And Section 5 (28-154, Burns' 1943 Supplement) provides in part:

"At the time of making the semi-annual settlement of taxes beginning with the settlement due next after the passage of the resolution of the county council, as hereinbefore provided, all of the money collected and on hand belonging to either the common school fund or to the permanent endowment fund shall be paid to the treasurer of state as provided in section 3 (§ 28-152) of this act. * * *.”

I am therefore of the opinion that a surrender of school funds by the county having been previously made would not affect my opinion. In other words, the opinion has dealt with a construction of Section 97 of the 1865 Act and Section 97 is wholly devoted to means and methods of collecting school fund mortgages: all of its provisions facilitate the conversion of real estate held by the fund into cash. The alternative procedures there outlined are all collection devices and none are loans of school funds. Upon complete collection by any means provided in that section, the cash should be surrendered to the state treasurer.

* * *

DEPARTMENT OF PUBLIC INSTRUCTION: Township Trustee—removal from township—effect on office. School bus driver—no statutory requirement that he must be a resident of township in which route is located.

June 16, 1944.

Opinion No. 58

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

Dear Dr. Malan:

This will acknowledge receipt of your letter dated June 7, 1944, which reads as follows:

"Will you kindly give me an official opinion relative to the following questions:"
1. A township trustee moves from the township in which he was elected into an adjoining township in the same county. May he continue to serve as township trustee in the township in which he was elected?

2. Must a school bus driver reside in the township in which his route is located?”

Answering your letter, I beg to advise that your first question is identical with a question submitted to the Attorney General by the State Superintendent of Public Instruction in 1907, and was answered by the Attorney General in an official opinion dated March 6, 1907, Opinions of the Attorney General, 1906-1908, page 97.

The concluding paragraphs of this opinion read as follows:

“A mere temporary removal or absence for a limited time by the officer from the township to which his residence has been restricted by law, with no intention to abandon his office, will not result in terminating his title to the office, but when he actually removes from the township with the intention to change his residence he surrenders his right to longer hold his office.

“It is therefore my opinion that a person serving as township trustee in Indiana by removing from the township in which he is an officer thereby surrenders his right to the office.”

I fully agree with the above mentioned opinion and hereby reaffirm the conclusions therein stated.

In addition to what is said in the former official opinion, supra, I call your attention to the following authorities, which expressly hold that a temporary absence or change of residence, without an intention to acquire a new, permanent and fixed place of habitation, does not constitute a change of residence or domicile.

State ex rel. v. Scott, 171 Ind. 349;
State ex rel. v. Huff, 172 Ind. 1.

Referring to your second question, it is my opinion that this question must be answered in the negative for two reasons, viz:
(a) A school bus driver is not a public officer or an official of the township or school district by which he is employed and therefore, the constitutional provisions of Section 6 of Article 6 of the Indiana Constitution do not apply. The relationship existing between a township trustee and a school bus driver is that of employer and employee and for this reason there is no constitutional prohibition applicable to such relationship.

(b) Burns' R.S. 1943 Supplement, Section 28-3922, contains the following:

"Any school bus driver shall be employed subject to dismissal at any time for incompetency, negligence, failure to perform his duties, or for any other just cause."

I have been unable to find any language in any other statute which provides that a school-bus driver must be a resident of the township in which his route is located. The language contained in the above quoted statute is not sufficient to provide for a cancellation because a school bus driver is not a resident of the township.

Therefore, it is my opinion that as long as a school bus driver is competent, fully and faithfully performs all the duties required of him under his contract, and is not guilty of any negligence or other conduct specifically mentioned in the statute, or in the contract, it is immaterial where he resides.

STATE BOARD OF TAX COMMISSIONERS: TAXES—Delinquent personal property tax can not be included in sale of real estate for delinquent tax. Section 2, Chapter 224, Acts of 1941.

June 16, 1944.

Opinion No. 59

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of June 13th in which you ask the following question: