OFFICIAL OPINION NO. 22

March 10, 1948.

Hon. Ben H. Watt,
State Superintendent,
Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Watt:

Your letter of February 25, 1948, has been received requesting an official opinion on the following questions:

"1. Can the County Board of Education lower the salary of the County Superintendent of Schools?

"2. and 3. Craig School Township and Jefferson School Township of Switzerland County, Indiana, have just completed consolidation proceedings under Chapter 123 of the Acts of 1947, effective under the law August 1, 1948.

"After August 1, may these townships under Chapter 261 of the Acts of 1947 bond the Civil Township 2%?

"Between now and August 1 may these two townships bond the Civil Township 2% under Acts 261 of 1947?"

1. In answering your first question, it is necessary to call your attention to a number of statutes effecting my decision in the matter. The general salary of the county superintendent of schools is fixed in each enumerated county by Section 49-1004 Burns' 1933, same being Section 4, Chapter 21, Acts of 1933.

Under Section 49-1014 Burns' 1945 Supplement, same being Section 14, Chapter 21, Acts of 1933, as amended by Section 1, Chapter 96, Acts of 1939, it is provided:
"The salary of the county superintendent, as herein stipulated, may be increased by a majority of the township trustees to an amount which, in the judgment of a majority of the township trustees, may seem proper, and the county council shall appropriate and the board of county commissioners shall allow the necessary funds to pay such increase in the salary of the county superintendent."

The last referred to section of the statute was the subject of an opinion by the Supreme Court of Indiana in the case of Benton County Council v. State (1946), 224 Ind. 114, 65 N. E. (2d) 116. There the court was called upon to determine the validity of an increase in the salary of a county superintendent of schools, during his term, under the provisions of the Indiana Constitution prohibiting the increase in salary of a public officer during his term of office. The court held the salary of said county superintendent of schools was fixed "pursuant to law" by the county board of education, rather than "by law," and that such increase was not violative of such constitutional provision. On page 121 of the opinion the court further held:

"It will be noted that our statutes have provided a limitation upon the township trustees as to whom they can employ as a county superintendent. Section 28-701 Burns' 1933 (Supp.). Under this statute to be eligible to hold this office one must have had five years experience as a teacher in the public school and be the holder of a first or second grade superintendent's license. The statute under consideration also provides that his salary may be increased to an amount which in the judgment of the majority of the township trustees may seem proper. It is our opinion that this provision of the statute means the same as if it had said that the trustees should fix a salary which is reasonable and is analogous to legislation regulating public utilities which often provides that rates and charges fixed by administrative boards shall be reasonable. As was said in Kryder v. State, supra, 'Legislation of this character is sustained upon the theory that it is proper for the legislature to delegate to such
boards and officers the function to determine what is or what is not reasonable under the particular facts."

It is clear from the foregoing that the authority for paying any sum of money in excess of the original amount of salary for such officer provided by Section 49-1004 Burns' 1933, supra, is vested in the county board of education. It, therefore, remains, among other things, to determine if the power of such an administrative board to fix such salary, or to increase the same, authorizes such board to decrease such salary, and to what extent such decrease may be ordered.

In the case of State ex rel. Wadsworth v. Wright (1937), 211 Ind. 41, the court was called upon to determine the validity of the act of the legislature separating a judicial circuit into two circuits which thereby deprived the prosecuting attorney of such original circuit of the benefits of certain fees which would ordinarily accrue to him due to his holding such office. In answering the contention of such prosecuting attorney "that such a decrease in salary would violate the federal and state constitution, he being a constitutional officer," the court held on page 43 of the opinion that there is no provision of the Federal Constitution protecting one in his rights to the emoluments of a public office; and on page 45 of the opinion pointed out that Section 13, Article 7 of the Constitution of Indiana merely protects judges of the supreme and circuit courts against a diminution of their salary during their continuance in office. On pages 44 to 46 of the opinion the court held such a reduction in salary of such prosecutor could be made by the legislature as long as it did not in fact set a salary which was so negligible as to amount to an abolition of such constitutional office. To a like effect see the case of Board of Commissioners of the County of Perry v. Lindeman (1905), 165 Ind. 186, 191.

