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

Dear Sir:

Your letter of September 25, 1951, has been received requesting an official opinion on the following questions:

"Rule No. 41 of the General Commission of the Indiana State Board of Education which was validated in accordance with Chapter 120 of the Acts of 1945 reads as follows:

"In interpreting the term 'legal transfer' the board will accept, as a legal transfer, any arrangement whereby a parent of a school child attending school in a corporation other than that of his legal residence submits to the State Board of Education written evidence of payment of the legal transfer charge to the corporation in which the child is actually in attendance."

Question 1: In accordance with Rule No. 41, may the township trustee or Board of School Commissioners of the school corporation of which the pupil is in attendance, furnish the transportation of said pupil from the boundary line of the school corporation to the school in which the pupil is in attendance?

Question 2: If the answer to Question No. 1 is "Yes", may the school corporation educating the pupil qualify for transportation funds as set forth in Section 4, Chapter 247, of the Acts of 1949 as amended?

Question 3: If a township trustee or Board of School Trustees, or board of School Commissioners deem it necessary to transfer certain resident pupils from their school
1951 O. A. G.

corporation to another school corporation and furnish the means or transportation for those transferring pupils, shall the school officials transport those pupils who are also transferring to the receiving school corporation but who pay the transfer tuition costs as provided in Rule 41, of the General Commission of the Indiana State Board of Education?

Question 4. If the answer to Question 3 is "Yes", may the school corporation furnishing the transportation qualify for transportation funds as set forth in Section 4, Chapter 247 of the Acts of 1949, as amended?"

Rule No. 41 of the General Commission of the Indiana State Board of Education is in accord with the authority given said Commission by the State Distribution Statute, same being Chapter 247 of the Acts of 1949, as construed by this office in its Official Opinion No. 13, same being 1949 Indiana O. A. G., page 57. Reference is made to Question No. 3 of said opinion, as specifically answered on pages 62, 65 and 66 of the opinion, which in substance held that under the Distribution Statute said Commission had authority for adoption of rules to facilitate the purposes of the Act including the transfer of pupils feature of the statute. However, it is there pointed out that said Act does not repeal the statutes regarding transfer of pupils but could determine the manner of qualifying for transfer costs paid by the State under the Distribution Statute. (See pages 65 and 66 of the opinion).

The validity of parents placing their children for education in a public school other than that of their residence has for many years been recognized, where the parents pay the costs of such education to the receiving school. On this question, see Official Opinion No. 12, 1949 Ind. O. A. G., page 55.

In the case of Carter, Trustee v. State ex rel. (1931), 202 Ind. 655, 659 and 660, it was held that usually the question
of whether a particular pupil can be better accommodated by transfer from his home corporation is left to the discretion of the school officials. Said case then points out that under certain facts, under certain transfer statutes, applications for such transfers might be made.

On the question of duties of Township Trustees regarding the education of children within their respective school corporation, Section 28-2410, Burns (1949 Repl.) provides in substance that the Trustee take charge of the educational affairs of the Township, employ teachers and locate schools, etc. It authorizes him to otherwise make provision for the education of such children. Said statute as well as the case of Carter, Trustee v. State ex rel., supra, clearly places the responsibility for designation of schools to which pupils shall be officially transferred in the discretion of the Township Trustee, except as modified by some statutes covering specific circumstances not here pertinent. (Also see Jackson School Township v. State (1932), 204 Ind. 251, 262.)

The foregoing is pointed out to show that difference in a situation where a child has an official transfer under the Transfer Statutes and under which type of transfer the requirement for transportation might attach, as distinguished from a voluntary transfer by the parent, which would cast no absolute responsibility for transportation on the corporation of the children's residence, but under which latter situation Rule 41, supra might still be operative.

Assuming no official transfer has been granted in the cases covered by your request, under the foregoing authorities, I am of the opinion your questions should be answered as follows:

1. Since the pupils referred to in your question No. 1 are actually in attendance in a receiving school corporation, the receiving school corporation would be authorized to transport such pupils from the boundary line of the school corporation to the school in which the pupil is in attendance, provided such transportation did not increase the cost to the taxpayers of the receiving school corporation in an amount above that received from the State Department of Education pursuant to Rule 41, supra. I don't think it could exceed this amount especially since there is no express statutory authority therefor. Even a statute authorizing such excess payment might raise grave constitutional questions.
2. The answer to your second question is in the affirmative.

3. In your third question, you use the word "shall" implying the obligation of the school corporation to transfer pupils who do not have an official transfer, along with pupils having an official transfer, to the receiving school corporation. Under the foregoing authorities, it is my opinion the school corporation of residence would have the discretionary authority to furnish such transportation to such un-officially transferred pupils, but I don't believe such transportation is mandatory.

4. Your answer to question No. 4 is in the affirmative.

OFFICIAL OPINION NO. 88

October 4, 1951.

Honorable Arthur M. Thurston,
Superintendent,
Indiana State Police,
Stout Field,
Indianapolis 21, Indiana.

Dear Sir:

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

"Information has been requested of our department relative the legality of using 360 degree visible amber lights on top of emergency trucks that must, by necessity, at various times be parked upon the highway. Please note attached petition in this regard.

"Burns Statutes, Section 47-2208, in regard to clearance lights apparently would make the light illegal if it were mounted on the rear of the vehicle since the law states that a rear mounted light shall display or reflect only a red light. Would this light be illegal since they intend to mount it on the top of the cabs of emergency trucks?"

Burns' 47-2208, to which you refer, same being section 126 of chapter 48 of the Acts of 1939, provides in part as follows: