OFFICIAL OPINION NO. 41

June 5, 1952.

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

Dear Sir:

Your letter has been received requesting an official opinion and reads as follows:

> "I should like to have an official opinion on the following question: Do the Acts of the Special Session of Indiana State Legislature of 1932, Chapter 27, Section 1, Page 42, being Section 28-2807 of Burns' Indiana Statutes — Annotated — 1933, replacement of 1948, which reads as follows, to-wit:
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> " 'Whenever sixty (60) per cent of the resident taxpayers of any school township or school corporation shall petition the trustee or board of trustees of such school township or school corporation for the abandonment of any high school or high schools within such school township or school corporation, it shall be the duty of the trustee of such school township or the board of trustees of such school corporation to comply with such petition and to abandon such high school or high school of such school township or school corporation, and to provide for the education and transportation of the pupils entitled to high school privileges, living within such school township or school corporation, in other high schools in such township or school corporation, or in the high schools of other townships or other school corporations.'
>
> include a joint elementary and high school conducted in the same building, serving the same territory or community, using the same school bus facilities, and using a common faculty whose duties and responsibilities overlap in certain respects?"

It is to be noted the above quoted statute refers only to "high school or high schools" of the school corporation. No

mention is directly made therein as to a joint elementary and high school conducted in said school corporation, and your question assumes the facts that the joint elementary and high school in question is "in the same building, serving the same territory or community, using the same school bus facilities, and using a common faculty whose duties and responsibilities overlap in certain respects."

While I do not find from my research that the above statute has ever been construed by our Supreme Court, I do find that a somewhat similar statute, Sec. 28-2701, Burns' 1948 Replacement, same being Sec. 1, Chap. 18, Acts 1893, has been construed by both the Indiana Appellate Court and the Indiana Supreme Court. This last referred to statute, in substance, requires that whenever it becomes necessary for the Trustee of any township in this state to change and re-establish the site of any school building and remove said building to a new site and location therefor, that said Trustee is required to present a petition, signed by the Trustee and a majority of the patrons of said school, to the County Superintendent of School of the county, setting out certain detailed information specified in said statute.

The last referred to statute was first construed by the Indiana Appellate Court in the case of Parker v. Humfleet (1916), 63 Ind. App. 281, 112 N. E. 253. That action was to enjoin the township trustee from carrying out a contract, and issuing bonds, for the construction of a school building. The old building had constituted a joint elementary and high school. The new building was to serve the same purpose. The opinion in that case makes reference to the fact that at the time of the enactment of the statute there under consideration, there was no statute providing for high schools, and that, therefore, the statute applied only to elementary schools. In reaching such conclusion, on pages 288 and 289 of the opinion, the Court said:

> "The graded school and the high school under consideration were conducted for several years in the same building. The relocation of the building contemplated will continue this system, one building serving both purposes. There is no contention that it will not be to the best interests of the patrons of the district and the public to relocate the graded school, for as to this

> we have seen there is no objection, only in so far as the relief sought, if granted, would necessarily operate to defeat both the building of the graded school and the high school. It does not appear that the trustee has exceeded the scope of his discretionary authority, and no bad faith or fraud is charged against appellees, and the allegations of the complaint, when applied to the law, disclose that no statute was violated nor was there an infringement of any legal rights of appellants."

In the case of Stevens, Trustee v. State *ex rel.* Alexander (1947), 224 Ind. 688, 70 N. E. (2d) 632, the Supreme Court of Indiana in construing the effect of Sec. 28-2701, Burns', *supra,* as well as the case of Parker v. Humfleet, *supra,* on page 693 of the opinion, said:

> "It is asserted that Sec. 28-2701, Burns' 1933 applied to the instant case in that the power of a township trustee, in removing or relocating a school, is somewhat limited by the terms of this statute. However, in Parker v. Humfleet (1916), 63 Ind. App. 281, 112 N. E. 253, it was held that the above section does not apply to a joint elementary and high school. There the application of the above statute was confined in its scope to district elementary schools.
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> "Great stress is placed upon Sec. 28-2801, Burns' 1933, by the appellees. It is asserted that this section has the effect of narrowing the discretionary power of the trustee in regard to the abandonment of the school under consideration. However, this section merely limits the discretion of the trustee in regard to *district schools,* but does not mention high schools or joint elementary and high schools."

It is to be noted that from the quoted language of each of the foregoing cases, the Court pointed out a distinction between elementary schools, high schools, and joint elementary-high schools. That the Court recognized such distinction between such classes of schools is clearly shown by the effect it had upon the Courts' decisions therein.

It is clear that if the Legislature in the enactment of Sec. 28-2807, Burns', *supra,* had desired to include joint elementary-high schools within the meaning of its provisions, it could very easily have so stated.

I am, therefore, of the opinion that the words "high school or high schools" as used in Sec. 28-2807, Burns' 1948 Replacement, does not apply to joint elementary-high schools conducted in the same building, serving the same territory or community, using the same school bus facilities and using a common faculty.

OFFICIAL OPINION NO. 42

June 9, 1952.

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

Dear Sir:

Your letter of May 17, 1952, has been received and reads as follows:

> "Will you please give me an official opinion on the following questions:
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> "A City School Corporation and the Township in which the city is located have consolidated in accordance with Chapter 68 of the 1947 Acts as amended.
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> > "Question I—Does teaching service in the old Corporations (Township or City) count toward acquiring tenure in the new corporation as created by Chapter 68 of the 1947 Acts as amended?
> >
> > "Question II—To be specific; does teacher A, who taught three (3) years in the City Schools, acquire tenure by signing her third contract with the new Corporation as created by Chapter 68 of the 1947 Acts as amended?