relationship between the Division of Mental Health and the Commission on Alcoholism, and if you have any specific questions in regard thereto please advise.

OFFICIAL OPINION NO. 57
December 9, 1955

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

Dear Mr. Young:

Your letter of November 21, 1955 has been received and reads as follows:

"Section 4, Chapter 247, Acts of the Indiana General Assembly of 1949 refers to levying a tax levy and rate to be known as a transportation tax of ten cents on each one hundred dollars of adjusted assessed valuation for purposes of distributing funds from the state school equalization fund for transportation purposes.

"Section 2e, Chapter 303 of the Acts of the Indiana General Assembly of 1955 establishes a new transportation formula for the fiscal years of 1955-1956 and 1956-1957. On page 905 of the Acts of 1955, at the conclusion of the third full paragraph, we find the following sentence:

"'The said per capita wealth factor shall be used as the measure of local effort instead of the provisions of Section 4 of Chapter 247 of the Acts of 1949 as amended.'"

"Will you please give me an official opinion on the following questions:

"Question 1: Does Section 2e, Chapter 303 of the Acts of 1955 suspend that part of Section 4, Chapter 247 of the Acts of 1949, which permits the levying of a transportation tax to the extent of making it illegal for such a transportation tax
rate to appear on the final approved school budget?

"Question 2: If an additional transportation tax is levied, is said levy to be considered as part of the maximum rate authorized by Chapter 318, Acts of 1955, or is it to be considered separate and above this limitation?"

The history of this legislation is important in order to understand the questions involved. The Acts of 1949, Ch. 247, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-1021 et seq., is the general statute on distribution of state support to the common school system. This statute is very comprehensive and among other things provides for a tax rate to be levied in each school corporation for three separate classes of school expenses; one of which is transportation, the taxes to be levied on adjusted assessment basis therein prescribed, and which levies were mandatory in order to secure such distribution in each of such classifications.

Section 4 of said Act, supra, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-1024, provides as follows:

"Subject to the provisions of sections 5 and 6½ hereof, whenever any local school corporation shall levy a tax levy and rate equivalent to ten cents [10¢] on each one hundred [$100] of adjusted assessed valuation within the limits of the corporation hereby authorized and hereafter known as the transportation tax to be paid into the special school revenue fund, then for every child living one and one-half [1½] miles or more from the school to which he is assigned by the authorized school authorities of the county, provided such child shall be in attendance at such public school for more than half of the days of the half school year upon which computation is made, there shall be distributed from the state school equalization fund a sufficient amount of money which when added to his proportionate amount of such transportation levy will provide twenty-five dollars [$25.00] per year for each such child transported. The state board of education
shall make the necessary rules and regulations for carrying into execution the provisions of this act, shall prescribe the regulations under which unusual road conditions and sparsity of population shall warrant the application of an adjustment factor to the transportation formula, and shall prescribe the forms to be used by the county superintendent of schools for reporting the information necessary for such execution."

As originally enacted said statute carried its own appropriation. However, beginning in 1951 and continuing through the 1953 and 1955 sessions of the General Assembly, the appropriation therefor was made in the General Appropriation Act, with a provision in each of said General Appropriation Acts that any and all provisions of the aforesaid statute which are in conflict with the provisions of this Section 2e shall be considered as suspended for the period for which funds are appropriated herein, but in all other respects said Acts of 1949, Ch. 247, supra, shall be in full force and effect.

Thereafter in each of said General Appropriation Acts, supra, certain exceptions to the provisions of said 1949 Act, supra, were made. These exceptions were specifically stated and were made following language which stated in substance "certain provisions of Section — of Chapter 247 of the Acts of 1949 notwithstanding," certain exceptions were to be made, the section applicable being set out in such provisions. From the foregoing it is to be easily seen that any exceptions to the provisions of the 1949 Act were so conclusively determined by the Legislature that nothing was left for construction by implication.

Prior to the 1955 General Appropriation Act, supra, the levying of the transportation tax was mandatory in order to secure distribution and was used as a basis of computation of distribution of funds in support of transportation in the school system. In the 1955 General Appropriation Act, supra, as found in the Acts of 1955, Ch. 303, Sec. 2e, a new formula for the computation of the distribution of funds for transportation, and for supplemental aid for transportation, was provided and among its provisions included the following at page 905 thereof:

"** The said per capita wealth factor shall be used as the measure of local effort instead of the provisions
of Section 4 of Chapter 247 of the Acts of 1949 as amended.”

Other provisions of said 1955 General Appropriation Act, supra, included the following on pages 906 and 907 thereof:

“* * * Provided, that in no instance shall any funds to be distributed from the transportation fund for purposes of transportation exceed ninety per centum of the actual cost of transportation as determined for the immediate preceding full school year. This cost shall include all contractual agreements and the cost of maintenance and operation of school owned vehicles and such costs shall also include an amount equal to ten per centum of the original purchase price of the chassis or the body or both for depreciation and amortization of vehicles owned partially or wholly by the school corporation.”

* * *

“Nothing in this act shall be construed to limit the authority of the school authorities of any school corporation to levy a levy and rate in addition hereto for the purpose of defraying expenditures for transportation in addition to the minimum foundation program of education.”

