed.

"I do not find a decision of the Indiana Supreme Court specifically dealing with this exact question. However, the legal principles involved are somewhat synonymous with the decisions of said Court herein-after referred to.

"In the case of Underwood et al. v. Fairbanks, Morse & Company (1933), 205 Ind. 316, 185 N. E. 118, the Court determined that a contract by a town to purchase engines, pumps, and other equipment for installation
in its light and water plant, for a cash payment to be made from funds derived from operation of the plant, and installments evidenced by pledge orders payable from its net revenue, does not create an indebtedness subject to constitutional limitation. On page 326 of said opinion the Court said:

"'It has been held that "obligations payable out of a particular fund, and for which the fund only, and not the municipality, is liable are not within the inhibition of Article 13" * * *'

"In the case of Jefferson School Township v. Jefferson Township School Building Company (1937), 212 Ind. 542, 10 N. E. (2d) 608, the Court applies a well established principle of law in holding that a contract by a municipal corporation for services or goods to be supplied in the future, and to be paid out of current revenue, is valid despite the fact that the corporation was indebted to its constitutional limit at the time of making the contract.

"When we analyze the statute under consideration, it is apparent there has been an advancement to the school corporation, by the State of Indiana, of that revenue which the state ordinarily would thereafter, over a period of years, distribute to the school corporation as state support to the public school system of the state. It is more in the nature of an advancement, rather than a loan. It is to be liquidated by deductions from future tuition and school support over a period of years, in an amount somewhat dependent upon the amount of the advancement and the agreement of the parties. No direct taxes are to be levied by the local school corporation in payment of such installments; rather the school corporation is mandated by the statute to raise a sufficient additional amount of revenue currently to equalize the loss of revenue to it by virtue of the deductions thereafter made by the state from the amount of distribution which would ordinarily be made to such school corporation.

"From the foregoing, among other things, we find: that the matters involve a particular fund; no payment
is required, instead there is a deduction made by the state from monies to be subsequently distributed by it; and any replacement of such amount for the operation of the school system, under its budget, is currently raised each year by an additional tax rate for such purpose.

“When we apply the general principles of law followed in the above-cited cases to the question presented, I am of the opinion an advancement of funds made pursuant to the Act in question does not constitute a portion of the school corporation's indebtedness within the meaning of the Indiana Constitution, Art. 13, Sec. 1.”

As above pointed out, Section 6 of the Act under consideration is in part copied from Section 8 of the Veterans' School Construction Act and Section 7 of the Act under consideration is substantially the same as Section 9 of said Veterans' Memorial School Construction Act. Since each of said statutes are for all practical purposes identical, except for the use of a different fund and a different agency making the advancement, I am of the opinion this question of indebtedness is settled by the last referred to Official Opinion.

Your further questions concern whether or not such an advancement constitutes the proper use of the Common School Fund under the provisions of Article 8, Section 3 of the Constitution of Indiana, and whether the provision for payment of interest as set out in Section 4 of the Act causes such advancement to be classified as a loan to the school corporation.

Article 8, Section 3 of the Constitution of Indiana provides as follows:

“The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.”

Article 8, Section 4 of the Constitution of Indiana further provides:

“The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common
School fund, as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.”

It has been held that the provisions of this section as to diminution of the common school fund, by its terms, apply to the principal, and not to the use of the interest, though the interest must be expended for the use of common schools.


From the provisions of the statute in question, it is clear that the use of such funds is to be made in the interest and benefit of the public schools. Its investment is safeguarded by a withholding of funds thereafter to be distributed to the particular school corporation. Its administration, in the advancement of the loan, is under the jurisdiction of the Indiana Common School Fund Building Commission composed of the Governor, Lieutenant Governor, Auditor of State, Treasurer of State, the Superintendent of Public Instruction, Chairman of the State Board of Tax Commissioners and four other members appointed by the Governor and selected one each from the educational department of Indiana University, Purdue University, Ball State Teachers’ College and Indiana State Teachers’ College.

Acts of 1953, Ch. 141, Sec. 2, as found in Burns’ (1957 Supp.), Section 28-164.

Certainly in the hands of such high officials of the state; under the mandate of the Constitution; and under the provisions of the statute creating such Commission, such Common School Funds are required to be so handled and administered that the principal thereof remains inviolate. As shown by the foregoing provisions of the Constitution, the manner in which such funds are invested is not prescribed by the Constitution but is left to the discretion of the Legislature for their providing by law for its investment in “some safe and profitable manner.” The prescribing of interest to be collected on this advancement is merely to meet the requirements of such constitutional provision and to mitigate the loss of revenue by
virtue of such change of investment of such Common School Funds. It is my opinion that this does not constitute the changing of an advancement, as above considered, into a loan or the creation of an indebtedness.

It should be noted that the use of money from the Common School Fund in the manner provided in this Act, Chapter 379, Acts of 1959, is unique, and there are no Indiana judicial determinations to which we can refer for direct authority. Reasonable minds may differ on the question of the existence of an investment under these circumstances in which there is no existing security, and no obligation on the part of the borrower to repay except from funds to which it is not entitled at the time the loan is made, such funds to be determined and paid in the future by the State of Indiana, which likewise is not and could not be indebted to the Common School Fund.

A full consideration of the provisions of this statute in respect to school corporations eligible to receive such advancement from the Common School Fund also presents some question as to the constitutionality of the statute, but the General Assembly has herein provided the classification and authority for use of the Common School Fund, and the ultimate determination of validity of all statutes in respect to their compliance with the provisions of the Constitution of Indiana can only be made by the courts.

OFFICIAL OPINION NO. 23
June 12, 1959

Stewart T. Ginsberg, M. D.
Mental Health Commissioner
Division of Mental Health
1315 West 10th Street
Indianapolis 7, Indiana

Dear Doctor Ginsberg:

Your letter dated May 8, 1959, requests my opinion concerning two questions involving the transfer of inmates of correctional institutions to psychiatric hospitals for necessary care and treatment. The specific questions contained in your letter are quoted as follows: