

OFFICIAL OPINION NO. 44

June 6, 1952.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State of Indiana,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your request for an Official Opinion reads as follows:

“May I please have your official opinion on the following two questions:

“1. Is a township trustee who serves as a member of a school board pursuant to the provisions of Chapter 148, Acts of 1917, as amended (Burns' 28-1220 and following sections) entitled to receive the compensation provided in Sec. 5 of the Act (28-1224) in addition to his compensation as township trustee?

“2. Is a township trustee who serves as a member of a metropolitan school board pursuant to the provisions of Chapter 227, Acts of 1949 (Burns' Supp. 28-805 and following sections) entitled to receive any compensation (*per diem*) or mileage for such service in addition to his compensation as township trustee?

“These questions arise because of the provision of Sec. 1, Ch. 251, Acts of 1945, which states:

“The township officers herein named shall receive for their services the compensation provided in this Act (65-208—65-222) and that they shall receive no other compensation whatever.”

“In requesting your opinion on the foregoing questions I am not unmindful of two official opinions of the Attorney General touching on this matter under laws other than Ch. 148, Acts of 1917 and Ch. 227, Acts of 1949, namely Official Opinion No. 94, Nov. 12, 1946, and Official Opinion 57, June 23, 1949.”

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By Chapter 251, Acts of 1945, it is noted that the legislature classified townships into ten (10) classifications and fixed the compensation of township officers accordingly. Sec. 1 of Chapter 251, Acts of 1945, now Chapter 319, Acts of 1951, provides as follows:

“Section 1. That the township officers herein named shall receive for their services the compensation provided in this act and that they shall receive no other compensation whatever.”

The answer to your questions depends upon the effect of the foregoing Act of 1945, as amended by the Act of 1951.

Your first question deals with Chapter 148 of the Acts of 1917 as amended, found in Burns' Stat., 28-1220 to 28-1224. This Act provides for the consolidation of certain school corporations for certain purposes. It has been held by our Supreme Court that the consolidation of a school township under this Act with another school corporation does not extinguish the existence of the school township. See *Ehle v. State ex rel. Wissler* (1922), 191 Ind. 502, 133 N. E. 748, and *Harris v. State ex rel. Allen* (1937), 212 Ind. 386, 8 N. E. (2d) 594. The Attorney General interpreted this Act by his Official Opinion No. 26 on March 16, 1948. Concerning the effect of the 1917 Act, the opinion quotes from the Supreme Court's opinion in the *Ehle* case as follows:

“* * * The act does not expressly make such consolidated schools a separate and distinct corporation, but on the contrary recognizes the corporate bodies entering into such consolidation as an existing entity.”

The Official Opinion of the Attorney General makes the following conclusion:

“Under the authority of the foregoing decision of the Supreme Court of Indiana, School corporations heretofore consolidated under Chapter 148 of the Acts of 1917, do not lose their identities as town, city or township school corporations on such consolidation but retain their identity as local taxing units, and such consolidation merely affords a vehicle by which such joint school corporations may operate their schools as a unit, under the direction of a board of trustees.”

Therefore, the effect of the foregoing construction is, that the office of school township trustee, under such consolidation is not destroyed by the Act of 1917, but the school township trustee continues to act as such officer under the consolidation. Chapter 159, Acts of 1917, passed after Chapter 148, Acts of 1917, provided at Sec. 1, "That the township officers herein named shall receive for their service the compensation provided in this act and they shall receive no other compensation whatever." This Act was repealed by Chap. 251, Acts of 1945, to become effective January 1, 1947. Sec. 1 of the 1945 Act now reads the same as Sec. 1 of Chap. 159, Acts of 1917. Chap. 148, Acts of 1917 provides as follows:

"Said township trustee shall perform the clerical work and bookkeeping for said board, for which services said township trustee shall receive in addition to the compensation received by him as township trustee the sum of \$100.00 per annum when the schools of his township are consolidated with the schools of an incorporated town, and shall receive the sum of \$200.00 per annum for his services when the schools of his township are consolidated with the schools of a city."

Since such township trustee still acts as township trustee, rather than a trustee of the consolidated school corporation, the general salary provisions for township trustee found in Chap. 159, Acts of 1917, afterward Chap. 251, Acts of 1945, now Chap. 319, Acts of 1951, governs. It is evident that the legislature did not intend the compensation provision of Chap. 148, Acts of 1917, to be considered compensation in the nature of a *per diem* for the reason that the legislature made provision for a *per diem* for township trustees by Chap. 311, Acts of 1945, but which Act expired by limitation at midnight, December 31, 1946.

Therefore, it is my opinion that, since the Supreme Court has held that the existence of the school township still remains, after the consolidation provided for under Chap. 148, Acts of 1917, that the township trustee continues to act as *ex officio* trustee under the consolidated school, and the compensation provided by Chap. 159, Acts of 1917; Chap. 251, Acts of 1945, now Chap. 319, Acts of 1951; is all the com-

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pensation for salary or *per diem* provided for such offices by the legislature.

Therefore, your first question is answered in the negative.

Your other question deals with Chapter 227, Acts of 1949, Burns' Stat., Sec. 28-805 *et seq.* It is noted that this act provides for the formation of a Metropolitan school district. Sec. 3 of the Act in part provides as follows:

"Sec. 3. In any county or adjoining counties, a trustee or trustees of any township school corporation or school corporations and/or the school board or boards of any county and/or counties and/or town and/or towns and/or city and/or cities therein may adopt a resolution or resolutions providing for the merging of said corporations into one metropolitan school district."