From the foregoing it appears the Legislature did not specifically suspend the right to raise the transportation levy specified in the Acts of 1949, Ch. 247, Sec. 4, supra, and contemplated some additional funds to be raised by local taxation to complement such transportation distribution. It did change the formula for computation of such transportation distribution and in effect no longer made said transportation levy mandatory in order to receive distribution, but the right to levy the tax specified in Section 4 of the 1949 law, supra, does not seem to be suspended, except possibly by implication.

While the repeal of statutes by implication is recognized, it is not favored and that conclusion will not be indulged unless the later Act is so repugnant to the earlier as to render the repugnancy or conflict between them irreconcilable. A court will always, if possible, adopt that conclusion which, under the particular circumstances in a given case, will permit both laws to stand and be operative.
Not only has the Legislature in the enactment of the foregoing statutes given full credence to such rule of statutory construction but it has expressly provided that said 1949 law was only suspended to the extent of any conflict and that otherwise said statute would continue in full force and effect. When this construction is adopted it is apparent that the new transportation formula could be used in the distribution for transportation; that the mandatory required raising of the transportation tax levy under the 1949 law is no longer necessary, but that the right to raise the tax given by said statute could still be made without being in conflict with said 1955 General Appropriation Act, supra. For this reason I am of the opinion the right to make such levy is continuing unless overcome by some other statute not previously considered.

In your second question reference is made to the Acts of 1955, Ch. 318, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-1106, which reads as follows:

"The tax levying bodies or officials of any school township, district, town or city shall have the right to levy a tax not to exceed two dollars and fifty cents [$2.50] on each one hundred dollars [$100] of taxable property for the special school revenue fund of any such school township, district, town or city in addition to any other tax for said fund now provided by law; and they also shall have the right to levy a tax not to exceed two dollars and fifty cents [$2.50] on each one hundred dollars [$100] of taxable property for the supplementary tuition fund of any such school township, district, town or city in addition to any other tax for said fund now provided by law: Provided, however, That in no case shall the total levy for the special school fund and supplementary tuition fund, exceed the sum of three dollars and thirty cents [$3.30] on
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each one hundred dollars [$100] worth of taxable property: Provided, further, That nothing in this act [this section] shall be deemed to prevent said tax levying bodies or officials from levying any other tax provided for in chapter 126 of the Acts of 1917 or chapter 45 of the Acts of 1919."

The last referred to statute is an amendment of the Acts of 1945, Ch. 39, Sec. 1, and generally concerns the maximum tax limitation rate for special school revenue fund. This Act was in existence at the time of the enactment of the 1949 law, supra, the only difference being the limitations therein expressed were for a lesser amount. At that time an Official Opinion was issued by this office, being 1949 O. A. G., page 57, No. 13, wherein it stated that the limitation tax levy statute did not apply to the transportation levy prescribed in the Acts of 1949, Ch. 247, Sec. 4, supra, and it is further stated at page 65 of the Opinion as follows:

"Summarizing the foregoing answer to your question number one, I am of the opinion the valuation tax limitation laws are not repealed. However, the ten cent transportation tax may be levied in addition to any such tax authorized by the limitation statutes."

It is a required rule of statutory construction that the Legislature is presumed to be acquainted with existing law and in legislating on any subject, to have in view its provisions together with the construction placed thereon by the courts.

Stith Petroleum Co. v. Department of Audit & Control of the State of Indiana et al. (1936), 211 Ind. 400, 405, 5 N. E. (2d) 517;

Town of Brownsburg v. Trucksess et al. (1933), 98 Ind. App. 322, 185 N. E. 315, 329.

Applying the last referred to authorities to a construction of the effect of said tax limitation statute on the right to raise the transportation tax specified in the Acts of 1949, Ch. 247, Sec. 4, supra, it is apparent that it does not affect or repeal such right of such transportation tax levy in view of the construction which has been placed upon said statute, prior to
from the foregoing I am of the opinion your questions should be answered as follows:

1. The Acts of 1955, Ch. 303, Sec. 2e, supra, does not suspend that part of the Acts of 1949, Ch. 247, Sec. 4, supra, to the extent of impairing the right to make the levy of a ten cent [10¢] transportation tax rate on an adjusted assessment valuation, or for such levy to appear on the final approved school budget.

2. From the foregoing I am of the opinion that if an additional transportation tax is levied under the Acts of 1949, Ch. 247, Sec. 4, supra, it is not to be considered as a part of the maximum rate authorized by the Acts of 1955, Ch. 318, Sec. 1, supra.

OFFICIAL OPINION NO. 58

December 13, 1955

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

Dear Mr. Young:

Your letter of November 21, 1955, requesting an Official Opinion has been received and reads as follows:

"Will you please give me an official opinion on the seven questions listed below?

"Question 1. How many days must an eight months school be in session in order to receive state funds taking into consideration the provisions of the Acts of 1911, Chapter 278?

"Question 2. How many days shall an eight and one-half months school be in session in order to receive state funds taking into consideration the provisions of the Acts of 1911, Chapter 278?"