its amendment, by said Official Opinion aforesaid, and consistently followed thereafter until the enactment of the 1955 law.

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?"
“Question 3. How many days shall a nine months school be in session in order to receive state funds taking into consideration the provisions of the Acts of 1911, Chapter 278?

“Question 4. Effective August 1, 1955, a township with an 8 months term consolidated with a township having an 8½ months term and a township having a 9 months term. The new consolidated school corporation has a calendar calling for 172 days of school. How many months are in this school term? On what basis should the tuition support distribution be made?

“Question 5. Can holidays as described by the statutes be included in the number of days required in qualifying for tuition support?

“Question 6. Can holidays as defined in the Acts of 1905, Chapter 118, and subsequent Acts concerning holidays be included in the number of days required in qualifying for tuition support in an eight months school, in an eight and one-half months school and in a nine months school?

“Question 7. Please define what constitutes a day of school or instructional day?”

Acts of 1949, Ch. 247, Sec. 6, as found in Burns’ Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-1026, provides as follows:

“* * * If any school shall be in session for eight [8] or eight and one-half [8½] months, then the distribution for said schools shall be proportionately reduced, but no school shall be eligible for state funds under the provisions of this act if the term of school shall be less than eight [8] months.”

Said quoted statute is not changed by the General Appropriation Act of 1955 as found in the Acts of 1955, Ch. 303, Sec. 2e,
under which said 1949 law is continued in full force and effect except to the extent of any conflict with the provisions of said General Appropriation Act, *supra*.

Acts of 1865, Ch. 1, Sec. 1, as found in Burns’ Indiana Statutes (1948 Repl.), Section 28-5102, defines a school term as sixty [60] days, a school month as twenty [20] days, and a school week as five [5] days.

Acts of 1911, Ch. 278, referred to in your letter, is Burns’ Indiana Statutes (1948 Repl.), Section 28-4405, and reads as follows:

“The school board of any city or town, and the township trustee of any township, may adjourn the schools of such city, town or township in order to allow teachers to attend sessions of schools or institutes of agricultural instruction held in the county, and the meetings of any teachers’ associations, and to visit model schools under the direction of trustees or boards of trustees, and shall pay such teachers a wage for the time spent equal to the per diem of such teacher: Provided, That not more than three [3] days shall be allowed in any one [1] year.”

The last-referred to statute applies to city, town and township school corporations and it must be noted the three [3] day limitation therein referred to refers to the adjournment of schools for the reasons therein stated with the three [3] day limitation therein prescribed.

If the foregoing was all we had to consider, it could be very easily said that a nine [9] month school would be one hundred and eighty days, less the three [3] days above provided, which would be one hundred and seventy-seven days; an eight and one-half [8½] month school would be one hundred and seventy days, less the three [3] days, which would be one hundred and sixty-seven days, and an eight [8] month school, one hundred and sixty days, less the foregoing three [3] days, which would be one hundred and fifty-seven days. However, the problem is not that simple. It is to be noted that the Legislature in enacting Chapter 247 of the Acts of 1949, *supra*, merely referred to schools of eight [8] months, eight and one-half [8½] months and for its general formula used the nine [9] months
school calendar. If it had so desired, it could have specified the number of days of actual school instruction. This it did not do. So in using such a term, resort must be had as to what the Legislature intended, as that is the paramount rule in construing a statute.

1950 O. A. G., page 102, No. 34.

When the statute is considered in this manner, it is apparent that the Legislature must have had in question what, in general, has been considered an eight [8], eight and one-half [8½] or a nine [9] months school year in the public school system over the period of years. When this is done, I am advised that school schedules adopted prior to the time of execution of contracts in the month of May of each year, for the next succeeding school year, have fluctuated anywhere from one hundred and seventy-two to one hundred and seventy-seven days in what has been ordinarily considered to be a nine [9] months school. This comes about as a result of many other statutes.

Among these statutes may be considered the one defining legal holidays referred to in your fifth question, which is Acts of 1947, Ch. 236, Sec. 1, as amended, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Section 19-1916b. Among the many holidays there appearing which would occur during a school year are: New Year's Day; Christmas; Thanksgiving Day; Lincoln's Birthday; Washington's Birthday; Good Friday; Discovery Day and Veterans' Day [Armistice Day].

Each of said days are declared to be legal holidays; however, nothing is specifically said about schools being required to close. However, the Acts of 1921, Ch. 91, Sec. 2, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-4305, provides as follows:

"If, during the term of a teacher's contract, the school or schools are closed by order of the school corporation, or by order of the health authorities, or if, through no fault of the teacher, school can not be held, such teacher shall receive regular payments during such time the school or schools are closed: Provided, That
schools may be closed for a period of not over two [2] weeks for Christmas holidays without payment of salaries for teachers for such time: Provided, That such closing the school for Christmas holidays shall not be construed to shorten the length of the school term."

