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
1945, to be considered as employees under the workmen's compensation laws

“(a) when serving by virtue of a contract entered into by negotiation?

“(b) when serving by virtue of a contract entered into pursuant to open competitive bidding?

“(c) when temporarily serving to fill a vacancy for the remainder of a school year as contemplated in Section 3 of the act?

“2. Would partial or entire ownership of the equipment by the driver affect his status in relation to this matter?”

The School Bus Act of 1945, same being Chapter 210 of the Acts of 1945, is Section 28-3930 et seq. Burns' 1945 Supp., Section 1 of said act reading as follows:

“Pursuant to due notice and advertising as heretofore provided the trustee of any school township of this State, with the advice of the advisory board of such township, shall procure the services of the necessary number of school-bus drivers for his township and shall negotiate and enter into written contracts with such school-bus drivers upon the most advantageous terms to such township for the services to be rendered by such driver or drivers: Provided, however, that in negotiating such contracts due consideration shall be given previous exemplary services of any applicant for a bus-driver's contract; Provided, That the trustee of any school township is hereby granted authority to determine when the free flow of necessary school-bus equipment becomes such as to permit free and open competitive bidding, such trustee, with the advice of his advisory board, may proceed to let the necessary number of contracts by advertising for, and receiving sealed bids. Whenever sealed bids are received the trustee, with the advice of his advisory board, shall award each contract so made to the lowest and best responsible bidder.”
Section 2 of said act, same being Section 28-3931 Burns' 1945 Supp. is as follows:

"At least fifteen (15) days prior to the advertised date for the beginning of the negotiations of such school-bus contracts the trustee shall have prepared and on file in his office a written description of the route or routes to be negotiated. Said description shall give the approximate number of pupils to be hauled, the approximate number of miles to be traveled per round trip per day, the type of equipment, if any, required to be furnished by the school-bus driver, and any other relevant and necessary information to advise bus-driver applicants of the terms and conditions of such proposed contracts. Such written specifications shall be kept in the office of the trustee and a duplicate copy thereof shall be filed in the office of the county superintendent of schools. Such specifications shall be open to public inspection. The trustee shall give ten (10) days prior notice of the date for the beginning of such proposed negotiations for school-bus driver contracts by posting notice in at least three (3) public places within such township and by one (1) publication of such proposed negotiations in each of two (2) newspapers of opposite political faith and of general circulation printed and published within such township, if there be such papers published therein, otherwise in any two (2) newspapers published within the county. Such public notice shall convey the information that the trustee, with the advice of the advisory board of his township, is prepared to negotiate and execute contracts for the several bus routes of said township and that the specifications for the several routes and information relative thereto are on file in the trustee's office. Such specifications shall further require that the person to whom any school-bus driver contract may be awarded shall be required to carry public liability and property damage insurance in a company authorized to do business in the State of Indiana in such amounts as the trustee may deem necessary to afford reasonably adequate protection in the operation of the respective busses involved. The
advertised date for the beginning of such proposed negotiations shall not be more than ten (10) days after the close of the school term in any such school township. Such negotiations shall continue from day to day, but in no case to exceed forty-five (45) days, until the trustee, with the advice of the advisory board of his township, has executed the required number of contracts as set out in the advertising required in this section.”

Section 3 of said act, same being Section 28-3932 Burns’ 1945 Supp. provides:

“Any school-bus driver with whom the trustee, with the advice of the advisory board, shall enter into a contract shall be required to give a surety bond in a reasonable sum as specified by the trustee, such bond conditioned on the faithful performance of the full term of said contract. Such school-bus driver contract shall provide that the trustee may, at any time, alter and/or extend the given route. In the event a given route as changed, altered and/or extended is longer than the route covered by the original contract, the bus-driver of said route shall be paid as additional compensation for each mile or major fraction thereof in excess of the mileage of the originally contracted route a sum equal to the average rate per mile for the route as provided in the original contract. Said contract shall further provide that the school-bus driver shall neither sell nor assign his contract to any other person nor substitute any other person as driver except in case of sickness or death in his family, and in no case except with the approval of the trustee. Any school-bus driver may be dismissed for incompetency, negligence, failure to faithfully perform his duties, or for any other just cause. Any vacancy which occurs during any school term shall temporarily be filled for the remainder of said school term by the trustee with the advice of the advisory board. Upon the close of the school term the trustee, with the advice of the advisory board, shall proceed by advertising and negotiation in the manner as provided in the ex-
execution of the original contract to negotiate a contract which shall terminate at the same time as provided in the driver contract where the vacancy occurred.”

Section 4 of said act, same being Section 28-3933 Burns’ 1945 Supp. provides for payment of such drivers on a per diem basis based on the length of the school term and Section 5 of said act, same being Section 28-3934 Burns’ 1945 Supp. provides that the term of such contract shall be for either two or four years, except contracts to fill vacancies.