As to whether such authority to decrease a salary may be exercised by an administrative board, attention is called to the case of Board of Commissioners of Allen County v. Chapman (1899), 22 Ind. App. 60, where the court upheld the action of the County Board of Commissioners in decreasing the salary of the township assessor. While in that case the court in its conclusion specifically points out it was not called upon to determine whether such decrease could have been made in the middle of the year (since there the salary was
fixed yearly), what the decision of the court in that respect would have been had it been called upon to make such decision is clearly indicated by the number of authorities from other states, cited and quoted by the court on pages 63 to 65 of the opinion, which cases hold such authority by an administrative board to decrease such salary, except where prohibited by the constitution, could be exercised at any time.

It only remains to be seen what is the minimum salary prescribed for the office of county superintendent of schools. Since the enactment of Section 49-1004 Burns' 1933, supra, fixing a statutory salary for such office in each specified county of the State, the legislature has passed many other acts dealing with the qualifications of such office and the salary of teachers meeting such qualifications. This is referred to in the quoted part of the case of Benton County Council, supra. As there pointed out Section 28-701 Burns' 1945 Supp., same being Section 1, Chapter 258, Acts 1935, provides before anyone shall be eligible to hold such office of county superintendent of schools, he shall have had five years successful experience as a teacher in the public schools and must hold at the time of his election a first or second grade superintendent's license. Chapter 156 of the Acts of 1945, same being Section 28-801, Burns' 1945 Supp. makes such officer a "supervisor of instruction and as such eligible, subject to the rules that have been or shall be adopted by the State Board of Education, to qualify for teaching units in accordance with the terms of Chapter 263 of the Acts of 1943." It is equally clear that any such teacher possessing such qualifications is required to be paid the minimum salary prescribed by Chapter 358 of the Acts of 1947, which salary is dependent upon the years of professional training possessed by such individual all as specifically provided for in said act.

There is some authority that an officer's salary cannot be changed during the term where it is fixed as an annual salary. However, I do not believe the court in the case of Benton County Council v. State, supra, followed such authorities in ruling that such salary of said county superintendent of schools could be increased during the annual period.

Therefore, in answer to your first question, I am of the opinion the County Board of Education may at any time during the term of a County Superintendent of Schools decrease his salary to a sum equal with, but not less than, the
salary provided for such person under Chapter 358 of the Acts of 1947, being the minimum teachers' salary law. That the minimum salary in each case is to be computed on the basis of the professional training possessed by said individual.

2. In answer to your second question, I wish to advise that Chapter 123 of the Acts of 1947, under Section 1, provides as follows:

"The school trustees, of any two or more school corporations, whether towns, cities, or townships situated in the same or adjoining counties are hereby authorized and empowered to consolidate the elementary schools or the high schools, or both, of such corporations or to furnish consolidated school facilities for the children of school ages of such school corporations in the manner and upon the conditions hereinafter prescribed in this act."

Section 2 of said act provides in part as follows:

"Whenever the school trustees of any two or more school corporations, whether towns, cities or townships, situated in the same or adjoining counties, desire to consolidate the elementary schools or high schools, or both, of their respective corporations, or to furnish consolidated school facilities for the children of school age of such corporations, they may meet together with the township advisory board, or boards, if one or more townships so desire, and adopt a joint resolution declaring their intention to consolidate such school city or cities, town or towns and township or townships. * * *"

Under Section 7 of Chapter 123 of the Acts of 1947, it is provided that when any such consolidation of such two or more school corporations has been fully effected, such school townships, etc., effecting such consolidation shall be deemed abandoned and merged in such new consolidated school corporation.

Section 5 of said act provides that on such consolidation, which would be the first of August next succeeding such election to consolidate, such consolidated schools shall be
under the control and management of the board of trustees authorized by Section 3 of said act.

Section 8 of Chapter 123 of the Acts of 1947, provides that the school board of such consolidated school is vested with all the powers vested in school boards of towns and cities of their class under the laws of the State and that taxes are to be collected as a single taxing unit for that territory served by said consolidated school corporation. (See 1947 Ind. O.A.G., page 204, Official Opinion No. 41.) Under section 9 of said acts bonds may be issued by said consolidated school corporation against the taxable property of said new corporation.

