

it would be impossible to segregate or determine the assets or liabilities of the above named school corporations which would be received or assumed by the consolidated school, if such consolidation was effected.

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OFFICIAL OPINION NO. 66

July 30, 1953.

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

Dear Sir:

I am in receipt of your request for an opinion as follows:

“The Attorney General for the State of Indiana in his Official Opinion No. 40 issued June 1, 1953, ruled that there are two options in the interpretation of Chapter 273 of the Acts of 1953, concerning the charges for transfer tuition. What is referred to in said opinion as Option 1 is that part of the statute in existence prior to the 1953 amendment and consists of rhetorical paragraphs 2, 3 and 4 of the amended statute.

“When school budgets for the 1953 tax year were established, transfer tuition charges to be collected for the depreciation and use of school buildings were included as miscellaneous revenue of the Special School Fund. The aforementioned Official Opinion No. 40 indicates that collected funds are to be placed in a bond fund, sinking fund or cumulative building fund or ‘Having no specific fund created \* \* \* I am of the opinion such funds could be paid into any general school fund and used for the operation and maintenance of such school system upon appropriation being duly made.’

“Question 1. If a school corporation elects to use Option 1 of said statute, shall that portion of the transfer tuition charges as prescribed by Chapter 273

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of the Acts of 1953 for the 1952-53 school year be placed in the special school fund in which it was originally established or should it be placed in the bond fund, sinking fund, or cumulative building fund?"

The above statute referred to is Section 28-3717, Burns' Indiana Statutes Annotated (1953 Supp.). The pertinent part of said section of the statute referring to Option 1, above mentioned, is as follows:

"The annual per capita cost shall be computed from the average daily attendance and the total expenditures of the current school year, as set out in the classified budget forms prescribed by the state board of accounts, excluding interest on bonded debt capital outlay, debt services, and costs of transportation; and there shall be added to all such expenditures, an amount equal to 5% on the fair valuation of the school plant: Provided, That in the cases of creditor corporations that have heretofore entered into a contract for leasing a school house or school houses from voluntary associations under the provisions of the Acts of the General Assembly of the state of Indiana, 1927, page 269, since repealed, and the Acts of the General Assembly of the state of Indiana approved March 13, 1947, and all acts amendatory thereof or supplemental thereto (§§ 28-3220—28-3233), there shall be added an amount equal to 4% on the fair value of the school plant: Provided, That the amount so added shall not exceed \$25.00 per pupil. It shall be the duty of the county assessor of each county in this state to evaluate and appraise each such school plant within his jurisdiction, annually, at any time between the first day of March, and the 15th day of May. In making such evaluation or appraisal such assessor shall comply in all respects with the provisions of the law of this state concerning the assessment of property for purposes of taxation and an appeal may be taken from such determination of the county assessor to the county board of review, or, in the event that no appeal be taken, the decision of the county assessor shall be final."

The last rhetorical paragraph of said section of said statute being new language inserted by the 1953 amendment thereof reads as follows:

“All transfer tuition funds received by a creditor corporation or creditor local administrative unit from a debtor corporation or debtor local administrative unit as a result of adding to all such expenditures an amount equal to said five (5) per cent on the fair valuation of the school plant or of including in the computation the cost of all payments of interest and principal on school building bonded indebtedness during the current school year, and an amount equal to the total revenues from any school building tax in effect in the creditor corporation or creditor school administrative unit during the current school year shall be placed in the cumulative school building fund or school building sinking fund, or the bond fund of the creditor corporation and shall be expended only for such purposes as are lawful in accordance with acts which control the expenditures of such funds.”

Section 2 of said amendatory act (Chapter 273, Acts of 1953) repealed all acts or parts of acts in conflict, and Section 3 of said act declared an emergency, and was approved by the Governor on March 14, 1953, and was in full force and effect at that time.

It is to be noted that said act as so amended now requires all transfer tuition funds received by creditor corporation “as a result of adding to all expenditures an amount equal to five (5) per cent on the fair valuation of the school plant or of including in the computation the cost of all payments of interest and principal on school building bonded indebtedness during the current school year, and an amount equal to the total revenues from any school building tax in effect in the creditor corporation or creditor school administrative unit during the current school year should be placed in the cumulative school building fund, etc.” It also specifies it should be expended only for such purposes as are lawful in accordance with the acts which control the expenditures of such funds. The above language is clear and unambiguous. While the legislature could very easily have made provision for the unquestioned

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hardship which might result to school corporations from not having available to them from transfer tuition money the anticipated revenue for general school purposes contemplated in their budget adopted for 1953, the legislature has not made such provision. This office cannot supply any such omissions in the statute, by construction, where the law is clear as to the effect of an amendment of a statute.

It is a rule of statutory construction that a section of the statute, as amended, is to be regarded, as to matters thereafter occurring, as if such section, instead of the section which was blotted out by the amendment, had been a part of the original act.

Russell v. State (1903), 161 Ind. 481, 68 N. E. 1019;

Ullman v. Townsend (1914), 57 Ind. App. 126, 106 N. E. 611;

Atz v. City of Indianapolis (1927), 87 Ind. App. 580, 158 N. E. 523;

Million v. Metropolitan Casualty Ins. Co. (1933), 95 Ind. App. 628, 172 N. E. 569.

Considering the above legal proposition, it is to be noted that under said statute between the 1st of March and the 15th of May of this year the county assessor evaluates and appraises such school plant. This is done annually. Thereafter the computation of transfer cost is made and received by the creditor school corporation. These are matters arising after the effective date of the statute, and are clearly within its provisions.

It has further been held that an amendment to a section of the statute "to read as follows" operates to repeal all the section which is not embraced in the amended section.

State *ex rel.* Nicely v. Wildey (1935), 209 Ind. 1, 197 N. E. 844.

From the foregoing I am of the opinion that the above statute requires that the funds there designated for deposit in the bond fund, sinking fund, or cumulative building fund, be placed in one of such funds, if the same exists, for the 1952-53

school year, even though such school corporation elects to operate under Option 1 of said statute, and in spite of the fact that it had contemplated in its budget placing such funds for use in its special school fund.

You have verbally expressed a desire, in order to obviate further questions on the matter, that this opinion also cover a school corporation, like situated, which desires to exercise Option 2 of the statute. As shown by Official Opinion No. 40, *supra*, Option 2 of the statute is rhetorical paragraph 5 of the statute and it contains: a different formula for ascertaining transfer costs, including a removal of the \$25.00 limitation; it is entirely new matter as added by the legislature; and the formula therein contained is covered by the requirements of said statute of placing certain parts of such revenue in such bond fund, sinking fund, or cumulative building fund. As above stated, this provision making such requirement of placing such funds in such specified accounts is also part of the new matter added by the 1953 amendment.

All of the above authorities and propositions addressed to the answer of your question as to Option No. 1 are equally applicable to a school corporation, like situated, making an election under Option No. 2 of the statute. In addition, since Option No. 2, and the requirements of depositing such funds in such accounts, are all new matter added by the 1953 legislature, a school corporation electing to operate under Option 2 of said statute and take advantage of any right to charge in excess of \$25.00 per pupil, would also be subject to any disadvantages it might be subject to under the provisions of said statute, including such requirement to deposit certain amounts thereby received in such specified accounts.