The digest of this bill explains that its purpose was to clarify existing provisions for compensation for members of the General Assembly and to prevent the requirement that unearned salary be returned to the State. On the basis of these authorities, it is my opinion that any salary which was unearned and unpaid at the time of the legislator's death cannot be paid to his estate or his heirs.

Your third question considers certain expense allowance of legislators. House Enrolled Act No. 13 of the 88th regular session of the General Assembly which has become Chapter 2 of the Acts of this year provides in part as follows:

> "It shall be the duty of the auditor of state to issue his warrant upon the treasurer of state for the expenses of each of the senators and representatives at the rate of ten dollars per day for each day of said General Assembly."

Section 29 of Article IV of the Indiana Constitution specifically prohibits any increase in compensation for members of the legislature during the session at which the increase is made. Thus, to be valid, the above quoted excerpt must be construed to allow reimbursement for actual expenditures only and inasmuch as a legislator could not incur additional expenses in the discharge of his duties after his death it would be improper to pay any expense allowance for a period of time elapsing after the death of the member of the legislature.

OFFICIAL OPINION NO. 19

April 14, 1953.

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

Dear Sir:

Your letter has been received in which you request an official opinion on the following question:

> "School people generally have believed that School Trustees, and by delegation of Trustees school admin-

istrators, are authorized to determine regarding the suspension or expulsion of children deemed harmful or hazardous to the welfare of pupils generally.

"Is the judge of the Juvenile Court, by the 1945 Acts, Chaps. 347, 356, and 218, creating a Juvenile Court and declaring its jurisdiction in matters of delinquent, dependent, and neglected children, as well as in instances of contributors to delinquency, dependency, and neglect, given authority superseding that of the school authorities?"

An answer to your question requires a consideration of numerous constitutional provisions as well as the authorities and jurisdiction of school officials in establishing, maintaining and operation of the schools in their charge, and a further consideration of the jurisdiction of Juvenile courts.

Article III, Section 1 of the Constitution of Indiana provides as follows:

> "The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided."

It has been held that no department of the state government can be controlled or embarrassed by another department of the government, unless the Constitution so ordains.

> State v. Shumaker (1929), 200 Ind. 716, 164 N. E. 408.

The above constitutional provision was also applied in the case of Board of School Commissioners of the City of Indianapolis v. Center Township *et al.* (1895), 143 Ind. 391, 42 N. E. 808, which involved the right of the lower court to order an annexing city to pay for school buildings located in the annexed territory. The lower court ordered the school building paid for to the township even though there was no statute providing for payment. On page 404 of the opinion the court said:

> "* * * Therefore, if the city school corporation in this case is to be made liable to contribute, that liability must be created by the decree of the court, as was attempted to be done in this case. The creation of such liability being the exercise of a legislative function or power which the constitution forbids the courts to exercise, the superior court erred in attempting to do so. Section 1, article 3, Const., R. S. 1894, section 96 * * *."

Article VIII, Section 1 of the Constitution of Indiana provides as follows:

> "Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."

In carrying out the duties relating to establishment and maintenance of schools, the local authorities merely act as agencies of the state, with the state being the principal, and such functions are essential matters of state concern and subject to state regulation and control.

> State *ex rel.* Osborn v. Eddington (1934), 208 Ind. 160, 164, 165, 195 N. E. 92;
>
> Ratcliff v. Dick Johnson School Township (1933), 204 Ind. 525, 185 N. E. 143.

