Mr. R. R. Wickersham  
State Examiner  
State Board of Accounts  
304 State House  
Indianapolis, Indiana

Dear Mr. Wickersham:

This is in answer to your inquiry concerning House Enrolled Act No. 173, which became Ch. 310 of the Acts of 1955. Your question reads as follows:

"The above numbered statute passed by the General Assembly in 1955 and signed by the Governor on March 11, 1955 has to do with the salary of township trustees and the allowance for clerical assistance.

"It will be observed that in classes 3 through 10 that two amounts are provided. In each of the classes 3 through 10 a proviso is used. For the sake of presenting the question, we shall use only a township of the fifth class. The statute provides:

"'* * * in townships of the fifth class, a salary of twenty-two hundred dollars ($2,200) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be two thousand dollars ($2,000) a year * * *.'"

"We are presented with a question regarding the proper interpretation or effect of the use of the words 'and/or.' We would like to have your official opinion on the following four situations:

"(a) In the case of a township trustee of class 5 who does not serve as township assessor and who has no township schools under his supervision, is he entitled to a salary of $2,200 or a salary of $2,000 per annum?

"(b) If such trustee serves as township assessor and who has township schools under his supervision, is he
entitled to an annual salary of $2,200 or a salary of $2,000 per annum?

"(c) In a case where a trustee of a fifth class township serves as township assessor but has no township schools under his supervision, is he entitled to a salary of $2,200 or a salary of $2,000 per annum?

"(d) If the trustee of a fifth class township does not serve as a township assessor but has township schools under his supervision, is he entitled to a salary of $2,200 or a salary of $2,000 per annum?"

The Acts of 1955, Ch. 310, insofar as the same is pertinent to your question, reads as follows:

"* * * That the township trustee, for all his services shall receive, in townships of the first class, a salary of five thousand dollars ($5,000) a year; in townships of the second class, a salary of five thousand dollars ($5,000) a year; in townships of the third class, a salary of three thousand five hundred dollars ($3,500) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be three thousand dollars ($3,000) a year; in townships of the fourth class, a salary of twenty-seven hundred dollars ($2,700) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be twenty-five hundred dollars ($2,500) a year; in townships of the fifth class, a salary of twenty-two hundred dollars ($2,200) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be two thousand dollars ($2,000) a year; in townships of the sixth class, a salary of two thousand and fifty dollars ($2,050) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be eighteen hundred and fifty dollars ($1,850) a year; in townships of the seventh class, a
salary of nineteen hundred dollars ($1,900) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be seventeen hundred dollars ($1,700) a year; in townships of the eighth class, a salary of sixteen hundred dollars ($1,600) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be fourteen hundred dollars ($1,400) a year; in townships of the ninth class, a salary of fourteen hundred dollars ($1,400) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be twelve hundred dollars ($1,200) a year; in townships of the tenth class, a salary of eleven hundred and fifty dollars ($1,150) a year; provided, however, if said trustee does not serve as ex officio township assessor and/or has no school under his supervision then the salary of said trustee shall be nine hundred and fifty dollars ($950) a year * * *”.

The use of the phrase “and/or” has caused considerable confusion. See Words and Phrases, Vol. 3, pp. 640 to 647. The only way in which I know to resolve the question which you have asked is to attempt to ascertain the legislative intent in enacting this particular statute.

In order to do this the statute must be read as a whole and should be examined and considered with respect to the factual circumstances existing at the time the statute was enacted. These circumstances are as follows:

(a) Under Acts of 1951, Ch. 302, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-1031a, the Township Trustee acts as Township Assessor only in townships of less than 5,000 population; in townships of more than 5,000 population there is an elected township assessor.

(b) Under Acts of 1945, Ch. 25, Sec. 14a, as amended, as found in Burns' Indiana Statutes (1951 Repl.),
Section 65-221a, the State Board of Accounts is directed and authorized to classify the several townships of the state into classes 1 through 10, according to the classification factors set out in said statute.

(c) Reference to the Roster of State and Local Officials of the State of Indiana, 1953-1954, compiled by the Statistical Department of the State Board of Accounts, pages 66 through 81, discloses that there are no third, fourth, or fifth class townships having a population of less than 5,000 persons; hence, the Township Trustee does not act as the Township Assessor in any township of the third, fourth or fifth class.

Some sixth class townships are of more than 5,000 population and some sixth class townships have less than 5,000 population; hence, in some sixth class townships the Township Trustee acts as the Township Assessor and in some sixth class townships the Township Trustee does not act as the Township Assessor.

All seventh, eighth, ninth and tenth class townships are of less than 5,000 population; hence, all Township Trustees in seventh, eighth, ninth and tenth class townships act as Township Assessors.

(d) Reference to the Indiana School Directory for the school year 1953-1954, published by Wilbur Young, State Superintendent of Public Instruction, discloses that in some third, fourth, or fifth class townships, the Trustee has supervision of the school or schools and in some third, fourth, or fifth class townships the Trustee does not have supervision of any school.

The foregoing facts existed at the time this statute was under consideration by the Legislature and were presumably considered in the enactment of said statute. If the phrase "and/or" as used in the Acts of 1955, Ch. 310, were to be construed in the conjunctive as meaning "and," then no Township Trustee in a third, fourth, or fifth class township could receive the higher salary authorized by said Act since no Trustee in any such township serves as a Township Assessor. This construction of the statute would give an absurd result which should be avoided whenever possible.
On the other hand, if the phrase "and/or" as used in this statute is construed in the disjunctive, as meaning "or," a practical result will be obtained which appears to me to carry out the legislative intent. In this connection see Armstrong, Administrator et al. v. State ex rel. Klaus, Auditor (1919), 72 Ind. App. 303, 120 N. E. 717.

I am therefore of the opinion that the phrase "and/or" as used in this Act means "or."

Therefore, my answers to your questions are as follows:

(a) A Township Trustee in a fifth class township who does not serve as Township Assessor and who has no schools under his supervision is entitled to a salary of $2,000 per year.

(b) There are no Township Trustees serving as Township Assessors in fifth class townships, however, if there were Township Trustees serving as Township Assessors in fifth class townships and said Trustees had supervision of the township schools, they would be entitled to an annual salary of $2,200.

(c) Assuming the Trustee in a fifth class township did serve as Township Assessor but had no township school under his supervision he would be entitled to $2,200 per year. As stated in (b) above, Trustees in fifth class townships do not, however, serve as Assessors.

(d) A Township Trustee of a fifth class township who does not serve as a Township Assessor, but who has a school under his supervision is entitled to a salary of $2,200 per year.