class, and the general intent and purpose of an enacting clause will be controlled by the particular intent subsequently expressed. * * *"

See also:

Campbell v. Jackman Bros. (1908), 140 Ia. 475, 118 N. W. 755;

Simpson v. State (1912), 179 Ind. 196, 99 N. E. 980;

Stiers v. Mundy (1910), 174 Ind. 651, 92 N. E. 374.

From the foregoing authorities and citations it is, therefore, apparent that the Legislature intended not to limit the County Surveyor, as is the expressed intention with respect to Federal Government officials and employees, in the performance of their official duties, but excepted County Surveyors from the purview of the Act in all practice within their respective county.

When the language of a statute is clear and unambiguous, there is no room for construction, and the language used must be held to mean what it plainly expresses.

State *ex rel.* Mason v. Jacobs (1924), 194 Ind. 327, 142 N. E. 715;

State v. Martin (1923), 193 Ind. 120, 139 N. E. 282.

It is, therefore, my opinion that an unregistered county surveyor may engage in private practice provided he limits said practice to the boundaries of his county.

OFFICIAL OPINION NO. 38

June 1, 1954

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

Dear Mr. Young:

Your letter of May 13, 1954, has been received requesting an Official Opinion upon the following questions:

"Question 1. In a School Safety Patrol to what extent is a school and sponsoring teacher liable?

"Question 2. Is a Safety Patrol legal from the standpoint of directing traffic at an intersection or at a crossing?

"Question 3. To what extent is a teacher liable for injury either in class, on athletic events, or in travel in regard to pupils?"

I do not find any statute in this state specifically authorizing or governing the establishment of School Safety Patrols. From a legal standpoint, it is primarily the duty of the Police Department to provide for the safety of the inhabitants on the streets and highways. It is my understanding that most School Safety Patrols operate under the authority of the City Police Department and that most patrols operate under a direct police officer assigned for that purpose with a delegation of such functions to the principal of the school and by him to some teacher assigned for the duty of assisting and carrying on such function. The school patrol officers do not attempt to make arrests, but merely report to the school officials for disciplinary action violations by pupils and report to the police authorities flagrant violations by motorists.

In the rendering of the effectiveness of such a program, most cities have adopted local ordinances regulating speeds of motor vehicles in school areas and enforce the proper regulations of the motor vehicle traffic under the general safety laws of the state.

From a legal standpoint, while it is primarily the duty of the Police Department to provide for the safety of the inhabitants, it would seem the establishment of a school patrol by a school within reasonable limits of the school building would also constitute a school function, although there seems to be no decision on this question in this state and I have found no pertinent cases decided in any of the other states' Supreme Courts.

Under the provisions of the Acts of 1899, Ch. 192, Sec. 1, as amended, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-2410, school trustees are required to take charge of the educational affairs of their respective townships, towns

and cities; to provide schools, or otherwise arrange for the education of the children in their respective school corporations; and make provision "necessary for the thorough organization and management of said schools." This, in my opinion would include such reasonable means necessary to provide for the safety of the children in going to and from school as well as a reasonable supervision over the orderliness and obedience of children to the safety laws of the highways.

I believe your second question should be answered first. From the foregoing, I am of the opinion a school safety patrol is legal from the standpoint of directing school pupils at an intersection or a crossing, where properly constituted. While a violation of their directions by motorists would not take on the same character as a disregarding of the direction of a duly constituted police officer, the failure of motorists to recognize and assist in such programs, where the present of children in and about said crossings are so clearly pointed out to them, subjects such motorists to prosecutions under the safety statutes of the State of Indiana and ordinances of the cities relating thereto.

As to your first and third questions it is submitted the law in Indiana, as determined by our Supreme and Appellate Courts, is not well settled. In the two leading cases in this state on the question of individual liability of school officials and employees for injuries to children resulting from their negligence, the Court has failed to make a clear cut decision on the question. It has somewhat indicated that when presented with the question the officials and employees might be held immune from personal liability. In the first of these cases, the same being Adams v. Schneider (1919), 71 Ind. App. 249, 124 N. E. 718, where injuries resulted during a field day exhibition, the Court held the school acted in an official governmental capacity and was not liable for the negligent construction of bleachers. However, the Court indicated that the board acted in a ministerial capacity for which they would be personally liable for their negligence or the negligence of their agents.

