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
County claim and collect their *actual* expenses in inspecting war memorials in the middle west outside of the state of Indiana?

“(2) If your answer to question No. 1 is in the negative, can such members of the board of county commissioners and/or the county attorney and/or the architect collect *actual* expenses for inspecting war memorials within the state of Indiana?

“(3) If your answer to question No. 1 is in the negative as far as collecting *actual* expenses while inspecting war memorials in cities outside the state of Indiana was concerned, might such commissioners collect mileage at the rate of 6c per mile for the miles necessarily traveled while inspecting such war memorials outside the state of Indiana as provided in Section 49-1013, Burns' 1933?

“(4) If your answer to question No. 3 is in the negative, might such commissioners collect mileage at the rate of 6c per mile for the miles necessarily traveled while inspecting war memorials within the state of Indiana?

“(5) If the members of the board of commissioners of Allen County were only permitted to collect expenses on the basis of 6c per mile for the miles necessarily traveled, could the county attorney and/or the architect employed by such board of commissioners charge and collect their actual expenses?”

The actions of the county commissioners in this instance were alleged to be taken pursuant to statutes relating to the erection of county war memorials. Chapter 245 of the Acts of 1921 (Burns' 1933, Section 49-401 et seq.) generally provides for the erection of county war memorials.

Section 6 of this act (Burns' 1933, Section 59-406) was amended by Chapter 207 of the Acts of 1947. Section 6 specifically provided for the procuring of designs, plans and specifications whenever the board of county commissioners of any county desired to establish a war memorial under this act. The amendment in 1947 made only one material change in the procedure to be followed. The original act provided for
a contest to insure competition among architects submitting plans for a structure and authorized the county to offer premiums for the best and second best designs and plans submitted. All provisions for such contest were deleted by the amendment in 1947. Also, it is to be noted that the county commissioners had the same power to employ engineers and architects and other personnel necessary to aid them in selecting the best design under the provisions of the original act as they have under the amendment. It is to be noted further that no specific additional work is placed upon the board of commissioners by the amendment and any authority to do any act to aid them in selecting an appropriate design which they could not have done under the original act will have to be implied from the fact that there is no longer any provision for the holding of a contest and the offering of prizes.

It is quite well settled in our State that the boards of county commissioners are creatures of statute and that they can exercise only the powers that are expressly conferred by statute or that arise by necessary implication from those expressed powers. Board of Commissioners of Vanderburgh County v. Sanders (1940), 218 Ind. 43; Sullivan v. Board of Commissioners (1925), 85 Ind. App. 287.

Thus, in deciding whether or not the board of commissioners in this instance had the necessary authority to proceed as they did, we must look to the statutes conferring general powers and particularly to the powers conferred by the County War Memorial Act.

Section 18 of Chapter 245 of the Acts of 1921 (Burns’ 1933, Section 59-418) confers upon the board of county commissioners the specific power in the establishment and maintenance of county war memorials that “is conferred upon the board of trustees of the Indiana War Memorial as set forth in the Act of 1920 pertaining to the Indiana War Memorial.” The powers of the commissioners would be the same as those exercised by the above mentioned trustees when not inconsistent with this act, with the specific exception that they are prohibited from employing a secretary.

Section 6 of Chapter 50 of the Acts of 1920 (Burns’ 1933, Section 59-207) sets forth the powers of the Board of Trustees of the Indiana War Memorial. It should be noted in this regard that sub-section 6 of the above section provides for the advertisement of and the holding of a contest and the
awarding of prizes to architects submitting the best designs. This particular provision in the powers would undoubtedly be superseded by the provisions of the 1947 amendment as above stated in so far as it applies to counties. Also, it should be noted that sub-section 5 of this section provides the power “to appoint and employ a secretary, architects, artists, engineers, attorneys, clerks, guards, laborers and all employees the board may deem expedient and to prescribe and define their respective duties and powers and to fix and regulate the compensation to be paid to the several persons so employed.” This provision in the enumeration of powers is much more comprehensive than the provisions in Section 6 of the County War Memorial Act as amended in 1947 as far as the employment of personnel is concerned. Thus, I do not believe that the amendment in 1947 created or added any additional powers that were not present in the original act.

In general the powers and duties of county commissioners in their respective counties are found in Burns’ 1933, Section 26-620 Pocket Supplement, same being Section 1 of Chapter 7 of the Acts of 1935.

Upon careful study of the general powers of county commissioners as set forth in this section as well as the specific powers mentioned above in connection with war memorials, I fail to find any express authority for the county commissioners visiting any war memorial anywhere in order that they might be better informed or be in any better position to select and adopt any design for war memorial buildings.

If it could be implied from these provisions that it would be necessary or proper for the commissioners to so inspect other memorials the question then is presented as to how and in what manner they should receive any compensation or expenses for such inspection trips. In this respect it is quite well established that county officers can receive only such compensation as the law provides and that before any allowance is made the officer must point to the particular statute authorizing the same. Board of Commissioners v. Johnson (1890), 127 Ind. 238; Applegate v. State, ex rel. Pettijohn (1933), 205 Ind. 122.

It was stated in the case of Board of Commissioners of Carroll County v. Gresham (1884), 101 Ind. 53, that services imposed by law upon officers are presumed to be rendered or performed gratuitously unless it is shown that:
1. There is a statute fixing compensation for the service and,
2. There is a law authorizing or making the county liable to pay for such service out of its treasury.

See also Waymire v. Powell (1885), 105 Ind. 328.

The salary for the Commissioners of Allen County is set forth in Burns' 1933, Section 49-1004, same being Section 4 of Chapter 21 of the Acts of 1933. This section provides:

"In each of the counties of the State of Indiana, the annual salaries of officials hereinafter named shall be as follows:

"* * *

"Allen County: * * * county commissioner, nineteen hundred twenty dollars ($1,920.)"

