

OFFICIAL OPINION NO. 89

August 27, 1945.

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

Dear Sir:

Your letter of August 1, 1945, received requesting an official opinion on the following:

“The City of Evansville recently annexed a portion of Knight Township, Vanderburgh County.

“A statute, Burns’ Indiana Supplement, Section 28-3305a, Acts of 1935, ch. 158, paragraph 1, page 578, provides for the liability of the city or town for the indebtedness of the annexed territory.

“Does this statute make the civil City of Evansville liable for the debts of the school trustee of the annexed territory, or does it make the School City of Evansville, Indiana, liable?”

Section 28-3305a, Burns’ 1943 Supplement, same being Section 1, Chapter 158, Acts 1935, provides 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.)

Section 28-3305, Burns' 1933, same being Section 1, Chapter 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 four 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 indebted-*

ness, 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 corporation 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." (Our emphasis.)

Section 28-2401, Burns' 1933, same being Section 1, Chapter 119, Acts 1859, provides as follows:

"Each and every township that now is or may hereafter be organized in any county in this state is hereby also declared to be a school township, and, as such, to be a body politic and corporate, by the name and style of '----- School Township of ----- County,' according to the name of the township and of the county in which the same may be organized; and, by such name, may contract and may be contracted with, sue and be sued in any court having competent jurisdiction."

Section 28-2402, Burns' 1933, same being Section 4, Chapter 1, Acts 1865, provides as follows:

"Each civil township and each incorporated town or city in the several counties of the state, is hereby

declared a distinct municipal corporation for school purposes, by the name and style of the civil township, town or city corporation respectively, and by such name may contract and be contracted with, sue and be sued, in any court having competent jurisdiction; and the trustees of such township, and the trustees provided for in the next section of this act, shall, for their township, town or city be school trustees, and perform the duties of clerk and treasurer for school purposes."

It is a well known rule of statutory construction that in construing the statute courts must give effect to the intent of the Legislature, and in seeking such intent, will look to the Act as a whole, as well as to each and every part thereof, to its title, its general purpose, and the evils or mischiefs it was intended to remedy, and that words and phrases of a statute will be taken in their plain, ordinary and usual sense, unless a contrary purpose is clearly manifest.

Smith, Trustee, v. State, *ex rel.* (1930), 202 Ind. 185, 191.

It has been uniformly held in this State that the use of the word "township" in a statute, contract or other instrument, refers to the "civil township" rather than to the "school township," unless a contrary purpose is clearly manifest.

Smith, Trustee, v. State, *ex rel.*, *supra*;
State, *ex rel.* v. Stevens (1917), 63 Ind. App. 561, 564 to 566;

Sproat, Trustee, v. State of Indiana, *ex rel.* Giles (1915), 182 Ind. 687, 689;

McLaughlin v. Shelby Twp., Jefferson Co. (1875), 52 Ind. 114, 115, 117.

From the foregoing cases it is clear that where the Legislature uses the word "city," without qualification as to "civil city" or "school city," it would be construed to mean "civil city" unless a contrary purpose is clearly manifest.

When the foregoing authorities are applied in construing the provisions of Section 28-3305a, Burns' 1943 Supplement, *supra*, I am of the opinion that where the word "city" appears it should be construed to mean "civil city." That from the

provision of said statute it was clearly the legislative intent to permit the city to annex a portion of the civil township, or school township, whereupon the civil city becomes liable for such proportion of the indebtedness, outstanding unpaid bonds or other obligations of that part of the annexed civil township or school township as the assessed valuation of property in said annexed or incorporated territory is to the valuation of all property in said township. An exception to the foregoing prevails when there is a school building included in the territory so annexed. In the latter case the "remaining indebtedness on such building" shall be paid by the school city pursuant to the provisions of Section 28-3305a, Burns' 1933, *supra*, under the proviso contained in Section 28-3305a, Burns' 1943 Supplement, *supra*. 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.

OFFICIAL OPINION NO. 90

August 28, 1945.

Hon. C. E. Ruston, State Examiner,
State House,
Indianapolis 4, Indiana.

Dear Sir:

I am in receipt of your letter of July 13 asking three questions in regard to the election code of Indiana, being Chapter 208 of the Acts of the 1945 Legislature. I will answer these questions separately.

"1. Are the supplies needed by any county for holding elections in any year purchased by the board of county commissioners upon requisitions, specifications, bid and contract prepared and awarded pursuant to the provisions of Section 26-536 Burns' Supplement, 1943?"

Section 20 of the Indiana Election Code provides:

"All materials, supplies and equipment of any and every sort which are to be paid for out of the county