

I am also informed that this appropriation has been set up by the Auditor to make it available as of April 1, 1945, and to continue to be available during the coming biennium until the job for which the appropriation was made is finished.

OFFICIAL OPINION NO. 55

June 25, 1945.

Hon. Clement T. Malan,
State Superintendent of Public Instruction,
State House,
Indianapolis 4, Indiana.

Dear Dr. Malan:

Your letter of April 19, 1945, received requesting an official opinion on the following question:

“A township has two small high schools, grades 9-12, both of which are under the jurisdiction of the township trustee. Does the township trustee have authority to consolidate these two high schools?”

Section 28-2410 Burns' 1933, same being Section 1, Chapter 192, Acts 1899, as amended by Section 1, Chapter 224, Acts 1901, provides as follows:

“The school trustees shall take charge of the educational affairs of their respective townships, towns and cities. They shall employ teachers, establish and locate conveniently a sufficient number of schools for the education of children therein, and build, or otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient management of said schools. Such school trustees may also establish and maintain in their respective corporations, as near the center of the township as seems wise, at least one (1) separate graded high school, to which shall be admitted all pupils who are sufficiently advanced:

* * *”

Section 28-2803 Burns' 1943 Supplement, same being Section 1, Chapter 233, Acts 1907, as amended by Section 1, Chapter 274, Acts 1937, provides in part as follows:

"The township trustee shall discontinue and temporarily abandon all schools under their charge at which the average daily attendance during the last preceding school year has been fifteen (15) pupils or fewer; and said trustees may discontinue and temporarily abandon all schools at which the average daily attendance during the last preceding school year has been twenty (20) pupils or fewer: Provided, The conditions as to roads, streams and bridges permit of such discontinuance: Provided, further, That any school so discontinued and temporarily abandoned may be re-established by the township trustee in his discretion whenever he shall feel assured of an average daily attendance of more than twelve (12) pupils during the school year; * * *."

Section 28-2801 Burns' 1933, same being Section 1, Chapter 97, Acts 1901, provides in part as follows:

"No township trustee shall abandon any district school in his township until he shall have first procured the written consent therefor signed by a majority of those legal voters who are entitled to vote for township trustee in such district; * * *."

In the case of *Ireland v. State, ex rel.* (1905), 165 Ind. 377, 380, the court said:

"A school district has no fixed boundaries, but is composed of the persons residing in the township who have been enumerated and attached thereto under Section 5958 Burns 1901, Acts 1895, p. 127, Section 1. * * *"

While the enumeration law, being Section 14 of the Acts of 1865, as amended, was expressly repealed by Section 3 of Chapter 56 of the Acts of 1932, referred to in the footnotes of Section 28-1014 Burns' 1933, it is seriously doubted that school districts in townships have in fact been abolished.

Your question does not state whether or not these two (2) schools when so consolidated will be located in one (1) of the two (2) original buildings, or if a new building is contemplated. If the latter is the case it would be controlled by the provisions of Section 28-2701 Burns' 1933, same being Section 1, Chapter 18, Acts 1893, which in substance provides that if a trustee desires to change or re-establish the site of any school building or remove such building to a new site or location he must first secure the signatures to a petition therefor of a majority of the patrons of the school so located, which petition must be filed with the county superintendent of schools and his approval secured. It has been held that this statute applies whether the building is to be in fact removed or a new building substituted therefor.

Kessler, Trustee v. The State, *ex rel.* (1896),
146 Ind. 221, 227;

Baldwin, *et al.* v. Roussey, *et al.* (1922), 192
Ind. 300, 306.

If it should be construed that the Township Trustee has the unqualified right to discontinue or abandon a school regardless of the number of pupils in average daily attendance, there would be no necessity for Section 28-2803 Burns' 1943 Supplement, *supra*, authorizing such trustee to discontinue such school where the average daily attendance is twenty (20) or less pupils. It is also to be observed that practically all of the statutes regarding consolidations or abandonments of schools require some approval of the voters in the school district or patrons attached to such school, before such action is taken by such trustee.

I am therefore of the opinion the township trustee would not have the right to abandon either of said schools and place the pupils in the remaining school except in compliance with the provisions of Chapter 28-2801 Burns' 1933, *supra*.

I am also of the opinion such trustee would not be authorized to abandon both of said schools and construct a new school on a different site without a compliance with the provisions of Section 28-2701 Burns' 1933, *supra*.