but also that intangible property in the form of *chooses in action* may obtain such a situs separate from the domicile of its owner. * * *

It seems apparent from what has been said that trucks owned by the company kept in Kentucky obtained a business situs separate from the domicile of the owner. Therefore, it should be assessed for personal tax in the State of Kentucky and is therefore not taxable in the State of Indiana. See also the case of Lawrence v. State Tax Commissioner, 286 U. S. 276.

In conclusion you are advised that if you find said trucks are being and have been kept in the State of Kentucky and they have obtained a business situs there you should exempt them from taxation in this State.


OFFICIAL OPINION NO. 57

September 13, 1950.

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

Dear Mr. Jensen:

Your letter of August 16, 1950, has been received requesting an official opinion as to the liability for payment of salary to a teacher employed in the joint high school of Fall Creek Township and Middletown, Indiana. In your supplemental letter you advise the Middletown joint high school was organized pursuant to the provisions of Chapter 193 of the Acts of 1911, same being section 28-2650 et seq., Burns 1933. You state the contract between these school corporations for such joint establishment and maintenance of a high school was executed in March of 1914. In April, 1914, a supplemental agreement was entered into providing that in the erection of buildings, employment of teacher, etc. "The party of the first part (being the township school corporation) setting jointly with the party of the second part shall have two votes."
You further state that at a meeting considering the employment of a teacher for the joint high school, the trustees of the school town voted “yes” and the township trustee voted “no”. Thereafter at a meeting attended only by the trustees of the school town such trustees signed a contract to employ the teacher for the joint high school. Warrants were issued by the Treasurer of the joint high school district to pay this teacher who cashed the warrants. The township trustee refused to pay that portion of the teacher’s salary ordinarily paid from school township funds to teachers of the joint high school. Thereupon the trustees of the school town took up the warrants with their own money.

Your specific questions presented are:

“1. Is the teacher’s contract binding upon the joint high school district or the trustee of the school township?

“2. May the teacher recover from the joint high school district when he has been fully paid, for the purpose of refunding to the trustee of the school town the moneys which they personally advanced?

“3. May the trustees of the school town recover from any person or corporation the moneys which they personally advanced to pay the school teacher thus employed?”

The pertinent section of the 1911 law is Section 3, which was amended by Section 1, Chapter 13, Acts of 1915, same being Section 28-2652, Burns 1933. As so amended this section provides as follows:

“The school officials of any such township, townships and incorporated towns may authorize and enter into contract with the school commissioners or board of school trustees of any such city or incorporated town to provide such high school accommodations for a part or all of their respective townships or town corporations by the purchase of grounds, erection of a building or buildings or by making repairs of present building or additions thereto, and by equipping the same in accordance with existing laws, governing cities and towns in such procedure including the issuing of
notes or bonds of their respective corporation and the payment of the same: Provided, however, That no contract by the school officials of any such township, townships and incorporated towns, shall be deemed to grant away their right of representation in the control and management, maintenance and up-keep of such school or schools as may be established or maintained by such contract; and be it Provided, further, That a board of control for such school or schools as may be established or maintained by such contract, consisting of the township trustee of each township and the president of the board of school commissioners of each city or town included in such district and a party to such contract, shall have full control and management of such school or schools as may be established or maintained by such contract, each member being entitled to an equal vote in such control and management: Provided, further, That in case of a tie vote on the question of management or control of such school or schools then and in that event the county superintendent of the county in which said school is located shall cast the deciding vote in such control or management."

It would therefore appear the contract in question as well as the supplemental contract was made before the amendment of 1915. The 1911 Act was the same as above quoted but ended with the first colon and the 1915 Act by amendment added the remainder of such section.

The legal question involved, under this particular statute and amendment, was answered in an official opinion of the Attorney General found in 1941 Indiana O. A. G. page 354. On page 355 the opinion announces the following conclusion:

"The effect of this amendment would be to give the president of the town board of school trustees the power of acting, with the township trustee, in the management of the school, including the hiring of teachers.

