The total charge to the township authorized by the last quoted provision is for items furnished within the County Home. Where a resident of the County Home who is a township public charge, requires hospitalization which cannot be provided by the County Home, then such poor person may be provided for in the manner authorized by the Acts of 1935, Ch. 116, Sec. 5, *supra,* with regard to such necessary hospitalization. Therefore, the duty would remain with the township trustee to provide such hospitalization and its accompanying medical and surgical care for the poor person of his township.

It is my conclusion that where a poor person has a legal settlement within a particular township and constitutes a township public charge, the mere circumstance that such poor person has been admitted to a County Home does not relieve the township trustee of the particular township from providing for the expense of necessary hospitalization of such poor person where the nature of the care required is such that it cannot be furnished within the County Home.

OFFICIAL OPINION NO. 61

December 1, 1954

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

Dear Mr. Wickersham:

This is in reply to your letter which, in part, reads as follows:

> "We have received a request for an opinion on the question of the power of a board of school trustees of a school corporation to provide by rule or regulation for 'sick leave' for teachers of such corporation which are more liberal than the provisions for such purposes as set out in Section 2, Chapter 293, Acts 1951 (28-4333). This statute grants to the teacher seven days sick leave

each year and permits the accumulation of such sick leave days to a total of 60 days.

"The school city making the request is granting ten days sick leave per year, cumulative to sixty days. We are informed that other school cities have different plans and one case permits the accumulation of unused sick leave to a total of one hundred days.

* * *

"We request your official opinion on the following question:

"Are school trustees limited by the provisions of Section 2, Chapter 293, Acts 1951 (28-4333 Burns) in granting sick leaves for teachers, or are such trustees permitted to grant more liberal sick leave provisions through adoption of rules or regulations upon such subject."

The above statute referred to is Acts of 1945, Ch. 231, Sec. 2, as amended, as found in Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-4333 and provides, in part, as follows:

"* * * Each teacher shall be entitled to be absent from work on account of illness or quarantine for a total of seven [7] days in each year without loss of compensation, and for death in immediate family for a period extending not more than five [5] days beyond such death. If in any one school year the teacher shall be absent for such illness or quarantine less than seven [7] days, the remaining days up to a total of seven [7] shall be accumulative to a total of sixty [60] days. Accumulative days accrued to the teacher as of the effective date of this act shall be credited to the teacher. * * *"

The above statute is commonly known as the Teachers' Minimum Salary Act. Section 1 of said Act, as found in Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-4332, together with the above-quoted section of said Act provides for a minimum salary for teachers. Its purpose is clearly to leave the school corporations the right to adopt a salary schedule

more remunerative than therein specified. Such a salary schedule is referred to in said Act and further provision for such schedule is made in Acts of 1927, Ch. 97, Sec. 1, as amended, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-4307.

It is a matter of common knowledge that for many years prior to the incorporation of the mandatory sick leave provisions in the Minimum Salary Law that local school corporations made provision for such sick leave in their rules and regulations adopted in their salary schedule. While not actually a salary, it is so closely connected with the salary offered a teacher as to be a part thereof. In other words a consideration of both the salary schedule and sick leave offered the teacher determines his actual compensation. It is a condition of employment so closely associated with the salary as to be in fact a part thereof and constitutes the actual remuneration which a teacher receives for his yearly service when he is required to be absent because of illness.

In addition to the above section, Acts of 1927, Ch. 97, Sec. 5, as amended, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-4311, should be considered. Said section is as follows:

> "Leaves of absence—Requested and unrequested—Periods of—Reasons for—Amendment—School corporation—Proviso—Right to hearing.—Any such school corporation, upon written request, may grant leaves of absence, for periods not exceeding one [1] year, to any permanent teacher for study or professional improvement or because of physical disability or sickness, subject to such rules and regulations governing leave of absence as may be adopted by such corporation; Provided, That without written request any such school corporation may place a permanent teacher on leave of absence for periods of not exceeding one [1] year because of physical or other disability or sickness; Provided, That such teacher shall have a right to a hearing on such unrequested leave of absence in accordance with the provisions for hearings contained in section two [§ 28-4308] of this act. [Acts 1927, Ch. 97, Sec. 5, p. 259; 1933, Ch. 116, Sec. 4, p. 716.]"

It was held in the case of School City of East Chicago v. Sigler (1941), 219 Ind. 9, 36 N. E. (2d) 760 that the above section was in the nature of a limitation, that outside of said Act, school authorities could grant leaves of absence and adopt rules and regulations upon the subject. Therefore, said section is not to be construed as a grant of authority but as a one-year limitation upon the authority otherwise had. The Court in said case, after quoting said section, said at page 15:

* * *

> "The provision made for voluntary leave of absence seems to be in the nature of a limitation. Undoubtedly before the act was passed school boards could grant leaves of absence and could adopt rules and regulations upon the subject. This right is recognized by the act but a limitation is imposed that such absence shall not exceed a year."

In said opinion, this Court recognized the right of the board to provide for involuntary leave in a case not mentioned or expressly authorized by statute. This same reasoning would apply to said Acts of 1945, Ch. 231, Sec. 2, as amended, *supra*.

Applying the reasoning and holding of the Court in said case to your question, it would seem that the board has authority to grant sick leave and adopt reasonable rules and regulations relating thereto, subject to any limitations provided by statute.

The Acts of 1927, Ch. 97, Sec. 5, as amended, above quoted, limits the period to not to exceed one year.

The Acts of 1945, Ch. 231, Sec. 2, as amended, above quoted, is a statutory grant for a total of seven days in each year with an accumulation up to sixty days. However, there is nothing in said section prohibiting or limiting the right of the board to grant additional leaves of absence and to adopt reasonable rules and regulations upon the subject under their power otherwise had.

It is therefore my opinion that such teachers receive seven days leave in each year which shall be accumulated to a total of sixty days by virtue of the statute; that school boards may grant additional leaves and provide for proper voluntary or involuntary leave for proper cause, which would be in addition

to the above leave expressly provided by statute, which must be consistent with the salary schedule adopted by the School Board and in force and effect.

OFFICIAL OPINION NO. 62

December 6, 1954

Mr. Hugh P. O'Brien, Chairman
State Board of Correction
210 State House
Indianapolis, Indiana

Dear Sir:

Your request has been received and reads as follows:

> "We would appreciate an official opinion regarding the eligibility of a State employee, in the classified service, to remain on the payroll while a candidate for a public elective office. It is our understanding that any employee in the classified service who becomes a candidate for public office shall be deemed to have resigned from the service (Section 41, Chapter 139, Acts of 1941). It is also our understanding that no person elected to public office shall, for the term for which he is elected, be appointed to any position in the classified service.
>
> "Specifically, we have an employee who has been nominated and is seeking election for the office of Justice of the Peace. Are we correct in assuming that he shall be deemed to have resigned from the service once he has filed for such public office?"

Acts of 1941, Ch. 139, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1301 *et seq.* is an Act for the establishment of a State personnel merit system, applicable not to the employment of all public employees but only to those specified in Section 2(a) of the Act. Being an Act for the establishment of an employment system based upon merit, it is similar to statutes providing for the employment of persons on a civil service basis as contrasted with Acts for the