In the case of School City of East Chicago v. Sigler (1941), 219 Ind. 9, 36 N. E. (2d) 760, the court was required to determine the validity of a rule of the School City of East Chicago requiring a teacher upon becoming a candidate for public office to take a leave of absence from his duties as such teacher during such political activity. In upholding the validity of such rule, the Supreme Court of Indiana, on pages 13 and 14 of its opinion, said:

"A statute requires school trustees to 'take charge of the educational affairs of their respective townships, towns and cities.' Section 28-2410, Burns' 1933, Section 5967, Baldwin's 1934. They are required to furnish teachers and equipment 'for the thorough organization and efficient management of said schools.' The power to make reasonable rules and regulations to that end cannot be successfully challenged. Fertich v. Michener (1887), 111 Ind. 472, 11 N. E. 605, 14 N. E. 68; State *ex rel.* v. Beil (1901), 157 Ind. 25, 60 N. E. 672. Activities of the teacher which have a reasonable bearing on his ability, efficiency and influence in the classroom seem to us to be within the field of such regulation by the school board.

"It will be conceded that he has the same privilege as any other citizen to become a candidate for public office. Such candidacy should not be and is not ground for cancellation of his contract as a permanent teacher. But anyone who has been a candidate recognizes that political activity is apt to interfere with one's usual avocation and this fact, independent of any possible involvement of the school system in political controversies, affords a sound reason for a temporary severance of the candidate's connection with the schools. This rule, general in terms and applying to all teachers, does not to us seem such an unreasonable exercise of the board's powers as to warrant judicial interference. The board, not the courts, is charged with the duty of managing the school system and so long as it acts with fairness its decisions on matters within its discretion are not subject to judicial review."

The rights of courts to interfere with school officials exercising their discretion in matters committed to them by law for the government and operation of the school system was further considered by the Supreme Court of Indiana in the case of State *ex rel.* Mitchell v. Gray *et al.* (1883), 93 Ind. 303, which involved the rights of the school officials to deny a colored child the right of attending a separate white school. In upholding the action of the school officials in that case, the court on page 306 of the opinion said:

> "Very few children attended the colored school, while the attendance at the white was very large, and it is obvious that the corps of teachers and course of instruction necessary in the one were very different from those required in the other. Some officer or officers must pass upon and decide the question of what is necessary in each case, and so long as there is no corrupt or malicious act, and no perversion of power, courts must leave the matter in the hands of those to whom the law has entrusted it. There can, of course, be no denial of educational privileges, no total exclusion from schools, *except for cause,* but there may be rules and regulations for their government, *and these rules and regulations courts are bound to respect.*" (Our emphasis.)

The case of The State *ex rel.* Andrew v. Webber *et al.* (1886), 108 Ind. 31, 8 N. E. 708, involved the right of the school officials to exclude a pupil from attending the common schools where the child, pursuant to its parent's orders, refused to participate in a music class in the school. In upholding the action of the school officials in the exclusion of such child, the court on page 36 of the opinion said:

> "The power to establish graded schools carries with it, of course, the power to establish and enforce such reasonable rules as may seem necessary to the trustees in their discretion, for the government and *discipline* of such schools, and prescribing the course of instruction therein." (Our emphasis.)

From the foregoing, it may reasonably be concluded that under the divisional branches of government, the Constitution has seen fit to place the school system in the hands of the administrative branch of the government, pursuant to such laws as are enacted by the legislature. School officials must necessarily establish, maintain and operate schools and in doing so, they are given reasonable discretion in determining what is necessary to maintain discipline even to the point of exclusion of pupils where the welfare of the school system requires it. From the foregoing it is not meant to imply that arbitrary or capricious actions of officers are beyond the jurisdiction of the courts, but the rule is well settled that where the matter is

one for the discretion of school officials, is reasonably exercised in the interest of the school system, it does not become a matter for judicial interference. Otherwise, the courts would run the schools and not the administrative branch of the government.

The 1945 statutes referred to in your question concerning the jurisdiction of the judge of the Juvenile Court, being Ch. 218 (Sec. 10-812 *et seq.* Burns' 1951 Supp.); Ch. 347 (being Sec. 9-3101 *et seq.* Burns' 1951 Supp.); and Ch. 356 (being Sec. 9-3201 *et seq.* Burns' 1951 Supp.), are very comprehensive statutes. It is not deemed necessary to set these out in detail except to say generally that they give jurisdiction to the Juvenile Court over the children who are declared delinquent, dependent, or neglected. It gives substantial jurisdiction over the parents and any other person contributing to such status of such children. Under Sec. 15 of the last referred to statute (9-3215, Burns' 1951 Supp.) the court has the power to commit the child to a suitable public institution or agency or to a suitable private institution or agency.