From the foregoing, it is clear that where two townships consolidate under Chapter 123 of the Acts of 1947, the school corporation formerly existing in each of the respective townships are no longer in existence, and one consolidated corporation, under the direction and control of the board of trustees, is created.

In 1946 Ind. O.A.G. page 65, Official Opinion No. 21, it was held Article 13, Section 1 of the Constitution of Indiana did not prevent a school township being bonded up to 2% of the value of taxable property within such corporation, and the civil township bonded up to 2% of such value of taxable property, for school building purposes, providing the legislature has provided for the creation of such an obligation on behalf of the civil township.

Chapter 261 of the Acts of 1947, under Section 1, thereof, provides in part as follows:

"Whenever fifty-one per cent (51%) or more of the owners of taxable real estate in any township shall file a petition with the township trustee requesting the issuance of bonds of the civil township for such purpose, the township trustee, with the concurrence of the advisory board of such township, shall be authorized and empowered to construct and equip a building or room, or rooms, in which to instruct students of such township in the arts of agriculture, domestic science, or physical or practical mental culture, and in which to hold school or township entertainments, or to be used for general educational or school purposes, or to be used for other township pur-
poses. Such facilities may consist of a separate building or an addition to an existing school building or a school building to be constructed, or a room or rooms in an existing school building may be remodelled and adapted to such purpose, as may best suit the needs of such township. * * *

Section 2 of Chapter 261 of the Acts of 1947, provides for the issuance of bonds of such civil township for such building purposes, and Section 3 of said act provides that the maintenance of such building may be either by the school township corporation or the civil township corporation.

Statutes must be construed in their plain and ordinary meaning unless a contrary purpose clearly appears.

See Section 1-201 Burns' 1933;
Garvin v. Chadwick Realty Co. (1937), 212 Ind. 499, 506.

A careful examination of the provisions of Chapter 261 of the Acts of 1947 reveals the legislature was confining its legislation to the granting of authority to issue bonds of the civil township for the construction of buildings in that township, for the use of that township for educational and recreational purposes, and did not authorize or intend the same to apply to consolidated township school corporations whose territorial jurisdictions comprise two or more townships.

In answer to your second question, I am, therefore, of the opinion two townships who have consolidated under Chapter 123 of the Acts of 1947, cannot after August 1, 1948, being the effective date of such consolidation, bond the civil township up to 2% for school building purposes.

The above answer is given on the assumption such a consolidation is made of both the elementary schools and the high schools of such townships. In this connection, it is pointed out Section 2 of Chapter 123 of the Acts of 1947, makes it permissible to consolidate either the elementary schools, or the high schools, or both. Regardless, of what schools were consolidated under Chapter 123, the school corporation could not issue civil bonds of the townships under Chapter 261 of the Acts of 1947 for building purposes, but if only the grade schools or elementary schools were
consolidated, ample authority is afforded for such issuance of civil township bonds for building purposes under the provisions of Chapter 211 of the Acts of 1947.

3. Since under the provisions of Section 5 of Chapter 123 of the Acts of 1947, such consolidation of such schools is not complete until the first day of August next succeeding such election to consolidate, it is clear the present school townships continue to operate their respective township schools under their present officers. This might seem to indicate that in the interim between now and August 1st, such proceedings might be had to effect an issuance of bonds of both the school corporation and civil corporations of each of said respective townships, for the purpose of raising money for the building of a building for school and educational purposes under the provisions of Chapter 261 of the Acts of 1947.

However, I am of the opinion such procedure would not be available as Chapter 261 of the Acts of 1947, as previously indicated, contemplates the erection of a building in the township, and for the township, and does not contemplate the erection of one building at some place in the area of a consolidated school corporation consisting of several townships.

OFFICIAL OPINION NO. 23

March 11, 1948.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
Room 304 State House,
Indianapolis, Indiana.

Dear Mr. Ruston:

Your letter has been received in which you state that in some instances premiums charged by insurance carriers for workmen’s compensation insurance have been computed on pay rolls which include the compensation of school bus drivers. You desire an official opinion on the following questions:

"1. Are school bus drivers who serve pursuant to employment contemplated in Chapter 210, Acts of