"If the member of the town school board, joining with the trustee in employing the teacher, is the president of the board, the vote of the other members of the board upon the employment in question would be of no effect."
Attention is directed to the fact that in the question presented to the Attorney General forming the basis of the 1941 opinion, it is stated the contract between the school corporations forming the joint school was dated January 29, 1913, which would also present an identical factual basis of a contract for the joint operation of a school being consumated between the enactment of the original statute in 1911 and its amendment in 1915.

In reaching the conclusion announced in the former opinion the Attorney General necessarily had to assume that the 1915 amendment applied prospectively to the operation of the joint school created by the 1913 contract. With this conclusion I fully agree for as hereafter pointed out it is clear the amendment to the statute was intended to control the future operation of any schools established from the time of the original statute and such legislation would not violate any constitutional provision as to impairment of any vested property rights. Since the former opinion did not discuss these latter questions it is deemed advisable to consider them.

The primary purpose of construing a statute is to determine the legislative intent.

Snider v. State ex rel. Leap (1934), 206 Ind. 474, 478;
State v. Ritter's Estate (1943), 221 Ind. 456, 469, 470.

In the case of Sherfey v. City of Brazil (1938), 213 Ind. 493 at 498 the Court said:

"* * * And the introduction of a new word or words into a statute indicates an intent to cure a defect in and suppress an evil not covered by the former law. It will be presumed in such a case that the Legislature intended to change or add to the existing law. State ex rel. v. Board of Election Commissioners of City of Tipton et al. (1925), 196 Ind. 472, 482, 149 N. E. 69.

In the case of Hiatt v. Howard (1937), 104 Ind. App. 167 at 171, the court in considering that a statute may be construed to be retroactive in its application where no vested property rights were involved, quoted and approved the following language from an earlier case:
"* * * The better rule of construction, and the rule peculiarly applicable to remedial statutes, however, is, that a statute must be so construed as to make it effect the evident purpose for which it was enacted, and if the reason of the statute extends to past transactions, as well as to those in the future, then it will be so applied, although the statute does not in terms so direct, unless to do so would impair some vested right or violate some constitutional guaranty.' (Barnett, Admx. v. Vanmeter et al. (1893), 7 Ind. App. 45, 52-53, 33 N. E. 666.)"

It is also a recognized rule of statutory construction that when a statute is amended it is to be construed from the date of the amendment the same as if such amendment was a part of the original act.

Cain v. Allen (1907), 168 Ind. 8, 16;  
State ex rel. v. Adams Express Co. (1908), 171 Ind. 138, 141.

The effect of the foregoing is to establish that the amendment of 1915 was retroactive to the extent of effecting contracts for the establishment of joint schools entered into prior to the 1915 amendment of said statute so as to require the joint school officials to comply thereafter in the operation of said schools with the requirements of such 1915 amendment.

It is clear that the legislature by such amendment intended the same to apply to future operations of any schools organized under the original 1911 statute because among other things such amendment provides that "no contract" by such respective school officials "shall be deemed to grant away their right of representation in the control and management * * * of such schools." It further declares that the joint school boards set up by such contracts shall consist of the president of the city or town school board and the township trustee, each to have one vote, requiring a majority to act, and in case of tie vote deciding vote to be cast by the county superintendent.

It therefore only remains to determine if such retroactive legislation impairing the provision of such contract for the establishment of such school violates any property right of the respective school corporations or of the citizens thereof.
It has been established in this state that the school system in various communities in the State of Indiana is a function of state government.

Benton County Council v. State *ex rel.* Sparks (1945), 224 Ind. 114, 121.