It is pertinent to note the purposes of Ch. 356 of the Acts of 1945, *supra,* are stated in Sec. 1 of said Act (Sec. 9-3201, Burns' 1951 Supp.), and are as follows:

> "The purpose of this act (sections 9-3201—9-3224) is to secure for each child within its provisions such care, guidance and control, preferably in his own home, as will serve the child's welfare and the best interests of the state; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents.
>
> "The principle is hereby recognized that children under the jurisdiction of the court are subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them."

It is to be noted, the above statement of purpose requires a construction of said act consistent with the "best interests of the state" and is for the purpose of insuring to such child "the legal obligations due to them."

In the case of State *ex rel.* Gannon v. Lake Circuit Court (1945), 223 Ind. 375, 61 N. E. (2d) 168, the court held that Chs. 218, 347 and 356 of the Acts of 1945 must be read and construed in *pari materia* with each other.

It is to be further observed the above statutes give the Juvenile Court the right to punish children who are habitual truants (Sec. 9-3201 Burns' 1951 Supp.). It must however be borne in mind that these statutes as well as all other statutes applicable to a particular situation must be considered in *pari materia* with each other in determining the legislative intent and so as not to violate any of the provisions of our State Constitution.

> Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 498, 13 N. E. (2d) 568.

In my opinion the common schools of the state are not custodial institutions to which a Juvenile Court may commit a child—they are merely places of learning. While it is true the court can order the child to go to school, where he is an habitual truant, in my opinion the court cannot in such an *ex parte* proceeding make it incumbent upon school officials to receive and retain such child for schooling where in the opinion of the school officials it will interfere with the orderly operation of the school. For a court to do so in such a manner would seem to be permitting the court to substitute its judgment for that exercised by the school officials. It is not countenanced by the above authorities.

In support of the above conclusion attention is called to the case of State *ex rel.* v. Montgomery Circuit Court (1945), 223 Ind. 476, 481, 482, 62 N. E. (2d) 149, where the Supreme Court clearly points out that a local court must not only have general jurisdiction of the subject matter of the action (in that case an injunction suit), and jurisdiction of the parties by process, but it must also have jurisdiction of the *particular class of case* which is presented to it for a decision.

I am therefore of the opinion the Judge of the Juvenile Court does not have authority superseding that of the school officials on the question of exclusion of children from school for cause.

An orderly determination of the question would seem to be an action of mandate against the school officials to determine the legality and reasonableness of their actions in the exclusion of any such children.

OFFICIAL OPINION NO. 20

July 1, 1953.

Mr. James M. Knapp, Director,
Indiana State Personnel Bureau,
311 West Washington Street,
Indianapolis 4, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

> "The State Personnel Act in Section 40, Chapter 139, Acts of 1941, provides that all records of the division shall be public records except such records as the rules may require to be held confidential for reasons of public policy.
>
> "The official rules of the State Personnel Board were approved by the Attorney General as to their legality and filed with the Secretary of State on April 27, 1950. In Rule 14 of these official rules all records are declared to be public except the following:
>
> "1. Examination material prepared and organized in advance of an announced examination.
> "2. Graded examination papers.
> "3. Personnel folders and merit rating reports.
> "4. Applications for examinations.
> "5. Employment lists.
>
> "The anti-secrecy bill passed in the recent session of the General Assembly, Chapter 115, Acts of 1953, provides in Section 3 that all records shall be open to public inspection, except as may now or hereafter be otherwise specifically provided by law. This same section also authorizes the making of memoranda abstracts from the records so inspected.