From a reading of the Act it is clear that a Metropolitan School district constitutes a separate and distinct unit of government. The legislature provided in Sec. 12 of the Act as follows:

"Such school districts shall be vested with all rights, titles, and interests of their respective predecessor township and town school corporations hereby terminated. * * *"

The members of the board of education which govern the district are elected by the voters of the entire district. We note the provision of the legislature in Sec. 9 of the Act which reads in part as follows:

"* * * All candidates for membership on the metropolitan board of education shall be voted upon by the voters of the entire district and shall be elected for four-year terms after the first election provided herein and shall take office and assume their duties one week after their election."

However, the first meeting of the board of education is composed of the respective trustees and members of school boards who are to serve as *ex officio* members. Sec. 7 of the Act in part reads as follows:

“Sec. 7. The first metropolitan board of education shall be composed of the respective trustees and members of school boards of the school corporations forming the same who shall serve *ex-officio* as members thereof subject to all the laws relative to length of terms, powers of election, or appointment and filling vacancies applicable to their respective offices. The members of the metropolitan board of education shall serve until their successors are elected or appointed and qualified.”

The legislature then made the following provision for certain compensation in Sec. 7 of the Act, which reads in part as follows:

“The metropolitan board of education shall have the power to pay to each member of the board a reasonable *per diem* for service on the board not to exceed one hundred twenty-five dollars per year and mileage to and from their homes to the place of meeting within the district not to exceed six cents per mile.”

This provision is the point of your second question. It appears that the members of the board of education, except for the first meeting, need not be township trustees or other trustees of former school corporations. But for the first meeting a school township trustee acts in an *ex-officio* capacity until his successor is elected and qualified. It is assumed that such township trustees continue to receive the compensation for salary as provided in the salary act of 1945 heretofore referred to, while serving as a member *ex-officio* of the metropolitan board of education.

Therefore, it would appear that such township trustees acting *ex-officio*, are not entitled to additional compensation as *salary*. But the provision in Sec. 7, Chap. 227, Acts of 1949, is for a reasonable *per diem*. It has been held that there is a distinction between a *salary*, which is compensation on an annual basis, and a *per diem*, which is compensation on a daily basis. That the granting of a *per diem* is not considered an increase in salary. See the Opinions of the Attorney General, February 17, 1943, page 66; also, No. 65, July 17, 1945; No. 31, April 13, 1945; No. 40, May 15, 1945; No. 39, May 14, 1945.

The "compensation" spoken of in Chap. 251, Acts of 1945, in my opinion, is intended to mean "salary." This is indicated by the compensation provision of Sec. 14, Chap. 251, Acts of 1945, as amended by Sec. 1, Chap. 319, Acts of 1951, which reads: "That the township trustee, for all his services, shall receive in townships of the ----- class, a *salary* of ----- dollars a year." As we have seen, a "salary" contemplates payment for services rendered on an annual basis. Therefore, the compensation allowed as "*per diems*," should not be considered as compensation in the character of salary.

As we construe the Metropolitan Act, the township trustee will serve only in an *ex-officio* capacity until the first election, after which all members of the Board of Education of the Metropolitan School District will receive the provisions set forth in Sec. 7, Chap. 227, Acts of 1949. The Act limits the amount of the total *per diem* payable in any one year to \$125.00. Inasmuch as the allowance is for *per diem* for service on the board, it does not constitute additional salary and the township trustee, in my opinion, would be entitled to receive such *per diems* not exceeding a total of \$125.00 in any one year.

As we have seen, Chapter 227, Acts of 1949, gives the metropolitan board of education power to pay to the members of the board "a reasonable *per diem* for service on the board not to exceed one hundred twenty-five dollars per year *and mileage* to and from their homes to the place of meeting within the district not to exceed six cents per mile." The question then is, assuming that township trustees are entitled to further compensation for their *services*, by way of *per diems*, are they entitled to the expense travel to attend meetings, or must the township trustees who are members of the metropolitan board of education travel at their own expense, while other members are allowed compensation for mileage. We know of no other provision whereby such township trustees may recover such travel expense. Unless the provision for such compensation, in Chap. 227, Acts of 1949, applies equally to members of the metropolitan board, then there would appear to be a discrimination as to members who are township trustees.

The Salary Act of Chap. 251, Acts of 1945, says "that they (township trustees) shall receive no other compensation what-

ever." We believe this language is modified by the legislature by the provision above quoted in Sec. 7, Chap. 227, Acts of 1949, as to compensation for per diems and mileages, which is a later enactment. Since a metropolitan school district may include school corporations from more than one county, the travel expense to attend meetings may amount to a considerable sum.

Therefore, it is my opinion that such township trustees while serving as members of a metropolitan board of education are entitled to the *per diems* and mileage provided in the 1949 Act.

OFFICIAL OPINION NO. 45

June 10, 1952.

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

Dear Sir:

Your letter of May 26, 1952 has been received and reads as follows:

"Paragraph 2, Article 3, Provision D, Section 2(e), Chapter 217, Page 625, Acts of the Indiana General Assembly of 1951 reads as follows:

"For the purpose of carrying out the provisions of this section and the provisions of Chapter 247 of the Acts of 1949, the General Commission of the State Board of Education, on the basis of available data on enrollments and assessed valuations, shall make estimates, and whenever available appropriations will be insufficient or in excess to make a full distribution as herein provided, said General Commission of the State Board of Education shall on or before July 1 of each year, adjust the local foundation tax rates for tuition and transportation purposes upward or downward *in like amount* for the *ensuing year.*' (Our emphasis.)