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

Dear Mr. Watt:

I have your recent request for an official opinion on the following question:

"Is a school city required to purchase school buildings formerly used by a township if said school buildings are located in an area annexed by the civil city?"

A determination of this question requires a consideration of two statutes. The first being Section 28-3305, Burns' 1948 Replacement, same being Section 1, Ch. 219, Acts 1927, provides as follows:

"In all cases where any city or incorporated town of this state shall hereafter annex any territory, or where any town shall be hereafter incorporated, in which territory so annexed or incorporated there shall be real estate of any school township held by it for school purposes, and such school township shall at the date of the annexation have paid for said school property or school building, or both, or shall be indebted in whole or in part either for the purchase of said real estate or for buildings constructed thereon, it shall be and is hereby made the duty of the common-school corporation of such city or incorporated town, to pay the present value of such property or buildings, or both, as the case may be, where they have been paid for; or, in case they have not been paid for, then to pay the present value thereof, less any unpaid bonded indebtedness incurred in the purchase or building thereof, and, in addition thereto, pay such indebtedness, the indebtedness to be paid to the bondholders, and the value as herein fixed, less indebtedness to be paid to the school township from which the property and buildings are taken, and such city or town school corpo-
ration is hereby made liable therefor. The present value of any such real estate or school building taken shall be determined by three (3) appraisers, one to be selected by the township trustee of the township in which such property or school is located, and one to be selected by the president of the board of school trustees or board of school commissioners of the school city or school town appropriating such property or building, and one who shall be a member of the state board of accounts, and the appraisal of any two shall be binding on all parties concerned. Until such city or town school corporation shall have paid such indebtedness or value it shall not be entitled to a deed for such real estate. On the payment by such city or town school corporation of the full present value of such property or buildings, or both, the said city or town school corporation shall be entitled to a deed for such real estate, as now by law provided."

The other statute is Section 28-3305a, Burns' 1948 Replacement, same being Section 1, Ch. 158, Acts 1935, which reads as follows:

"In all cases where any city or incorporated town of this state has annexed or shall hereafter annex any territory, or where any town has been or shall hereafter be incorporated, and where the civil township, or school township, from which such territory was or is taken, is indebted or has outstanding unpaid bonds or other obligations at the time of the annexation or incorporation of such territory, then such city or town, as the case may be, shall be liable for, and pay such proportion of such indebtedness of such civil township or school township as the assessed valuation of property in such annexed or incorporated territory is to the valuation of all property in such township, as the same is assessed for general taxation, prior to the annexation of any such territory or incorporation of any such town. Such annexing city or town, or newly incorporated town, shall pay such part of (or) proportion of such unpaid indebtedness of such civil township or school township to the township trustee: Provided, That in case such indebtedness consists of outstanding
unpaid bonds or notes, of such civil township or school township, then such payment to such trustee shall be made at such time as the principal, or any part thereof, or interest of such bonds or notes falls or becomes due: Provided, further, That if any school building is included in such annexation, the entire remaining indebtedness on such building shall be paid by the annexing city, town, or newly incorporated town, as heretofore provided by law. No annexation of territory under previously enacted laws shall be effective if the liability so created should cause the indebtedness of the annexed city or town to exceed the constitutional limitation on indebtedness of such municipality, or if such annexation would cause the township indebtedness to exceed such limitation after the annexation took place.” (Our emphasis.)

The legal question at issue is whether a city annexing part of a township in which is located a school building assumes only the remaining indebtedness on such building, referred to in the proviso to Section 28-3305a, supra, or whether the city school corporation assumes the remaining indebtedness on such school building, and in addition thereto, is required to pay the township the appraised value of a school building less such remaining indebtedness thereon, under the provisions of Section 28-3305, supra.

In an Official Opinion of this office, same being 1945 Ind. O.A.G. 353 at 357, the question was presented as to whether or not on such annexation the civil city or the school city became liable for the pro rata share of the unpaid indebtedness of the township school trustee of the annexed territory. In holding that such school indebtedness assumed on such annexation was the liability of the school city, rather than that of the civil city, the two foregoing statutes are there fully considered and said opinion concludes: “I am of the opinion these two statutes are not in conflict with each other and may be construed in pari materia with each other.”

It may be well to point out the legislative history of the foregoing statutes. Each of said statutes are separate original acts and neither are amendatory of any previous statutes on the question.
The case of State ex rel. v. Tuhey (1920), 189 Ind. 635, shows the court was required to construe whether Section 2, Ch. 121, Acts 1917, or Ch. 84, Acts 1919, controlled as to the obligations assumed by a city on annexing territory on which was located a school building. It was there pointed out that an old act of 1899 as amended by Acts 1913, page 101, Section 6612, Burns 1914, did not require payment of the appraised value of a school building on such annexation. This statute was superseded by the Acts of 1917, supra, in requiring payment for the appraised value of the school building, less the unpaid indebtedness thereon, which was assumed by the city. Said opinion further discloses that said 1917 Act was superseded by the 1919 Statute aforesaid, which only required assumption by the annexing city of the unpaid outstanding indebtedness on the building. The 1919 Statute is set forth in full at the footnotes to Section 28-3305, Burns’ 1948 Supplement, supra.

However, in reaching such a conclusion the court held the 1919 Act, while it contained no repealing clause, covered the whole of the subject of reimbursement for such property, and by implication, repealed the 1917 laws. Also see: City of Jeffersonville v. Jeffersonville School Township (1921), 77 Ind. App. 31.

