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Act. The application of this opinion is confined to salaries payable to township assessors as provided in Acts of 1957, Ch. 350, *supra*. Said Act is not to be confused with the Acts of 1957, Ch. 211 (H. 298) concerning salaries payable to *deputy* township assessors, nor is this opinion to be construed as applicable to the latter Act for the reason that it does not contain language substantially similar to that upon which reliance is based in this opinion.

OFFICIAL OPINION NO. 17

May 27, 1957

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

Dear Mr. Hindman:

Your letter of May 8, 1957, requesting an Official Opinion, has been received and reads as follows:

“Chapter 112, Acts 1957, concerns the allocation of tax money and the responsibility for the education of school children upon the annexation of territory by cities and towns. This act did not carry an emergency clause and therefore will not become effective until the acts are promulgated. Chapter 96, Acts of 1955, was specifically repealed by section 6 of Chapter 112, Acts 1957.

“We submit three hypothetical cases of separate areas annexed by separate ordinances as follows:

“*Ordinance #1.* Relates to an industrial area only; there are no school children residing therein; approximately 1/10 of the total assessed valuation of the township lies in this area. Annexation became final February 15th.

“*Ordinance #2.* Relates to a residential area only: the number of school children in this area is equal to approximately 1/20 of the population of the school township. Annexation became final February 15th.

“Ordinance #3. Relates to both residential and industrial property equal to approximately 1/20 of the township’s total assessed valuation and the number of school children in this area is equal to approximately 1/20 of the school township population. Annexation became final on October 1st.

“Assuming that Chapter 112 will become effective August 15th and that there was levied by the school township for collection in 1957 for the Special School and Tuition Funds \$100,000.00, of which \$60,000.00 will be distributed to the school township in the June settlement, we request your official opinion on the following questions:

“1. Is the school city entitled to receive distribution of tax receipts for the Special School and Tuition Funds of the original school township under the provisions of Chapter 112 of the Acts of 1957 for an annexation which became final prior to the effective date of the act?

“2. If your answer to question one (1) is in the affirmative, is the distribution based on the school months remaining in the calendar year after the effective date of the annexation, or after the effective date of Chapter 112 of the Acts of 1957?

“3. Is the distribution of taxes referred to in Chapter 112, Acts 1957, made on the basis of the tax distribution after the effective date of the act or the date the annexation became final, whichever is the later, or is the distribution calculated on the basis of the taxes collected for the full calendar year?

“4. Does the statute entitle the school city to a proportionate part of the school township’s tax receipt for each area annexed, as set out in ordinance #1, #2 and #3, or does the character of the area annexed and the number of school children therein determine the right to such distribution?”

As stated in your letter, Acts of 1957, Ch. 112, did not contain an emergency clause and will not become effective until such Acts are promulgated. Therefore, the specific repeal of Acts of 1955, Ch. 96, will not become effective until the effec-

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tive date of Acts of 1957, Ch. 112. This results in allocation of funds being made under Acts 1955, Ch. 96 for the period prior to the effective date of the 1957 law. Thereafter, the allocation of taxes will be made under the 1957 Act for the period following its effective date.

The Acts of 1957, Ch. 112, Secs. 2, 3 and 4, read as follows:

“SEC. 2. Whenever any city or town shall have annexed territory from an original school corporation and shall have assumed the responsibility for providing educational facilities for the children of school age residing in the annexed territory prior to the end of the calendar year in which such annexation occurs, the auditor or auditors of the county or counties in which the annexed territory is located shall pay to the treasurer of the annexing school corporation a proportion of the tax receipts payable in such year equal to the number of months and any major fraction of a month, excluding in such calculation, however, any time falling within the summer recess, during which the annexing school corporation provides such educational facilities divided by nine (9).

“SEC. 3. Whenever any city or town shall have annexed territory from an original school corporation after March 1 of any calendar year and shall have assumed the responsibility for providing educational facilities for the children of school age residing in the annexed territory during the calendar year following the year in which such annexation occurs, the auditor or auditors of the county or counties in which the annexed territory is located shall pay to the treasurer of the annexing school corporation a proportion of the tax receipts payable in such following calendar year equal to the number of months and any major fraction of a month, excluding in such calculation, however, any time falling within the summer recess, during which the annexing school corporation provides such educational facilities during such following calendar year divided by nine (9).

“SEC. 4. In the event the annexing school corporation assumed the responsibility for providing educa-

tional facilities for only a part of the children of school age residing in the annexed territory during any period, then such school corporation shall receive a proportion of the amounts to be received by it under Sections 2 and 3 during such period, equal to the proportion of such children with respect to which it assumes such responsibility, to the total of such children in the annexed territory.”

Section 5 of said Act authorizes the interested school corporations to mutually agree upon a date upon which the annexation shall apply to the responsibility for education of children. It then provides “and no payment provided in Sections 2, 3 and 4 of this act shall be made until such annexing school corporation shall have assumed responsibility for providing such educational facilities. In the absence of such agreement, *the annexing school corporation shall assume responsibility for providing educational facilities at the time of annexation.*” (Our emphasis)

1. In answer to your first question it is clear the Acts of 1957, Ch. 112, applies to annexations which became final prior to the effective date of the Act as well as annexations which become final after the effective date of said Act.

2. In answer to your second question and as previously indicated, I am of the opinion the allocation of taxes for that portion of the school year from date of annexation to effective date of the 1957 law would be made under the 1955 law and from the effective date of the 1957 law, such prior annexations would be governed by the provisions of the 1957 Act.

3. In answer to your third question, it is clear the 1957 statute contemplates a distribution calculated on the basis of taxes collected for the full calendar year divided by the number of months or major fractions of a month, excluding time falling within the summer recess, during which such school corporation “shall assume responsibility for providing educational facilities at the time of annexation.” This latter phrase is construed and applied in the answer to your fourth question.

4. I do not see how the factual situations referred to in your letter, designated Ordinances 1, 2 and 3, would affect the answer to any of your questions. The number of pupils resid-

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ing in a particular area annexed does not seem to be the determining factor for it is to be seen under the quoted provisions of Sections 2 and 3 of the statute it is made applicable from the time such annexing school corporation "shall have assumed the responsibility for providing educational facilities for children of school age residing in the annexed territory prior to the end of the calendar year in which such annexation occurs"; and in Section 3 of the Act a like provision is made concerning annexations made after March 1st of any calendar year with the result it shall include payment of a proportionate part of taxes for the next ensuing year and during which such school corporation shall have assumed such responsibility for providing such educational facilities. In Section 5 of said Act, and as above referred to, where no agreements are made concerning effective date of annexation so far as education of children is concerned "the annexing school corporation shall assume responsibility for providing educational facilities at the time of annexation." Therefore, in the absence of any such agreement, the responsibility is fixed by statute and would become effective as of the date of annexation if it occurs after the effective date of the 1957 law, and on the date of the effective date of the 1957 law, if the annexation occurs prior thereto.

Section 4 of the statute would not affect the question unless only a part of the children in the annexed territory were given educational facilities by the annexing school corporation and then the opinions herein expressed would only be qualified to that extent.

If more than fifty per cent [50%] of the taxes referred to, payable in 1957, are distributed to the township prior to the effective date of the 1957 law, the full amount due the annexing corporation must still be paid such annexing corporation due to the fact such computation is on a calendar year basis of taxes collected.