



STATE OF INDIANA

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ATTORNEY GENERAL

September 24, 2018

OFFICIAL OPINION 2018-8

The Honorable Anthony J. Cook
State Representative, House District 32
Indiana State House
200 W. Washington St.
Indianapolis, IN 46204

RE: Alternative Wage Payment Arrangements and Educational Service Centers

Dear Representative Cook:

You requested the opinion of the Attorney General as to the possible application of Indiana Code § 20-26-5-32.2 to an Educational Service Center (hereinafter referred to as "ESC"), as established under Ind. Code Chpt. 20-20-1.

REQUESTOR STANDING

Ind. Code § 4-6-2-5 contemplates that either chamber of the General Assembly may request, by resolution, an official advisory opinion of the Attorney General as to the constitutionality of an existing or proposed legislative enactment. The final clause of that same statutory provision grants to the Attorney General the discretion to render (or decline to render) opinions sought by individual state legislators about other matters, including questions of statutory interpretation having statewide significance and which are likely to recur while evading judicial review.

QUESTION PRESENTED

Can an ESC, as an extended agency of school corporations, enter into alternative wage payment arrangements under Ind. Code § 20-26-5-32.2, or does the so-called "10 day rule" apply as a bar to such alternative payment methods under Ind. Code § 22-2-5-1?

BRIEF CONCLUSION

Although an ESC is an extension of a school corporation, it is not a "school corporation" for the purposes of Ind. Code § 20-26-5-32.2 such that an ESC may utilize the wage payment flexibility afforded under this statute.

ANALYSIS

The factual context in which this question arises is as follows, according to the requesting party:

Under Ind. Code § 22-2-5-1(b), “[p]ayment shall be made for all wages earned to a date not more than ten (10) business days prior to the date of payment” (hereinafter referred to as the “10 day rule”). The 10 day rule, if applied to public school employees who work less than 12 months a year would result in the employees not receiving a paycheck during lengthy holiday breaks and summer breaks. Because public school employees in many instances prefer to be paid through alternative wage payment methods (such as a teacher employed for 9 or 10 months a year being paid in equal installments over the course of 12 months), Ind. Code § 20-26-5-32.2 was passed to allow Indiana public school employees to utilize alternative wage payment methods notwithstanding the 10 day rule.

The alternative wage payment arrangement referenced above is codified at Ind. Code § 20-26-5-32.2, and states in relevant part (with emphasis added):

- (a) Notwithstanding IC 22-2-5-1, a *school corporation or charter school* and:
 - (1) an employee ...
may agree in writing to a wage payment arrangement.
 - (b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:
 - (1) using equal installments or any other method; and
 - (2) over:
 - (A) all or part of that school year; or
 - (B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.
- Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.
- ...
- (g) Employment with a *school corporation or charter school* may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

This alternative method for payment of wages provides employees of a school corporation or a charter school the opportunity to be compensated in equal installments over the course of 13 months. Absent from this statute is the specific inclusion of an ESC.

Indiana law provides for the creation of an ESC, which is by definition an “extended agency of school corporations.” Ind. Code § 20-20-1-2(a).¹ While an ESC organized under Ind. Code § 20-20-1-2 mirrors in some ways services provided by a “school corporation,” *see e.g.*, Ind. Code

¹ See 2011 *Op. Ind. Att’y Gen.* No. 1, discussing at length the agency role that an ESC discharges vis-à-vis its member school corporations. This opinion is available at http://www.in.gov/attorneygeneral/files/Official_Opinion_2011-1.pdf (last visited February 24, 2017).

§ 20-20-1-2(b), Ind. Code § 20-20-1-13, and may employ certified teachers for various purposes including instruction, Ind. Code § 20-20-1-9(2), the “primary purpose” of an ESC “shall be to perform educational planning on a cooperative basis and to assist in meeting specific educational needs in participating school districts which could be better provided by an educational service center than by the districts themselves.” 511 IAC 4-4-1(A).² Nowhere does a statute or regulation define an ESC as a “school corporation.”³

“School corporation,” for the purposes of Ind. Code § 20-26-5-32.2, is not defined as including an ESC. The following are dispositive (with emphasis added):

IC 20-26-2-1 Applicability

Sec. 1. Notwithstanding IC 20-18-2,⁴ *the definitions in this chapter apply* in IC 20-26-1 through *IC 20-26-5* and IC 20-26-7.

IC 20-26-2-4 "School corporation"

Sec. 4. "School corporation" means a local public school corporation established under Indiana law, including a:

- (1) school city;
- (2) school town;
- (3) metropolitan school district;
- (4) consolidated school corporation;
- (5) county school corporation;
- (6) community school corporation; and
- (7) united school corporation.

“[W]hen construing a statute, the legislature’s definition of individual words is binding upon us.” *Rose & Walker, Inc. v. Swaffar*, 721 N.E.2d 899, 901 (Ind. Ct. App. 2001). In this matter, the legislature has defined “school corporation” for application to Ind. Code Chpt. 20-26-5, and this definition is binding upon any interpretation of this concept of Ind. Code § 20-26-5-32.2.⁵ The applicable definition of “school corporation” does not include an ESC.

² The State Board of Education is charged by statute with promulgating rules for the establishment and governance—including the determination of geographic areas for operation—of ESCs. See Ind. Code §§ 20-20-1-2(a)(1), 20-10-1-3, 20-20-1-4, 20-20-1-5. The State Board’s rules are found at Title 511, Rule 4-4 of the Indiana Administrative Code.

³ The Indiana Supreme Court appears to have been mistaken in defining an ESC as “a private entity.” See *Hoagland v. Franklin Township Community School Corporation*, 27 N.E.3d 737, 739 (Ind. 2015). The OAG believes this characterization of an ESC is inexact and relies instead on its own determination of an ESC as stated in 2011 *Op. Ind. Att’y Gen.* No. 1, referenced *supra* at n. 1.

⁴ Ind. Code Chpt. 20-18-2 includes the general definitions to be applied throughout Title 20 of the Indiana Code. Ind. Code § 20-18-2-1. The definition for “school corporation” at Ind. Code § 20-18-2-16 does not include an ESC within the definition. However, the statutory provision does indicate the definition for “school corporation” for the purposes of Ind. Code Chpt. 20-26-5 is “the meaning set forth in IC 20-26-2-4.” Ind. Code § 20-18-2-16(b).

⁵ While it is true that the definition of “school corporation” at Ind. Code § 20-26-2-4 does not specifically mention a “charter school,” the statutory provision at issue, Ind. Code § 20-26-5-32.2, specifically includes a “charter school.” The legislative intent is clear and unambiguous in this regard.

CONCLUSION

The Indiana General Assembly has specifically defined “school corporation” at Ind. Code § 20-26-2-4 and applied this definition to Ind. Code Chpt. 20-26-5.⁶ This definition of “school corporation” is binding for the purposes of Ind. Code § 20-26-5-32.2. Since the legislature has not included ESC within this definition of “school corporation”, the wage payment arrangements in Ind. Code § 20-26-5-32.2 are not available to an ESC. Accordingly, the frequency of wage payments for ESC personnel would be dictated by Ind. Code § 22-2-5-1.

SUBMITTED, and
ENDORSED FOR PUBLICATION:



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Attorney General

Scott C. Newman, Chief Counsel
Kevin C. McDowell, Assistant Chief Counsel

⁶ See Ind. Code § 20-26-2-1 and Ind. Code § 20-18-2-16(b).