From the last-referred to statute, two things are apparent: (1) If through no fault of the teachers, school cannot be held, the teacher receives her pay; and (2) specific provision is made for the adjournment of schools for not more than two [2] weeks during the Christmas holidays without payment of teachers’ salaries, and without shortening the length of the school term. Since this is the only provision regarding penalties against the teacher when school is closed for a holiday vacation, it is possible that a court might very reasonably construe that on other legal holidays, sessions of schools would not be required and no deduction of compensation to the teacher would be made therefor.

In accordance with the foregoing, it has been common practice in schools claiming to be on a nine months basis, to take credit for many of these legal holidays as an extra day of school to mitigate against other days when schools are generally adjourned, such as the Friday following Thanksgiving and, in many school corporations, Easter Monday; credit being taken for such holidays as Labor Day when school is not in session and counting as an extra day, Washington’s Birthday and Lincoln’s Birthday when schools remained in session even though a legal holiday. Under such factual conditions such schools have been generally recognized as a nine months school and distribution made to them on that basis. This brings the question within the purview of the following rules of statutory construction:

Contemporaneous construction of a statute by those charged with administration of it is entitled to great weight, particularly where legislation by inaction has indicated satisfaction with the construction. 1954 O. A. G., page 43, No. 14;

In construing a statute the general scope and purpose of the Act and the conditions that prevailed at time of its passage may be considered. In re Boyer (1917), 65 Ind. App. 408, 117 N. E. 507.
In addition to the foregoing, the Acts of 1907, Ch. 51, Sec. 1, as amended, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-4402 authorizes county institutes in each county for not less than one [1] nor more than three [3] successive days for teachers' institute. The statute does not prescribe specifically concerning compensation of teachers, this institute to be called by the County Superintendent of Schools. If such institute were called for three [3] successive days, that would necessarily interfere with class. Also, under the Acts of 1929, Ch. 187, Sec. 1, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-4401, the County Superintendent of Schools of each county is authorized to call a teachers' meeting once each month for the purpose of organization, instruction and other purposes stated in the statute.

From the foregoing it is, therefore, apparent that not only are we concerned with scholastic days, but a question of when school may be in "session." In connection with this thought, it might also be a question of good local school administration that schools be adjourned for a day or a part of a day for the purpose of children attending some matter of great public interest or national importance, such adjournment being in the interest of education; so that it is debatable that the term nine [9] months school means a certain prescribed number of days of instruction in the classroom.

From all of the foregoing, I am of the opinion that since school corporations must make their schedule many months before a school year begins, and employ teachers under that schedule at that time, and since there are so many statutes involved concerning when a teacher may or may not be required to be in attendance in the school room as a part of her official functions and duties as a teacher, and due to the fact there may be some question in interpreting the term nine [9] month school, the question arising on the basis of whether it means actual instruction days or days when the school itself is in session, that it is not possible to state exactly how many days constitutes an eight [8] month school, an eight and one-half [8½] month school and a nine [9] month school, based upon actual days of instruction. That since the Legislature has not seen fit to prescribe the number of days making up any such school years that the only safe standard we can go by until it is further clarified by the Legislature, would be to
accept the approximate number of days generally used in school calendars and schedules in those school corporations commonly known as an eight \([8]\) month school, an eight and one-half \([8\frac{1}{2}]\) month school and a nine \([9]\) month school. This answers your first three questions.

In answer to your question No. 4, I am of the opinion the facts therein stated would not change the answers above given for if this new consolidated school corporation has an equal number of days as the school corporation above referred to, it should be given the same consideration as the other school corporations qualifying on a basis of 172 to 177 days for a nine \([9]\) months term. In other words, in the absence of later legislation, it should be determined if this school qualifies on a basis that is generally known and accepted as being an eight \([8]\), eight and one-half \([8\frac{1}{2}]\) or nine \([9]\) months term.

In answer to your questions numbered five and six, for the reasons herein stated, I am of the opinion that credit may be taken for holidays included in the number of days required for qualifying for tuition support in any such school, either by an eight \([8]\) months school, an eight and one-half \([8\frac{1}{2}]\) months school, or a nine \([9]\) months school.

In answer to your seventh question, I am of the opinion a day of school and a day of school instruction are not necessarily the same. To a teacher, required to devote her time on school functions, it is a day of school. To a pupil required to attend classes, it is an instructional day. It must further be considered all instruction is not given in the classroom.

I do not find that the Acts of 1865, Ch. 1, Sec. 163, supra, has been judicially construed as to what is a school day; nor do I find any court in this state or any of the other states in the United States has defined such words as applies to any questions here presented. Other than as above stated, I believe any clarification other than above stated, should be made by the Legislature or the courts.