Hon. Wilbur Young  
State Superintendent of Public Instruction  
227 State House  
Indianapolis, Indiana  

Dear Mr. Young:

Your letter of June 5, 1957, has been received and reads as follows:


"The deadline for filing a remonstrance petition in each of the townships was midnight, May 31, 1957. A petition was presented to the township trustee of Warren Township before that time with the names of sixty-seven individuals as required by the above Acts.

"Prior to midnight, May 31, 1957, thirty-one legal residents of the township who had signed the first petition filed another petition that their names be rejected leaving a total of thirty-six legal voters.

"The Act requires fifty legal voters and only thirty-six remain.

"Since there were no remonstrating petitions in any of the other four townships, is said consolidation in full force and effect, or does the original petition with sixty-seven names hold up the consolidation until an election is held in Warren Township?"

Acts 1947, Ch. 123 referred to in your letter is Burns' (1948 Repl.), Section 28-5901 et seq. Said statute was amended by Acts 1949, Ch. 268, and finally by Acts 1957, Ch. 260. Under Section 2 of the 1957 amendment, provision is made for the adoption of a joint resolution by the trustees of the respective consolidating school corporations. It provides for two publications of notice of such intentions and that they shall meet
one week following the date of the appearance following the last publication of notice of intention to consolidate, and if no protest has been filed, they shall declare by joint resolution such consolidation to be accomplished. Said section then further provides:

"* * * That, on or before the sixth day following the last publication of such notice of intention to consolidate, fifty (50) legal voters residing in any of such school corporations may petition the school trustees of their respective school corporation for an election to determine whether or not the majority of the voters of such school corporation are in favor of such consolidation."

Acts of 1957, Ch. 260, Sec. 7, provides in part as follows:

"Such consolidated schools shall be under the control and management of the consolidated school board created pursuant to this act, and such new consolidated school corporation, shall come into existence at the time specified in the resolutions provided in Sections 2 or 3 of this act, or in the event no such time is specified, at the following times: (a) in the event no protest has been filed and such creation is accomplished by the adoption of a joint resolution following publication of notice as provided in Section 2 of this act, thirty (30) days following the adoption of such joint resolution; * * *

From the data submitted with your question, it appears no effective date was specified in the resolution on consolidation. Therefore, the thirty (30) day provision in the last-quoted section of the statute applies and governs the effective date of such consolidation, if there is no valid remonstrance.

An examination of the decisions of the Indiana Supreme and Appellate Courts has failed to reveal a determination of this exact question as applicable to the right of a person to withdraw his name from a remonstrance or protest against school consolidation. However, we are not without authority on that proposition as affecting other similar undertakings.

In the case of Noel v. VanFleit (1933), 205 Ind. 657, 187
N. E. 832, the matter before the court concerned the legality of the withdrawal of certain remonstrators against the establishment of a drain. Under the statute there considered such remonstrance could be filed within 20 days after commencement of such proceedings, and required two-thirds in number of the land-owners affected. The remonstrance was filed on the 19th day and on the 20th day a number of remonstrators requested a withdrawal of their names from such remonstrance so that thereafter it did not contain a two-thirds majority of the land-owners affected. In that case on pages 661 and 662 of the opinion the court says:

"* * * If the withdrawals are filed within the period of twenty days, exclusive of Sundays, from the day set for the docketing of the petition, and, if at the expiration of that period, there are not two-thirds in number of the land-owners named in the petition, or who may be affected by any assessment or damages, remaining on the remonstrance, then, in that event, the remonstrance is ineffective and of no force. The withdrawals, in the instant case, having been made within the twenty-day period are effective and defeats and renders ineffective the two-thirds remonstrance. * * *" [Citing cases.]

The case of Current v. Current (1920), 72 Ind. App. 363, 125 N. E. 779, concerned a petition to change a public highway by vacating a certain road and opening a new one. The petition was filed by 17 persons and later seven of them withdrew their names from said petition, leaving fewer than the 12 names required, which action was taken before the matter was acted upon by the Board of County Commissioners. On pages 365 and 366 of the opinion the court said:

"The controlling question presented by this appeal, as we view it, relates to the action of the board of commissioners in assuming jurisdiction, after the filing of the withdrawal stated above. It is a general rule in this state that persons signing a petition have the right to withdraw their names therefrom before the tribunal created by law to receive and consider such petition has acted thereon. Hord v. Elliott (1870), 33 Ind. 220; Noble v. City of Vincennes (1873), 42 Ind. 125; Black
v. Campbell (1887), 112 Ind. 122, 13 N. E. 409; Ralston v. Beall (1908), 171 Ind. 719, 30 N. E. 1095. This general rule is applicable to proceedings to open and vacate public highways. Little v. Thompson (1865), 24 Ind. 146.

"Applying the rule just stated to the facts of this case, it is obvious that the filing of such withdrawal was timely. It thus became a part of the record in the proceeding, and the board was bound to take notice of the same in determining its jurisdiction. * * * We conclude that the board of commissioners was without jurisdiction to proceed with the matter set up in said petition, after the filing of said withdrawal, and that the court erred in dismissing the appeal, but should have dismissed the petition instead. * * *"

The case of Black et al. v. Campbell et al. (1887), 112 Ind. 122, 13 N. E. 409, concerned a petition for the location and construction of a free gravel road. After the report of the viewers and engineers was filed, but before it was acted on by the board of commissioners, some 21 petitioners filed a written motion asking to have their names struck off and withdrawn from the petition. The effect of such withdrawal, if valid, would leave less than the required majority of the affected land-owners remaining on the petition. On page 125 and 126 of the opinion the court said:

"We construe this provision, when taken in connection with the context, to mean that the question as to whether the prescribed majority of land-owners have signed the petition for the improvement remains an open question until the board proceeds to consider and to act upon the report which has been submitted to it, and that until that time the names of persons may be added to the petition at their pleasure, and the names of persons who have signed it may be withdrawn by leave of the board, which ought not to be refused on reasonable terms, except for good cause shown, in the nature of an estoppel. Hord v. Elliott, 33 Ind. 220."

From the foregoing, I am of the opinion that a person signing a remonstrance may petition to have his name stricken
therefrom within the time such remonstrance may be filed and before the time it can be acted upon by the tribunal before which it is pending. Assuming the facts contained in your question to be correct, I am of the opinion the filing of such petition for withdrawal of the names of 31 legal residents from the remonstrance was valid and the effect of the same was that said remonstrance did not thereafter have the required 50 names required by the foregoing statute.

From the foregoing, and from the data submitted with your letter, I am of the opinion such attempted remonstrance failed and that on June 1, 1957, by resolution of the school corporations affected, such consolidation of schools was accomplished, to be in effect 30 days thereafter under the provisions of the foregoing statute.

OFFICIAL OPINION NO. 20

June 14, 1957

Hon. Wilbur Young
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Young:

Your letter of February 25, 1957, has been received and reads as follows:

"The Indiana State Board of Education has the authority to administer the vocational education programs under the provisions of both the Smith-Hughes Act and the George-Barden Act (Title I).

"An opinion is requested:

"Does the State Board of Education have the authority to administer Title II of The George-Barden Act (Vocational Education in Practical Nurse Training)?"

The statute involved is the Act of Congress known as Public Law 911, Title II, which under 64 Stat. 27, Sec. 202, authorizes an allotment to each State participating in a program for Vocational Education in Practical Nurse Training under which the Federal Government pays 75% of the cost of the