An examination of each of the 1917 and 1919 statutes aforesaid shows that upon compliance with the requirements contained in each of said statutes, the school corporation of the city was to be given a deed to the land upon which was located the school building. This clearly indicates that when the respective requirements of said statutes are complied with, such action was all that was necessary to be taken to constitute a full compliance with the legal requirements thereof. The 1927 Act (28-3305, Burns’ 1948 Replacement, supra), also provides that upon compliance with this act a deed be given for the school building.

No such provision as to a deed being given is made in the last statute on this question, being the 1935 law, same being Section 28-3305a, supra. As a matter of fact, said statute, when the same is read in connection with its title, seems to be primarily concerned with the assumption of indebtedness by the civil or school city, and by the proviso to the Act seeks to make an exception of the application of said new law to a
situation where a school building is included in the land so annexed. It specifically provides that such remaining indebtedness be paid "as heretofore provided by law." This clearly indicates there was no intention to repeal in toto the 1927 law, Section 28-3305, Burns' 1948 Replacement, supra.

It is to be observed the 1927 law (28-3305, Burns' 1948 Replacement) requires not only the assumption of remaining indebtedness on a school building by the annexing corporation, but also requires an appraisement of the school building be made and the annexing corporation pay such appraised value less any remaining indebtedness thereon, before it shall be entitled to a deed to such real estate.

It must be conceded Section 28-3305a, Burns' 1948 Replacement, supra, does not expressly repeal Section 28-3305, Burns' 1948 Replacement, supra. On the question of whether or not a later act impliedly repeals a prior act, the court in the case of DeHaven v. Municipal City of South Bend (1937), 212 Ind.' 194, in considering whether a later statute repealed the provisions of an earlier statute as to the manner of taking appeals from orders of the Public Service Commission of Indiana, said on pages 198 and 199 of the opinion:

"It is clear from a reading of the 1929 Act and also Section 106 of the 1913 Act, that the 1929 Act does not repeal the 1913 Act by express terms. But appellee contends that it is repealed by implication. The general rules as to repeal by implication are: (1) Appeals by implication are not favored; and (2) Where there are two acts on the same subject, effect should be given to both if possible; and (3) But, if the two are repugnant in any of their provisions, the later act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even when two acts are not in express terms repugnant, yet if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act. This is the rule adopted in the case of Kramer v. Beebe (1917), 186 Ind. 349, 355, 115 N. E. 83, and is cited and relied upon by appellee. The court cites a great many authorities in support of the rule it announced. It is not argued by appellee that the
provisions of the 1929 Act are repugnant to or in conflict with the provisions of Section 106 of the 1913 Act. So we cannot say that the latter act repealed the former because they are in conflict. Appellee says that the repeal was effected because the 1929 Act covers the entire subject contained in Section 106. We have not been able to find any case that holds this sufficient to effect a repeal by implication. Repeal by implication is a rule of necessity. The 1929 Act in no wise conflicts with Section 106 of the 1913 Act. Both acts can remain undisturbed as there is no conflict whatever. No one can be injured in any way to hold that Section 106 is not repealed. The 1929 Act duplicates to some degree the provisions of Section 106, in that both grants to an aggrieved party the right to resort to the courts for a hearing. We can see no good and sufficient reason to hold, under the circumstances presented here, that the 1929 Act repealed by implication said Section 106 of the 1913 Act. Appellee has pointed out no rule and we know of none that requires us to conclude that Section 106, Acts 1913, was repealed by implication by the 1929 Act. On the other hand, Section 106 can stand unrepealed by all the recognized rules applicable to repeal by implication. Newbauer v. State (1928), 200 Ind. 118, 161 N. E. 286; Madden v. United States (1935), 80 Fed. (2d) 672."

Also, in the case of State ex rel. v. International Harvester Company (1940), 216 Ind. 463, at 467, the court held the general rule to be:

"Repeals by implication are disfavored. Where two acts are seemingly repugnant, they should be construed, if possible, so that the later will not operate as a repeal or modification of the former. If, by the application of every reasonable rule of construction, substantial harmony is found possible, then there is no irreconcilable conflict."

From the foregoing facts I am of the opinion Section 28-3305a, Burns’ 1948 Replacement did not impliedly repeal Section 28-3305, Burns’ 1948 Replacement, supra. Said acts are
not in irreconcilable conflict, and by following the rules of statutory construction referred to in the above authorities, full credence can be given all of the provisions of each of said statutes without conflict. As a matter of fact the latter statute specifically makes an exception in its proviso that the assumption of outstanding indebtedness be in conformity with the prior law.

In determining the legislative intent it is pointed out the legislature has not expressly or impliedly indicated any intention of repealing the prior statute. If the legislature had intended the latter statute to supersede the earlier statute on this question it seems reasonable, especially in view of the aforesaid history of such legislation, that it would either have followed the prior procedure of requiring a deed for the real estate to be made to the annexing corporation upon compliance with the provisions of that statute, or would have used some other means of clearly indicating such intent.

I am of the opinion Section 28-3305a, Burns' 1948 Replacement, same being Section 1, Ch. 158, Acts 1935, did not impliedly repeal Section 28-3305, Burns' 1948 Replacement, same being Section 1, Ch. 219, Acts 1927, as far as the requirement that, on annexation of territory by a city in which annexed territory is located a township school building, the city school corporation pay the present appraised value of such school building less any outstanding indebtedness thereon, which later indebtedness must be assumed by such city school corporation. Of course, by the express terms of said later act, as well as by the express provisions of the Constitution of Indiana (Article 13, Section 1), the effectiveness of such annexation is conditioned upon the fact that the liability so created does not exceed the constitutional limitation on indebtedness of such annexing municipal corporation.

I am therefore of the opinion a school city is required to purchase school buildings of the township, where said school buildings are located in an area annexed by the civil city in accordance with the provisions of Section 28-3305, Burns' 1948 Replacement.