The above case was distinguished in the case of Medsker v. Etchison (1935), 101 Ind. App. 369, 199 N. E. 429, which involved injuries to a child on a slide on a playground due to the alleged negligent installation of the slide. The Court held

the board was immune from liability. It reviewed the above case of Adams v. Schneider but the Court refused to express an opinion as to whether the Adams Case was a true expression of the law in Indiana, and further said even if negligence had been shown "we do not say by this that there could be a recovery here." The language used by the Court in this case would seem to indicate that the Court was reluctant to attach personal liability to the officials under such circumstances. However, of course, personal liability would always apply in case of willful personal act.

The authorities in other states are entirely in conflict on this question as will be seen from an examination of an extensive Annotation on the subject found in 160 A. L. R., p. 7.

However, for your information, attention is called to the provisions of the Acts of 1941, Ch. 52, as found in Burns' Indiana Statutes (1952 Repl.), Sections 39-1818 to 39-1820, authorizing state and municipal corporations, including school corporations, to provide insurance against liability for bodily injury to, or death of, or property damage sustained by, any person or persons caused by accident and arising out of the ownership, maintenance, hire or use of any motor vehicle owned by such corporation and any real or other personal property whatever owned, hired or used by such corporation in its business, and to pay the premiums therefor out of public funds. While such authority may not cover all the activities embodied in your questions, many of such functions would be covered.

The only official opinion of this office that I find covering the general subject matter here involved is 1929 O. A. G., page 257. Since this opinion would not be readily available for examination, said opinion is hereafter set out in full:

> "I have before me your letter of September 5, 1929, submitting the following question:
>
> " 'If the school trustees, the superintendent or the principal of a school system establishes a student patrol for the purpose of assisting smaller children in traffic, and if an injury should occur to a child or one of the patrol boys in the operation of this system, would any of the above school officials be liable for damage?'

"The right of a school teacher or superintendent to make reasonable rules and regulations for the government of the school under his control is well settled.

"Fertich v. Michener, 111 Ind. 472, at p. 482.

"Moreover such teacher or superintendent is not personally liable for a mere mistake of judgment in the government of his school. Liability attaches only when it is shown that such officer acted wantonly, wilfully or maliciously.

"Fertich v. Michener, *supra,* page 485.

"It is the general rule, also, that the supervision and control of a teacher over a pupil, and of a school board to make needful rules for the conduct of the pupils is not confined to the school-room and school premises, but extends over the pupil from the time he leaves home to go to school until he returns home from school.

"35 Cyc. 1136;

Mechem on Public Officers, Sec. 730;

Jones v. Cody, 132 Mich. 13, 62 L. R. A. 160;

Deskins v. Gose, 85 Mo. 485, 55 Am. Rep. 387;

Hutton v. State, 23 Tex. App. 386, 59 Am. Rep. 776.

"With the above general principles as a basis, I am of the opinion that it is not an unreasonable exercise of authority for school trustees, superintendents or principals to establish such rules and regulations as will combat the hazards incident to the releasing in one group a large number of children into the general traffic. Such rules may be made to extend to the limitation of the number of pupils released at one time; or, if in the judgment of the school officers the desired result is better obtained by the establishment of a student patrol, such a system may be established and the school authorities would not be liable for a mere mistake of judgment as to what method is best. The same reasoning would extend to the subject of the control of children approaching the school building.

"The patrolmen pupils are not, in my judgment, agents of the school officials in the ordinary sense of that term, but are units in a system of student control and in my opinion such officials are not liable for their acts if they have exercised reasonable care in their selection. On the other hand I am of the opinion that it is beyond the authority of such school officials to require pupils to act as patrolmen and the assumption of such duties must be voluntary and with the consent of parent or guardian in order to avoid the possibility of liability growing out of their having been assigned to what may become hazardous duties.

"Subject to the condition set out in the next preceding paragraph, in my opinion your question should be answered in the negative."

From the foregoing and in answer to your question Number 1, I am of the opinion a school corporation is not liable for injuries or damage resulting from the operation of a School Safety Patrol, that being a governmental function. That the sponsoring teacher or employee of the school system has a potential personal liability for their individual negligence causing any such injuries or damage, but that in my opinion such liability is remote in the absence of a flagrant disregard of duty or a willful act on behalf of such person or persons.

In answer to your question Number 3, I am of the opinion the answer is the same regarding liability of school corporations or personal liability of teachers or school employees as given in answer to your question Number 1.