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tion that it be submitted to the "voters of such school corporations." Since the annexed territory is no longer a part of the township school corporation, the persons residing in such annexed territory would no longer be voters of such school corporation.

From the foregoing, I am of the opinion that where a part of your election precinct is in the city and part of it in the township outside of the city, that such election be held in the regular and legally constituted voting precincts in which the voters reside but that the only voters residing in such precinct who could vote on the question of such consolidation would be those voters of the township school corporation living outside of the corporate boundaries of said city and would not include those voters living in that part of the territory annexed to such city.

OFFICIAL OPINION NO. 46

October 9, 1956

Mr. Cecil Bolinger
Executive Secretary
Public Employes' Retirement Fund
145 West Washington Street, 10th Floor
Indianapolis, Indiana

Dear Mr. Bolinger:

This is in reply to your letter in which you request an Official Opinion as follows:

"We have an inquiry from Mr. Albert A. Kuhl, Regional Representative of the Social Security Administration, relative to the status of judges of criminal courts. It appears that a judge of the criminal court of Marion County participated in Old-Age and Survivors Insurance coverage for the years 1952 and 1953 as an employee of Marion County.

"I would respectfully request that an Official Opinion be rendered as to whether or not judges of Criminal Courts are state employees or county employees, or neither.

“If, in your opinion, such Criminal Court Judges are employees of the county, then would the Criminal Court Judge of Marion County be eligible for coverage for the years 1952 and 1953, assuming of course that the County had extended social security coverage effective January 1, 1952.”

Under ordinary usage and understanding, a Judge is not considered as an “employee.” As defined in 48 C. J. S. Judge, § 2, “Judge” is a term employed to designate a public officer selected to preside and to administer the law in a court of justice.

With this in mind, we must realize that any classification of a Judge of a Criminal Court as an employee of either the State or the county is purely arbitrary and for use in administration of Social Security only. This same type of arbitrary definition, for a specific purpose, is recognized in the Federal Social Security Act and the Indiana Act authorizing an agreement to make government employees subject to the Social Security Act.

Title 42 U. S. C. A. § 418 states that “the term ‘employee’ includes an officer of a state or political subdivision.” Section (c) (3) of Title 42, *supra*, gives the State the right to certain selection of positions covered.

The Acts of 1951, Ch. 313, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1902 (c), uses the same definition. Subsection (f) thereof includes in the definition of a political subdivision a “county.”

Since each of these Acts authorizes the inclusion of a public officer in the term “employee,” a Judge may be included.

Criminal Courts are a creation of the Legislature. They are not constitutional courts. The terms of office of Judges and jurisdiction and counties in which they are located are defined by statute.

The Acts of 1881 (Spec. Sess.), Ch. 34, Sec. 1, as found in Burns’ Indiana Statutes (1946 Repl.), Section 4-2301, reads as follows:

“There shall be organized, in such counties as may be designated by law, a court, to be called the criminal

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court of _____ county (according to the name of the county). Such court shall be a court of record, and have a seal and device, as the judge thereof may choose, and the name of the county on the face thereof, and a description and impression thereof shall be spread on the order-book of the court.”

The Acts of 1881 (Spec. Sess.), Ch. 34, Sec. 7, as amended, as found in Burns' Indiana Statutes (1946 Repl.), Section 4-2309, established a Criminal Court in Marion County.

By the Acts of 1947, Ch. 65, Sec. 1, as amended and found in Burns' Indiana Statutes (1946 Repl., 1955 Supp.), Section 4-2319, two Criminal Courts were established in Marion County.

The Acts of 1881 (Spec. Sess.), Ch. 34, Sec. 4, as found in Burns' Indiana Statutes (1946 Repl.), Section 4-2304, defines and limits the jurisdiction of Criminal Courts as “within the county.”

By statute, the Judge is elected by “the legal voters of the county.”

From consideration of the foregoing and in view of the fact that certain discretionary rights of contract remain in the local government, I am of the opinion that a Judge of the Criminal Court of Marion County, during the years of 1952 and 1953, could be considered as a county employee, for Social Security purposes, providing that it was the intention of the county and State to include that position in the county plan and agreement for Social Security coverage for that period. Since your letter states the Judge participated, I presume he was so included.