In addition to the foregoing, school-bus operators are required to comply with the State safety regulations provided by Section 47-2132 Burns’ 1940 Repl., as well as other statutes enacted in the interest of safety and governing the type of equipment used and the manner of operation thereof: There is no definition of the words “independent contractor” in the Workmen’s Compensation Act. The definition of the word “employee” is found in Section 40-1701 Burns’ 1940 Repl., same being Section 1, Chapter 243, Acts of 1933, which reads in part as follows:

“(b) The term ‘employee,’ as used in this act, shall be construed to include every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer. * * *”

The Indiana Supreme Court has held the above language exempts an independent contractor from the provisions of the Workmen’s Compensation Law.

Meek v. Julian (1941), 219 Ind. 83, 85;
Columbia School Supply Co. v. Lewis (1916), 63 Ind. App. 386.

In the case of Gibbons v. Hanks (1940), 108 Ind. App. 481, 484, the court held the general rule is that where an agreement provides for a result to be accomplished by the employee and leaves to the employee the means and methods by which the result is to be accomplished, then that is the relationship
of an employer and contractor, and not that of master and servant.

The court further held that in doubtful cases such matters are resolved by the Board in favor of the employee.

As far as I can determine there is no decision in this State as to whether or not a school-bus operator is an employee or an independent contractor. However, considerable information is gained by a review of the only four cases from foreign jurisdictions that I know of squarely touching on this question.

In the case of Arthur v. Marble Rock Consolidated School District (1929), 209 Iowa 280, 66 A.L.R. 718, the court has required to determine if the school-bus driver's survivors were entitled to workmen's compensation benefits for injuries and resulting death sustained in the performance of his duties as such driver. While the Iowa statute is somewhat different than the Indiana law in that under the Iowa statute the school-bus driver may at his option substitute a driver in his stead, and is not permitted to do so under the Indiana law except in rare instances, and under the Iowa statute certain additional things must be furnished for the comfort of the children, in the main the two statutes, according to the wording of the opinion do not seem to be materially different. In reaching its conclusion on page 723 and 724 of the opinion the court said:

"An argument is made by appellee upon the theory that the contract required when and where the pupils were to be taken to and from school, that the driver must refrain from the use of profane language and tobacco, avoid fast driving and racing, stop before crossing railroad tracks, make proper outlook at such place, keep order among the pupils and report improper conduct. We said in Pace v. Appanoose County, 184 Iowa 498, reading on page 509, 168 N. W. 919, 17 N. C. C. A. 682, supra: 'The mere fact that the owner may have an overseer or architect to see that the work complies with the contract or that the work is to be to the owner's satisfaction does not change the character of the contract, if it meets the test stated.' Manifestly, a building contractor constructs according to the plans and specifications, and within the time
allotted therefor. Yet he may be an independent contractor. So, in the case at bar, Harry Arthur signed a contract, the very purpose of which was to transport children according to the methods and rules stated. Like the building contractor, Mr. Arthur performed according to 'plans and specifications.' Said rules and regulations were a part of the contract. But when meeting such specifications, Harry Arthur was an independent contractor transporting the children to and from school. There is a difference, on the one hand, between performing a contract embodying certain conditions, and, on the other, rendering services under the supervision, control, and regulation of someone else. See Pace v. Appanoose County, 184 Iowa 498, 168 N. W. 916, 17 N.C.C.A. 682, supra. Had Mr. Arthur operated his school bus in such a negligent way as to collide with another vehicle and injure an occupant thereof, the school district would not have been responsible therefor, because the claimant's intestate was not its servant, agent, or employee.

"While it is true, as urged by appellee, the school district furnished the body for the vehicle and reserved the right 'to make changes in the regulations' and 'terminate the contract at any time,' nevertheless those elements in the contract do not constitute the school district as the carrier and Harry Arthur its mere employee. Although those elements of the agreement are important in the consideration before us, yet they are outweighed and overcome by other more prominent conditions and provisions. Basis is found in the Code for those stipulations contained in the contract regarding supervision, and therefore, under the circumstances, such regulations amount to governmental control rather than the mere exercise of authority by a master over a servant. Analogous instances of governmental regulation of independent contractors may be found in national, state, and municipal control of steam railways, and in state and municipal supervision over the operation of street railways, motorbus carriers, taxicabs, etc. A careful analysis of the contract aforesaid plainly reveals the fact that the school district itself did not make the
conveyance. Rather than so doing, the school district purchased transportation for the children from Harry Arthur."