It is further well established in this state that the local school officials in carrying on the management and operation of schools act as the agents of the state. In the case of State *ex rel.* Osborn v. Eddington (1935), 208 Ind. 160 at page 164 and 165, the court said:

"The people of Indiana have translated into a fundamental constitutional postulate the belief that the general diffusion of knowledge and learning throughout a community is essential to the preservation of free government. And in harmony with this constitutional postulate the Constitution recognizes that the business of education is a governmental function and makes public education a function of state government as distinguished from local government. § 1, Art. VIII, Indiana Constitution.

'It was evidently the intention of the framers of the Constitution to place the common school system under the direct control and supervision of the state, and make it a quasi-department of the state government'; (Greencastle Twp. v. Black (1854), 5 Ind. 557, 563) 'a centralized and not a localized form of school government.' State *ex rel.* v. Ogan (1902), 159 Ind. 119, 121, 63 N. E. 227.

"Under the legislative act of 1852 (§§ 4 and 32, ch. 98, p. 439, R. S. 1852, Vol. I) the civil townships, towns and cities were made school districts. By later legislative enactment civil townships and incorporated towns and cities were made 'distinct municipal corporations for school purposes' (§ 28-2402, Burns, etc., 1933, Acts 1865, ch. 1, p. 3, § 4) and thus the school government of the state was separated from civil government. Consequently school corporations and school
officers, as such, do not act as agents of civil municipal corporations or civil administrative units. This was pointed out, as respects schools cities, in the case of Campbell v. City of Indianapolis (1900), 155 Ind. 186, 211, 57 N. E. 920:

'Equally untenable is their argument whereby they concede that it may be true that a school city is a distinct municipal corporation, but contend that it is only an agency of the civil city to discharge the functions of the latter in respect to the affairs of common schools. It is established by the decisions of this court heretofore cited that this proposition is not true. The government or management of our free common schools, as it has been frequently affirmed by this court, is a matter of state concern, and the various school corporation and school boards are, as a general rule, the agencies of the state in this respect or executing its functions. As well said by counsel for appellee, if one sustains the relation of agent to another, it must be with reference to some matter which pertains to or concerns the principal.'"

It has also been held by the Indiana Supreme Court, in litigation growing out of the annexation of territory by cities, on which territory were located township school buildings, that the local school corporations or residents thereof, have no vested property rights in such buildings and that the local school authorities hold such property as trustees for the state, and may be regulated, controlled or such property taken pursuant to legislative action without compensation for the use or benefit of the state school system.

State of Indiana ex rel. etc. v. Tuhey et al. (1920), 189 Ind. 635, 639;
City of Jeffersonville v. Jeffersonville School Township (1921), 77 Ind. App. 32, 33.

From the foregoing authorities it is clear there is no such vested property rights of either the local school corporations and officials, or the citizens thereof, in contracts pertaining to
the management, control and operation of local school corporations, under the constitutional provisions which would prevent such contracts being amenable to change by the legislature in the operation of the State school system.

Since the 1915 amendment to the statute, supra, thereafter required all school corporations organized under said statute as originally enacted in 1911, to manage and operate such school though a majority vote of a two man board consisting of the president of the city or town board of school trustees and the township trustee, and in case of a tie vote that the matter be settled by a vote of the county superintendent of schools, I am of the opinion your specific questions should be answered as follows: Your question No. 1 is answered in the negative; your question No. 2 is answered in the negative; as to the third question the trustee of the school town could not recover from the township school corporation, the moneys advanced to pay the teacher’s salary. The board of school trustees of the town acted beyond the scope of their authority in employing such teacher under such circumstances and the legal effect of such act is that such contract is void, however, from a practical standpoint it is very questionable that a court would order the teacher to refund such salary where employment was so made, such salary paid, and the services full rendered by the teacher under such circumstances.

OFFICIAL OPINION NO. 58
September 19, 1950.

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

Dear Sir:

I have your communication of September 7 instance, the body of which is as follows:

“'A question has been presented to this department by a county auditor regarding his authority to publish legal notices effecting county business.