

remainder of the veterans' bonus claims was commenced on June 1, 1953.

Therefore under the authority of O. A. G. No. 63, 1952, page 244 and Chapter 134 of the Acts of 1953, it is my opinion that a vested property right in the bonus for the remainder of the bonus claims was acquired on June 1, 1953.

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OFFICIAL OPINION NO. 50

June 26, 1953.

Hon. Harold W. Handley,  
Lieutenant-Governor of Indiana,  
331 State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter of May 25, 1953 has been received requesting an official opinion on the following question:

"In 1914 Cedar Creek Township, West Creek Township, and the incorporated town of Lowell (population about 1,600), jointly built and maintained a high school located in the town limits of the town of Lowell. In 1928 the town of Lowell conveyed their grade school located within their town limits to Cedar Creek Township. Their interest in the high school was conveyed to Cedar Creek and West Creek Townships—said schools have been maintained in like manner since that time, the incorporated town of Lowell lying entirely within the boundaries of Cedar Creek Township.

"About 1950 a new sub-division located in West Creek Township adjacent to the town of Lowell was incorporated into the town limits of Lowell.

"West Creek Township has four consolidated grade schools with ample accommodations.

"Does Cedar Creek Township have a right to levy and collect the school tax on this newly incorporated area in West Creek Township, since the high school is maintained by both townships, this area supplying some

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of the pupils, and this area being incorporated into the town limits of Lowell over twenty years after Lowell conveyed its town school to Cedar Creek Township?"

The above question is controlled by the provisions of Chapter 143 of the Acts of 1913, same being Sections 28-1205 *et seq.* Burns' Indiana Statutes Annotated (1948 Replacement). Section 1 of said act provides in part as follows:

"The board of trustees of any incorporated town in this state, the inhabitants of which do not exceed two thousand (2,000), as shown by the last preceding United States census, may, on its own initiative, and shall, whenever a petition, signed by two-thirds of the freeholders of such town, request the board of trustees, in writing, so to do, abandon and discontinue its management and control of public schools within such incorporated town, and abolish the board of school trustees therein. \* \* \*"

Section 2 of said Act, being Section 28-1206, Burns' Indiana Statutes Annotated (1948 Replacement) reads as follows:

"The town board of trustees of any such incorporated town, upon deciding to abandon and discontinue the control of the public schools therein, shall make or cause to be made a good and sufficient deed, conveying all real estate belonging to such school town to the township trustee of the township in which such incorporated town is located; and shall transfer all the personal property and fixtures belonging to such school town to such township trustee, all of which shall be accepted and held by such township trustee for the use and purposes of the school township wherein such town is located: Provided, That when any such incorporated town shall be located in two (2) or more contiguous counties, the children of school age who are residents of such incorporated town shall be entitled to the same school privileges in such incorporated town as the children of school age who are residents exclusively of the township which has assumed ownership and control of such school and school property. And all school revenue which is paid or which may hereafter be paid by that

portion of such incorporated town lying outside of the township which has assumed control and ownership of such school and school property shall be paid to the township trustee of the township wherein such school is located, in the same way and manner as such revenues were paid to the school trustees of such incorporated town before such town relinquished control and possession of such school and school property."

Section 3 of said Act, being Section 28-1207, Burns' Indiana Statutes Annotated (1948 Replacement) further provides:

"After the requirements set forth in the preceding section are complied with, the township trustee shall have full and complete control of all the schools within such town and shall conduct the same as provided for by law for the other schools of such township. And all children of school age residing outside of the township in which such school and school property is situated but within the limits of any such incorporated town, as herein provided, shall possess all the rights and privileges to attend the school or schools located within such incorporated town the same as though they lived in the township wherein such school or school property is located."

The above statute was construed by the Supreme Court of the State of Indiana in the case of the State of Indiana *ex rel.* Atwood Bank v. Board of Finance *et al.* (1923), 194 Ind. 350, 71 N. E. 916. In that case in determining that a bank located in the incorporated town limits was also located in the school corporation to which the town had abandoned its schools, even though that was in a different township from the location of the bank, the Supreme Court on page 355 of the opinion said:

"Under the provisions of the above statutes, when an incorporated town shall abolish its school board and convey its school building and grounds to the township in which they are located, the entire territory in the town is annexed to such township for all school purposes. Not only do the children residing in any part of the town have equal school privileges and the equal right and privilege to attend the school operated therein

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by the township, without payment of tuition, whether they live within the boundaries of the civil township or not, but the residents and property owners of the whole town must pay taxes for the support of schools in the township by which their schools have been taken over, and all the school revenue thus paid, including what is paid by that portion of the incorporated town outside of that township, must be turned over to the trustee of the township in which the school is located, in the same way and manner as it would otherwise have been paid to the school trustees of the town. Another township in which any part of the town may be situated has nothing to do with the levy or collection of taxes therein, the making of any orders concerning the children, or the payment of tuition for them. \* \* \*”

Applying the foregoing to the instant case, it is clear that the town of Lowell abandoned its schools to the township in which it was located, to-wit: Cedar Creek Township. Being entirely situated in that township at that time, it would have no authority to abandon the schools to any other township under the provisions of Section 2 of said statute, above quoted. The fact that it conveyed its interest in the high school to both Cedar Creek Township and West Creek Township was evidently to avoid any legal complications since both townships, together with the town, had built and maintained the high school prior to that time. This left the title to the high school in the remaining two school corporations. The statute requiring the town to convey its school properties to the township to which it was abandoning its schools, in my opinion, required the transfer to be made of its interests in the high school to Cedar Creek Township. By conveyance to both of the then operating school corporations it left their relative interest subject to later clarification.

Therefore, the above statute, as well as the construction placed upon it by the Supreme Court in the above cited case, places the school town of Lowell for both school and school tax purposes within and as a part of Cedar Creek School Township.

This leaves for construction only the effect of the encroachment upon the territory of West Creek Township by the annex-

ing into the town of Lowell at a much later date, of a subdivision located in West Creek Township. However, I think this question is answered completely by Section 3 of the above statute which provides that after such abandonment has taken place that "all children of school age residing outside of the township in which such school and school property is situated *but within the limits of such incorporated town*, as herein provided, shall possess all the rights and privileges to attend the school or schools located within such incorporated town the same as though they live in the township wherein such school or school property is located." (Our emphasis.) Since the actual annexed territory is now located *within the limits of such incorporated town*, it is in my opinion made a part of the school corporation to which such town has abandoned its schools, by virtue of the provisions of Section 3 of said statute, *supra*.

I am, therefore, of the opinion that the subdivision located in West Creek Township which has been annexed to the town of Lowell is now a part of Cedar Creek Township for all school purposes and for all school tax purposes.

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OFFICIAL OPINION NO. 51

June 29, 1953.

Hon. George N. Craig,  
Governor of the State of Indiana,  
206 State House,  
Indianapolis, Indiana.

Dear Governor:

I have your letter of June 9, 1953 in which you request my opinion as to the following questions:

"1. What are the duties of the town trustees in regard to the calling of an election at the expiration of their term?

"2. If the town trustees are unqualifiedly holding office, what are the results of any expenditures of money made by them pursuant to their official duties?"