> out the state, together with such additional studies as any local board of education may elect to have taught in the high school: Provided, That such additions shall be subject to revision of the state board of education. Mathematics: commercial arithmetic, algebra, geometry. History: United States, ancient, medieval or modern. Geography: commercial or physical. English: composition, rhetoric. Literature: English, American. Language (foreign): Latin or any modern foreign language. Science: biology, physics or chemistry. Civil government: general and state. Drawing. Music.'
>
> * * *
>
> "In my opinion, Chapter 91 of the Acts of 1923, same being Section 28-3418 of Burns', is not affected by either the opinion rendered in the McCollum or the Everson case, provided, however, that the teaching is secular and not sectarian in nature."

OFFICIAL OPINION NO. 25

June 5, 1956

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

Dear Mr. Young:

Your letter of May 17, 1956, has been received and reads as follows:

> "The Beech Creek-Center Joint School District of Greene County, Indiana, has been operating a joint school in Solsberry in Beech Creek Township. This joint school organization soon will be entitled to receive its final portion of state tuition support for the current school year, 1955-1956.
>
> "On May 12, 1956, the trustee of Center Township served a written notice on the trustee of Beech Creek

Township that Center School Township will withdraw from any and all participation in the Beech Creek-Center School as of the close of the 1955-1956 school year.

"Although Chapter 25 of the 1945 Acts as amended by Chapter 30 of the 1955 Acts enables the joint school to provide for pupils for grades 7-12, apparently some pupils in grades 1-6 have been attending this school.

"May I have your Official Opinion on the following questions?

"1. May the amount which the joint school is entitled to receive be distributed to the individual township trustees instead of to the treasurer of the joint school?

"2. Is each respective trustee entitled to receive his township's pro-rata share of tuition support for grades one through six for pupils attending the Solsberry School, the same plant where the joint school pupils, grades 7 to 12, attend?

"3. If a distribution of joint school funds shall be made to the said individual township trustees, can the official making the distribution be held personally liable for distributing joint school funds?"

In the case of Jackson School Township *et al.* v. State *ex rel.* Garrison *et al.* (1932), 204 Ind. 251, 183 N. E. 657, it was held that although there is no statutory authority for the dissolution of a joint school, a participating school corporation could legally withdraw from such joint venture in the absence of a showing that such action was arbitrary, unjust, and unreasonable. It is there pointed out that under the statute there in question the participating township trustees were only required to send to such joint school the number of pupils they selected for attendance. A like provision appears in the statute under which this school corporation was jointed, for under Acts of 1915, Ch. 141, Sec. 4, as added by the Acts of 1945, Ch. 25, Sec. 3, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-2649c, provision is made as follows:

"Said joint school shall be under the management

and control of the board provided for in section 2 hereof. The fund for its maintenance shall be provided for by each of the trustees of said townships each year in proportion to the number of pupils from each township attending such school and shall be paid to the treasurer of the board of such joint school following each distribution of revenues by the auditor to the township trustee."

From the foregoing quoted provision it is apparent the statute did not require all of the children entitled to attend such school to be assigned to it. Since I understand a test suit on this dissolution is now pending in the local courts of these school corporations, I do not feel it desirable or necessary to determine the validity of any such withdrawal since the factual question of the reasonableness of such action could not be determined by this office and the foregoing is pointed out merely to show a justification of your making a distribution to the respective township trustees instead of to the treasurer of the joint schools.

It is to be further noted that under the above-quoted provision of said statute, monies raised locally for the support of such school corporations participating in said joint venture are paid by the auditor of the county to the respective township trustees, who, in turn, pay their respective portion to the treasurer of the joint school board, in proportion to the number of pupils attending said joint school from their respective township school corporations.

Before answering each of your questions, it is to be noted that the statute authorizing this joint school is Acts of 1915, Ch. 141, Sec. 1, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-2649. This statute was amended by the Acts of 1945, Ch. 25, by adding six new sections to the statute, the last of which was an emergency clause, and the other five sections are found in Burns' Indiana Statutes (1948 Repl.), Sections 28-2649a to 28-2649e, inclusive. Section 1 of the original act was again amended by the Acts of 1955, Ch. 30, Sec. 1, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-2649. The last amendment merely changed the authority for such a joint school to include grades 7 to 12,

inclusive, where the original statutes only provide for high school, which would be grades 9 to 12, inclusive.

