OFFICIAL OPINION NO. 26

March 16, 1948.

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

Dear Mr. Watt:

Your letter of March 2, 1948, has been received in which you request an official opinion on the following question:

“Patriot School Town and Posey School Township have previously (1919) consolidated under the 1917 Acts, Chapter 148. Now the Patriot-Posey School Corporation and the York School Township has just completed the legal steps under Chapter 123 of the Indiana Legislative Acts of 1947 for consolidation, effective August 1, 1948.

“Is this consolidation valid under said Act, Chapter 123 of 1947?”

Section 1 of Chapter 123 of the Acts of 1947 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 herein-after prescribed in this act.”

Section 2 of said act provides in part:

“Whensoever 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 de-
claring their intention to consolidate such school city
or cities, town or towns and township or townships.

* * *

Section 6 of said act provides for a board of trustees to
be composed of from three to seven members as determined
by the provisions of the resolution adopted when such con-
solidated plan was voted upon; Section 7 provides on such
consolidation that the old school corporation is deemed aban-
donned and all property of such old school corporations are
merged in the new consolidated school corporation, and all
indebtedness of said old school corporations are assumed by
said new school corporation; Section 8 provides that the
board of trustees of such consolidated school is vested with
all the powers and duties pertaining to school corporations
of their class and that the assessment of taxes for operating
the schools and bonds for the building of school buildings,
shall be made as a single taxing unit throughout the bound-
aries of such new consolidated school corporation.

Chapter 123 of the Acts of 1947 was the subject of an
opinion of this office, same being 1947 Ind. O.A.G., Official
Opinion No. 41, where it held said statute creates a new con-
solidated school corporation, with the status of a city school,
and that the old corporations merging therein are no longer
in existence.

Under the authority of the case of Ehle, Trustee v. State
of Indian, ex rel. Wissler, et al. (1922), 191 Ind. 502, here-
after quoted, it is shown that the policy of the legislature
as to the enactment of statutes regarding the establishment
of the common school system is exclusively for the General
Assembly and that such laws are to be construed so as to
carry out such evident policy as expressed in such statutes.

It is the policy of the courts to construe the words in a
statute in their plain, ordinary and usual meaning unless a
contrary purpose clearly appears.

Section 1-201 Burns' 1933:
Dreves v. Oslo School Township (1940), 217
Ind. 388, 397.
When the foregoing statute is construed in the light of the aforesaid authorities it is at once apparent the legislature authorized the consolidation of "any two or more school corporations, whether towns, cities or townships, situated in the same or adjoining counties." (Our emphasis.) It makes no reference to any other type of school corporation such as a consolidated school in which the identity of the towns, cities or townships are lost or merged into a new consolidated school corporation. Authority for consolidation under said act is therefore given only to school town, school city, and school township corporations. It, therefore, remains to be determined whether or not the act under which the Patriot School Town and Posey School Township were consolidated thereby created a new consolidated school corporation, separate and distinct from the school town corporation and school township corporation existing prior to such consolidation. You advise me this consolidation was made under Chapter 148 of the Acts of 1917, same being Section 28-1220 et seq. Burns' 1933. That statute was fully considered by the Supreme Court of Indiana in the case of Ehle, Trustee v. State of Indiana, ex rel. Wissler, et al. (1922), 191 Ind. 502, supra, where the court on page 504 of the opinion said:

"The title to the application in this case designates the 'Consolidated School District of the school town of Cambridge City, Indiana and Jackson School Township of Wayne County, Indiana' as a relator, which would be proper if consolidated schools, under the 1917 act is to be regarded as a separate entity comprising both school corporations as a separate and independent school district. Our conclusion on the merits of this case is to the effect that the authority 'for the consolidation of schools'—see title of act—does not make such organization a corporate body, which may maintain or which may be joined as a necessary or proper party in mandamus proceedings."

On pages 508 and 509 of the opinion the court continued:

"It will serve no good purpose for us to enter into a discussion of the history of school legislation in this state, of which the 1917 act, supra, is a part. It is sufficient to say that such act, in the wisdom of the
general assembly, was an addition to our common schools system, or additional ‘suitable means’ concerning intellectual improvement. At this point we may say, that the policy of such legislation is exclusively for the general assembly.

“The act, supra, permits school corporations to consolidate their schools. That is to say, they may consolidate their primary schools only, or high schools only, or they may consolidate both. In either case provision is made for their control, management, and maintenance. 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. Each being represented on the consolidated school board, each required to pay the cost of transporting its own pupils to the consolidated school, and each separately to control, manage and maintain its schools not consolidated. The act apportions the cost of maintaining consolidated schools ‘in proportion to the number of children of school age enumerated in each corporation.’ While such cost is determined and the tax levy to meet it is made by the consolidated school board, yet the burden of producing the required revenue thus apportioned falls uniformly upon the taxable property of each corporation entering into the authorized school plan. In other words, in theory and in practice, each school corporation, to the extent that it enters into such plan, is taxed only to meet the cost of educating its own children of school age, and is not in opposition to the rule that taxes apportioned to a taxing district must be borne ratably by those constituting the public of that district.”

On pages 509 and 510 of the opinion the court further said:

“From the general tenor of the act before us we are convinced that the general assembly did not intend thereby to disturb the then existing school corporations other than to grant them additional power in the organization of their schools supported by revenue
apportioned to the individual corporations. While courts are not to be misled, as to their duty, by legislative pretenses, yet, legislative intention may be consulted for the purpose of determining the true purpose and effect of challenged legislation."

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. I am, therefore, of the opinion Patriot School Town and Posey School Township, each still retain such identities as school corporations that they may now legally consolidate with York School Township under and pursuant to the provisions and requirements of Chapter 123 of the Acts of 1947. Any such consolidation must be effected by the three separate school corporations.

OFFICIAL OPINION NO. 27

March 17, 1948.

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

Dear Mr. Ruston:

I have your letter stating certain questions concerning the expenses of the county commissioners and county attorney of Allen County incurred during trips for the purpose of inspecting various war memorial buildings. The questions you submitted are as follows:

"(1) Can the members of the board of county commissioners of Allen County and/or the county attorney of Allen County and/or the architect employed by the board of county commissioners of Allen