OFFICIAL OPINION NO. 59

December 14, 1955

Hon. Walter A. Baran
State Senator
4835 Baring Avenue
East Chicago, Indiana

Dear Senator Baran:

Your letter of November 26, 1955 has been received and reads as follows:

"May I please have your official opinion construing the Acts of 1951, Ch. 38, which statute applies to the election of members of the Board of School Trustees of the City of East Chicago, Indiana.

"Said Act was passed in 1951 and contained an emergency clause and pursuant to said statute an election for such trustees was held at the general city election in 1951 at which time five (5) persons were elected, whom we will refer to as A, B and C, who received the highest number of votes, being elected for a four year term beginning January 1, 1952, and two (2) members whom we will refer to as D and E who were elected for a four year term to begin January 1, 1954. Thereafter at the general city election of 1955, A, B, and D were the persons receiving the highest number of votes among the five (5) elected.

"The questions submitted to you are as follows:

"1. How many members constitute a full school board under the Statute?

"2. What is the term of office of the newly elected members of said Board beginning January 1, 1956, and will there be a vacancy on said Board at such time due to such said election?

"3. If there is a vacancy on said Board, may said vacancy be filled by the remaining members of said Board under the provisions of Section 7 of said statute?"
The Acts of 1951, Ch. 38 referred to in your letter is found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-1707 et seq.

Section 2 of said Act, supra, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-1708 provides as follows:

"At the time of the next election of city officials in such cities, to be held on and after the taking effect of this act, and at each such election every four [4] years thereafter, there shall be elected in each school city embraced within the terms of this act a full board of five [5] school trustees each of whom shall serve for a period of four [4] years. The three [3] candidates for the office of school trustee receiving the highest number of votes at such election shall take office on the first day of January following his or her election, and the two [2] remaining candidates for the office of school trustee who shall receive the next highest number of votes at such election shall take office on the first day of January two [2] years thereafter. Thereafter, such school trustees shall be elected at the time above provided for and shall succeed the retiring members in the order and manner as above set forth. The members of the board of school trustees in office at the time this act shall take effect shall continue to constitute and be members of the board of school trustees of each such school city until the subsequent qualification of the two [2] elective members taking office two [2] years after the first election herein provided for, saving that on the first day of January next following the first election herein provided for, the three [3] candidates for the office of school board trustee receiving the highest number of votes at such election shall become school board trustees and members of such school board, and thereafter such board shall be composed of five [5] members as in section 1 of this act [§ 28-1707] provided. If any of the school board trustees so elected at the first election herein provided for shall be holding the office of school board trustee by virtue of any previous election or appointment or by operation of this act, then such elected school board trustee's right to take office by
virtue of his receiving the highest or next to the highest number of votes at such election shall not be postponed, but he or she shall become a school board trustee and a member of such board and not by reason of a previous election or appointment by operation of this act. In that event the school board trustees shall proceed to fill the vacancy thereby created under the provisions of section 7 [§ 28-1713], of this act, so that on and after the first day of January next following the first election herein provided for, said school board shall comprise the two elected members and the members of the school board in office at time of the taking effect of this act or their successors in office by reason of an election to fill any vacancy or vacancies under section 7 [§ 28-1713], of this act, who shall hold office until the seating of the two [2] elective members taking office two [2] years after the first election herein provided for."

Section 7 of said Act as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-1713 reads, in part, as follows:

"If a vacancy shall occur in the office of school trustee in any such city by reason of death, resignation, disqualification or otherwise, except expiration of the elected term as provided in this act, the remaining trustees shall, at their next regular meeting, or at a special meeting called for the purpose, elect a successor to fill such vacancy for the remainder of the unexpired term. In the event of a tie vote between the remaining members, in filling a vacancy the city clerk of the civil city shall cast the deciding vote. * * *"

1. In answer to your first question, it is clear from the first sentence of Sec. 2 of said statute, supra, that a full school board under said statute consists of five [5] school trustees.

2. In answer to your second question, a careful examination of Sec. 2 of said statute, supra, shows that the first two sentences thereof involves election of school trustees for said board at the first election therefor. It is there clearly provided that the three [3] candidates for such office receiving the
highest number of votes at such election shall take office on
the first day of January thereafter, and that said term of office
is for four [4] years. Therefore, under the facts presented in
your letter A, B and C therein referred to were elected in the
city election of 1951 and took office January 1, 1952 for a four
year term. Said Section of said statute also provides that the
two remaining candidates for such office who shall receive the
next highest number of votes at such election shall take office
on the first day of January two [2] years thereafter. Under
the facts stated in your letter such two [2] candidates, being
therein referred to as D and E, were in said election elected
for a four year term to begin January 1, 1954. As previously
indicated all of the foregoing is provided for in the first two
sentences of Sec. 2 of said statute.