A similar finding was made in the case of Ex parte Board of School Commissioners of Mobile County (1937), 235 Ala. 82, 178 So. 63, where the court was required to determine if income due a school-bus driver was subject to garnishment proceedings as an "employee." The court reviews the Alabama statute and particularly comments upon the fact that the driver is required to give bond and is required to be protected by an insurance contract taken out by the board; the bus chassis is owned by the driver and the school bus body is owned by the school board; there are numerous requirements as to sanitation and the condition of a school bus; the carrying capacity was regulated by statute and was subject to periodical inspections by inspectors of the school board, and repairs were required due to such inspection. In reaching its conclusion that such bus drivers were independent contractors the court on pages 65 and 66 said:

"9. Supervision of this character designed to see that the specific work is done in compliance with the contract does not prevent the relation of independent contractor. Construction contracts, and many forms of transportation contracts furnish constant examples of such supervision over independent contractors. U. S. Cast Iron Pipe & Foundry Co. v. Fuller, 212 Ala. 177, 102 So. 25; U. S. Cast Iron Pipe & Foundry Co. v. Caldwell, et al., 208 Ala. 260, 94 So. 540; Looker v. Gulf Coast Fair, 203 Ala. 42, 81 So. 832; Casement v. Brown, 148 U. S. 615, 13 S. Ct. 672, 37 L. Ed. 582; 39 C. J. pp. 1316 to 1319, Sec. 1518; Id. Sec. 1521, pp. 1219 to 1321.

"10. The board has the authority to provide for increased transportation as needed, or to decrease and discontinue, if conditions require. This goes merely to the subject matter of the contract, and in no way affects the issue here. 39 C. J., p. 1321.

"The duration of the contract was five years, with provisions for rescission in case of breach of contract
on the part of the contractor. Payment was so much per month.

"11-13. The power to rescind and terminate a contract for nonperformance of stipulated obligations continuous in character is not the same as the power to discharge at will. The power to discharge in terms may often be considered in aid of construction, but is not sufficient to determine the relation. The same applies to manner of payment. The true test is control by the master over the manner and means of performance. 39 C. J. p. 1322 Sec. 1525; Id. p. 1521; Sec. 1523; Harris v. McNamara, 97 Ala. 181, 12 So. 103; Martin v. Republic Steel Co., 226 Ala. 209, 146 So. 276; Porter v. Tennessee C., I. & Ry. Co. 177 Ala. 406, 412, 59 So. 255; Birmingham Post Co. v. Sturgeon, 227 Ala. 162, 149 So. 74."

The only cases I find to the contrary are the cases of:

Ridgdell v. Tangipahoa Parish School Board (1944), — La. —, 17 So. (2d) 55;

and

Smith v. Tangipahoa Parish School Board (1945), — La. —, 21 So. (2d) 77,

each of which hold such bus drivers to be employees and under the Workmen's Compensation Act, but each case makes such holding upon a statement that the employer maintains supervision over the driver and directed the manner in which he was to perform his duties, without pointing out in detail what such supervision consisted of.

From the foregoing authorities, in view of the provisions of the Indiana Workmen's Compensation Act and the provisions of the Indiana School Bus Act, I am of the opinion such school-bus driver is an independent contractor and not an employee, and that the school corporation by virtue of the numerous provisions of the required contract of employment necessarily requires that such duties be performed in compliance therewith, and in compliance with the other safety statutes, that such contract in fact looks merely to the specified completion of the job of transporting children rather than a detailed supervision and control of such school-bus operator.
1. In answer to your first question, since there is no difference in the type of contract whether entered into by negotiations or by competitive bidding, I am of the opinion your questions under clause (a) and (b) should be answered by saying that such school-bus driver is an independent contractor. As to clause (c) of said first question, I am also of the opinion he is an independent contractor as there seems to be no distinction in the manner of carrying out the contract of one appointed to fill a vacancy under Section 3 of the Act than is required of one receiving the same by competitive bidding or negotiations, except in the manner of proceedings necessary to enter into the execution of such a contract.

2. From the foregoing cases, it is clear the courts made no distinction in such cases on the grounds the school-bus was partly supplied by the school board and partly by the operator. As was said by the court in the Ridgdell v. Tangipahoa Parish School Board, supra, at page 38 of the opinion, the controlling question is the question of supervision and direction by the employer rather than if the employee uses his own truck or tools in the performance of such duties. Since the Indiana statute (Section 38-3931 Burns’ 1945 Supp.) supra, in connection with the requirement of advertising for such bids requires the specifications prepared by the school authorities to contain the information as to “the type of equipment, if any, required to be furnished by the school-bus driver applicants.” This theory contemplates that the school bus could be owned by the school corporation, by the driver, or part by the school corporation and part by the driver, yet the same contractual status of the parties would prevail.

I am, therefore, of the opinion in answer to your question No. 2 that the ownership of the equipment would not effect the status of such school-bus driver being an independent contractor.