1. An examination of the entire statute, together with all additions and amendments thereto, fails to disclose any specific requirement that such money be distributed by the state to either the township trustees or to the treasurer of the joint school corporation. As I understand, as a matter of convenience and policy, your department has been distributing such funds to joint schools to the joint school treasurer. At the same time, as above noted, monies raised on a local level from taxation are distributed by the county auditor to the respective township trustees who in turn make their accounting with the treasurer of the joint school. So, as far as the statute is concerned, either plan is feasible for the trustees are the heads of their respective school systems and under bond and legally accountable for funds coming into their hands.

In connection with your first question, it must also be noted that the distribution statutes governing your office do not specify the particular officer to whom distribution shall be made by the state auditor upon computations made by you from your files.

In addition to the foregoing, in a recent case involving a construction of the state distribution statute to schools, the Supreme Court of Indiana in the case of Young *et al.* v. State *ex rel.* School City of Gary, Lake County, Indiana (1952), 230 Ind. 315, 103 N. E. (2d) 431, at pages 329 and 330 of the original opinion stated that while the August 1, 1951, distribution under the Acts of 1951, Ch. 247, Sec. 2e, was an appropriation for support in aid of local school corporations for the fiscal year 1951-1952, it was also in the nature of a reimbursement for money expended in maintaining the minimum program of education for the preceding half school year. Therefore, such distribution next to be made by you is in fact to be used by the local schools for both purposes. I am advised the majority of it will necessarily be used for the first half of the school year 1956-1957.

If the foregoing is true, it would be necessary that the trustees themselves have the money for the payment of their respective school expenses while educating their children sepa-

rately, or if the joint school is continued, it would be equally available for that purpose.

From the foregoing, and in answer to your first question, I am, therefore of the opinion that the amount of money which the joint school is entitled to receive on distribution through your office and the state auditor's office may be distributed to the individual township trustees, instead of the treasurer of the joint schools, for those children in grades 7 to 12, inclusive. Grades 7 to 12, inclusive, are the only ones authorized to such joint venture. In making such distribution it would be made to officers to whom other distribution of school revenues are made, and who are responsible and bonded.

2. In answer to your second question, since the above statute does not contemplate the operation of a joint school for children in grades 1 through 6, funds representing those children should be distributed to the individual township trustees entitled to same along with the other funds distributed to such township trustees representing children in average daily attendance in their respective elementary schools.

3. In answer to your third question, I wish to advise that in the case of Wallace *et al.* v. Feehan (1934), 206 Ind. 522, 190 N. E. 438, the Supreme Court at length considered circumstances under which personal liability would attach to public officers in carrying out their official duties. At pages 537 and 538 of the original opinion it is clearly indicated that public officers performing an official duty requiring the exercise of discretion as to the manner and means and requirements for such performance were relieved of personal liability except possibly in some instances for acts maliciously done, while if the act to be performed is purely ministerial, the good faith of the one performing the act is not an issue. Under the foregoing facts it is clear that in order to carry out the intent and purposes of the distribution statute, the distribution may be made in such a manner as can best facilitate the continuance of education in the local school communities. In making such a decision your act would be discretionary rather than ministerial. For these reasons, I am of the opinion no individual personal liability would attach to the state officers making such distribution under the plan suggested in your letter. We also have the right to consider that, as previously pointed out, such

distribution is being made to the officials apparently entitled to receive such funds and who are responsible, bonded public officials.

OFFICIAL OPINION NO. 26

June 13, 1956

Mr. Edgar K. Gusler
State Service Officer
Veterans' State Service Dept.
431 North Meridian Street
Indianapolis, Indiana

Dear Mr. Gusler:

I have your letter requesting an Official Opinion which reads in part as follows:

> "Your attention is invited to Burns' Statute, Sections 9-1704a and 9-1706a pertaining to the commitment of defendants in a criminal case to the maximum security division of the Norman Beatty Hospital and where the defendant is either found insane at the time of trial or before the trial is found not to have sufficient comprehension to understand the nature of the criminal action pending against him and make the proper defense.
>
> "Will you please give us an official opinion as to whether or not those persons who are veterans and confined to the maximum security division at the Norman Beatty Hospital can be charged for their support and maintenance the same as inmates of other state mental institutions are charged for support and maintenance."

The Acts of 1951, Ch. 238, Secs. 1 and 2, as found in Burns' Indiana Statutes (1942 Repl., 1953 Supp.), Sections 9-1704a and 9-1706a, provide as follows:

> "If, in any criminal action, the court or jury trying the cause finds the defendant not guilty on the ground of insanity, the court shall find as to the defendant's sanity at the time of the trial, and if the court shall find