This salary provision was supplemented by Section 1 of Chapter 238 of the Acts of 1945 (Burns' 1933, Section 49-1004c Pocket Supplement). This supplemental act does not become effective until January 1, 1949. However, Section 1a of this same supplemental act (Burns' 1933, Section 49-1004d Pocket Supplement) is effective and specifically provides for additional compensation for the additional duties imposed upon county commissioners by reason of defense plants and other war projects being located in Indiana.

The only other provision for any compensation, fees, or expenses is found in Section 13, Chapter 21 of the Acts of 1933 (Burns' 1933, Section 49-1013) which provides for mileage. This provision reads as follows:

"County commissioners, in addition to the salary herein provided, shall each be entitled to six cents (6c) per mile for the miles necessarily traveled in the conduct of the business of their respective counties: Provided, That the county does not furnish the means of transportation; and Provided, further, That not more than one (1) mileage shall be charged for one (1) conveyance although transporting more than one (1) person, and no mileage to be paid on trips between the home of the commissioner and the court-house. No
warrant will be drawn to any-commissioner in payment of mileage until an itemized claim has been filed showing the trips made and the mileage per trip.” (Our emphasis.)

The main restriction in the above quoted section is that the miles traveled should be “necessarily traveled in the conduct of the business of their respective counties.” I have not found any restriction on the traveling of county commissioners as far as territorial limits are concerned. Thus, it seems that the only expense or compensation to which county commissioners are entitled are their annual salary and their mileage.

In an official opinion of this office dated April 12, 1940 (O.A.G., 1940, p. 72) the above quoted statute was discussed in relation to the allowance of mileage for county commissioners attending the annual Road School held at Purdue University. This opinion turned upon the point of the “conduct of the business of their respective counties,” and held that attendance at the Road School would not be “conducting business.” Territorial limits were not discussed but the opinion implied that mileage could be paid for travel outside the county if such travel was necessary to the conduct of the county’s business.

In this particular instance if it can be implied from the County War Memorial Act that it was necessary and proper for the county commissioners to view other structures in order to select the best design and plans for their purpose, then they should be entitled to 6c per mile for the mileage necessarily traveled in accordance with this section.

The county attorney is not a county official, but is merely an employee who is retained by the county to do the legal work necessary in the normal and usual affairs of the county. There is provision by statute for the salary or expenses of this office, but it has been held that the designated salary for contract prices made by the county commissioners is regarded to be in full payment for all of the usual and ordinary services within the county. McCabe v. Board of Commissioners of Fountain County (1874), 46 Ind. 380; City of Rochester v. Campbell (1916), 184 Ind. 421.

It has been stated in an unofficial opinion of this office dated July 11, 1945 that the county attorney is not a lucrative office within the meaning of the prohibition contained in
Article 2, Section 9 of the Constitution of Indiana, and that accordingly he is not barred from holding several employments. It is also recognized that a county or city attorney can be hired or employed for the performance of extra work and service which could not be said to be included in the ordinary duties of his office. City of Rochester v. Campbell, *supra*.

It is not difficult to see that the legal work required in the establishment of a county war memorial under a special statute is beyond the regular duties required of a county attorney. This is particularly borne out in this instance by the express power given in the War Memorial Act for the county commissioners to hire an attorney. It has further been held that the contract of employment of an attorney for extra services beyond those to be performed by the regularly appointed attorney would not have to be a written contract and spread of record, but could be by parol agreement as long as it was made by the board in a regularly authorized session. City of Rochester v. Campbell, *supra*.

Thus, as far as the expenses of the county attorney are concerned in making trips to inspect war memorials, they should be allowed if this was the basis upon which he was retained by the board of commissioners for this particular work.

The County War Memorial Act specifically gives the board of commissioners power to hire and employ an architect or architects to draw plans and designs and to aid the commissioners in selecting a proper plan or design. However, there is no provision for any specific expenses incurred by said architect in the performance of his contract and the payment of any such expenses would have to be made strictly in pursuance to the provisions of the particular contract made.

There is no doubt but that the county commissioners are given express authority to prepare, select, and adopt a design for the erection of war memorials. It seems that all acts reasonably necessary and proper to carry out and make a proper selection in accordance with the appropriation and the desires of the community could be implied from this grant.

“Necessary and proper” has been defined to mean “suitable and fitted to the object,” such as are best and most useful in relation to the end proposed and not to be limited to things “absolutely indispensable.”

See Words and Phrases, Vol. 28, Pages 188 and 189.
Upon the foregoing authorities and reasoning, in my opinion, the answers to your specific questions should be as follows:

1. The members of the Board of Commissioners should not collect actual expenses. The expenses of the county attorney should be paid, provided he was engaged by the Board to perform this particular work upon the basis of "expenses." The expenses of the architect can only be paid according to the terms of the contract he has with the Board of Commissioners.

2. The second question is answered exactly the same as the first.

3. The county commissioners should be allowed their mileage in accordance with the statute for the miles necessarily traveled.

4. The fourth question is answered exactly the same as the third.

5. The county attorney and architect should collect their expenses only in accordance with their respective contracts with the Board of Commissioners.

This opinion has not discussed the statutes pertaining to the necessity of appropriation before any claims can be paid, as I understand sufficient appropriations in this instance were properly made by the county council.

OFFICIAL OPINION NO. 28

March 18, 1948.

Mr. Edwin Steers, Sr.,
Member, State Election Board,
108 East Washington Bldg.,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your letter of February 19, 1948, requesting my official opinion as follows:

"As you probably know, the Judge of Superior Court Room 3 of Marion County resigned sometime ago and a Judge was appointed to fill this vacancy. We would like to have an official opinion as to whether