However, as stated in your letter, A, B and D received the
three highest number of votes at the city election held in 1955.
D at said time still had two [2] years of a four year term to
complete which would not expire until January 1, 1958. C was
not elected to succeed himself. In such a situation the third
sentence of Sec. 2 of said Act is applicable, to-wit:

"* * * Thereafter, such school trustees shall be
elected at the time above provided for and shall succeed
the retiring members in the order and manner as above
set forth. * * *"

Under the last quoted provision of said section of said
statute, D, due to his being one of the three receiving the three
highest number of votes cast succeeds such retiring member
C, and A and B are considered as elected to succeed themselves
in office. This has the effect of nullifying the last two years of
the term of office for which D was first elected; that is, from
January 1, 1956, to January 1, 1958, and for such period of
time, on January 1, 1956, there will be a vacancy on such board
of school trustees. This vacancy occurs by operation of law
under the provision of said statute and is occasioned by the
fact that D cannot hold two offices at the same time and such
vacancy exists because D is by such second election disquali-
fied from completing the last two years of his first term of
office.

In support of the last referred to proposition the office of
school trustee is a lucrative office and no person may hold two
lucrative offices at the same time under the provisions of the Indiana Constitution, Art. 2, Sec. 9 (1951 O. A. G., page 216, No. 72).

The above conclusions are arrived at in giving full credence to each of the above provisions of the statute and to carry out the evidenced intent of the Legislature, that such trustees should be elected for staggered terms and take their office in order prescribed so as to preserve the orderly continuity of staggered terms of office therein provided.

Statutes must be construed as a whole in order to determine the legislative intent.

Snider et al. v. State ex rel. Leap et al. (1934), 206 Ind. 474, 478, 190 N. E. 178;

State ex rel. Milligan, Superintendent of Madison State Hospital v. Ritter's Estate (1934), 221 Ind. 456, 469, 49 N. E. (2d) 993.

Courts will look to the general purpose and scope of the statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567, 24 N. E. (2d) 776.

The foregoing construction is in full harmony with the above cited authorities and does full justice to the legislative intent of the orderly taking and filling of said offices as shown by the last two sentences of Sec. 2 of said statute. While these last two sentences only deal with the first election of school trustees, it is there in substance provided that if any trustee so elected at the first election should be holding the office by virtue of a previous election or appointment, then the school board trustee's right to take office by virtue of receiving the highest or next to the highest number of votes at such election "shall not be postponed, but he or she shall become a school board trustee and a member of such board and not by reason of a previous election or appointment by operation of this Act."

3. In answer to your third question, I am of the opinion, as above stated, that on January 1, 1956, there will be a vacancy on said board for the two years remaining of the original term
of office of D, which will expire January 1, 1958. Section 7 of said statute, supra, provides if any such vacancy occurs in the office of school trustee in any such city by reason of death, resignation, disqualification or otherwise, except expiration of the elected term as provided in this Act, "the remaining trustees shall at their next regular meeting, or at a special meeting called for the purpose, elect a successor to fill such vacancy for the remainder of the unexpired term."

In my opinion such vacancy in D's office arises due to his being "disqualified" to continue serving the last two years of his original term of office for which he was elected, and that after January 1, 1956 the remaining members then on said board, A, B, D and E should elect a successor to fill such vacancy until January 1, 1958. In any event, such vacancy is not occasioned by any conditions or facts bringing it within the only exception to Sec. 7 of the statute, which is an "expiration of the elected term" of D, as his original term still has two more years to run. The foregoing assumes that D will accept the new office and enter in and upon the duties thereof.

OFFICIAL OPINION NO. 60
December 14, 1955

Hon. Warren Buchanan, Chairman
Public Service Commission of Indiana
401 State House
Indianapolis, Indiana

Dear Mr. Buchanan:

This is in reply to your request for an Official Opinion. Your letter, in part, reads as follows:

"When a municipal waterworks is admittedly under the jurisdiction of the Public Service Commission in regards to rates and finances within the municipality, if that same municipal waterworks contracts to sell water to other cities, both within and without the State, is such operation also under the jurisdiction of the Public Service Commission?

"The factual situation which has given rise to this question is as follows: The Hammond Waterworks