stances so long as such increase does not violate some other valid rule and regulation.

His salary as increased could not exceed the maximum of a regular employee in the lower classification or that of a provisional employee in the higher classification. He could not be given an increase of salary on the basis that he is a regular employee of the higher classification.

I believe your second question is answered by my opinion of March 6, 1944 above referred to wherein I give it as my opinion that Section 60-1324 Burns’ R. S. 1943 Replacement was suspended and held in abeyance during the time of the present emergency.

SUPERINTENDENT OF PUBLIC INSTRUCTION: Schools—pupils of age or married: Public school corporations may not by general rule exclude pupils married or of age, and may not charge them tuition.

October 3, 1944.

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

Dear Dr. Malan:

Your letter of September 21, 1944, received requesting an official opinion on the following questions:

“1. May a person that is married or a person twenty-one years of age or older attend the public schools of a school corporation if he or she is a legal resident of that school corporation?

“2. May a school corporation collect tuition for school attendance from an individual who is twenty-one years of age or older who is a legal resident of the school corporation?

“3. May a school corporation collect tuition for school attendance from an individual not yet twenty-one years of age who is a legal resident of that school corporation, but married?”
Article 8, Section 1 of the Constitution of Indiana, provides as follows:

"Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, *and equally open to all.*" (Our emphasis.)

In the case of Blue v. Beach (1900), 155 Ind. 121, where the court held valid a regulation of the health department excluding from school children who were not vaccinated during the prevalence of a smallpox epidemic, the court on page 141 of the opinion said:

"It is true, as insisted, that the privilege of children in this State to attend the public schools is guaranteed by the Constitution, at least to the extent that tuition shall be free and such schools shall be equally open to all. Article 8 § 1 of the Constitution. Cory v. Carter, 48 Ind. 327, 17 Am. R. 738. It is equally true, however, that they are frequently denied this privilege by reason of their refusal to submit to the proper rules of school discipline.

"There is no express law in this State authorizing the expulsion from school of boisterous or disobedient pupils. That a rule to this effect, upon the part of school officials or teachers, may be enforced, no one will controvert. If expulsion can result from the violation of a rule, the object of which is to promote the morals of the scholars and the efficiency of the school in general, certainly one which is intended and calculated to promote the health of the scholars ought to be sustained."

In 47 Am. Jur., page 412, "schools," Sec. 155, the following language is found:

"The general charge or superintendency of public schools vested in the school authorities, in the absence
of express legal provisions, includes the power of determining what pupils shall be received and what pupils rejected. A school board may be vested by the legislature with power to determine whether or not youths who are members of fraternities or who are soliciting such membership shall be admitted to the public schools. The constitutional and statutory right of every child to attend the public schools is always subject to reasonable regulations by the local authority or the legislature. Hence, a child may be refused admission if infected with a contagious disease or dangerously exposed thereto, or who is of a licentious or immoral character, or of too feeble a mind to derive any benefit from instruction, or not sufficiently educated to enter or be retained in the lowest grade. However, a pupil may not be excluded from school because married, where no immorality or misconduct of the pupil is shown, nor that the welfare and discipline of the pupils of the school is injuriously affected by the presence of the married pupil.”

The last quoted authority cites the case of McLeod v. State, ex rel., Miles (1929), 154 Miss. 468, 122 So. 737, 63 A.L.R. 1161, where a writ of mandamus was filed to compel the trustees of the school corporation to admit a girl as a pupil in the public high school. The pupil was married and was excluded from school under an ordinance prohibiting married pupils from attending schools. Under the Mississippi Constitution, schools were established for children between the ages of five (5) and twenty-one (21) years, and it further provided: “* * * and, as soon as practicable, to establish schools of higher grade.” The court decided high schools came under the classification of “schools of higher grade.” Authority by statute was also specifically given the school authorities “* * * to suspend or dismiss pupils, when the best interest of the school made it necessary.” In holding such ordinance “arbitrary and unreasonable, and therefore void,” the court on pages 1163 and 1164 of the A.L.R. citation, said:

“The question, therefore, is whether or not the ordinance in question is so unreasonable and unjust as to amount to an abuse of discretion in its adoption. No
case directly in point is referred to in the briefs. The ordinance is based alone upon the ground that the admission of married children as pupils in the public schools of Moss Point would be detrimental to the good government and usefulness of the schools. It is argued that marriage emancipates a child from all parental control of its conduct, as well as such control by the school authorities; and that the marriage relation brings about views of life which should not be known to unmarried children; that a married child in the public schools will make known to its associates in schools such views, which will therefore be detrimental to the welfare of the school. We fail to appreciate the force of the argument. Marriage is a domestic relation highly favored by the law. When the relation is entered into with correct motives, the effect on the husband and wife is refining and elevating, rather than demoralizing. Pupils associating in school with a child occupying such a relation, it seems, would be benefited instead of harmed. And, furthermore, it is commendable in married persons of school age to desire to further pursue their education, and thereby become better fitted for the duties of life. And they are as much subject to the rules of the school as unmarried pupils, and punishable to the same extent for a breach of such rules."

An examination of the Indiana School Statutes fails to reveal any specific authority granted to the school authorities to make any rule or regulation excluding married pupils from attending the public schools of this State, or to exclude pupils over twenty-one (21) years of age from attending such schools.

I am, therefore, of the opinion that under the above authorities the school officials cannot by a general rule, or ordinance, exclude from the public schools of this State married pupils, or those over twenty-one (21) years of age, otherwise eligible to attend such schools. Any such exclusion must depend upon the facts in each individual case and then the additional fact must be present to show that the age of such pupil, or the married status of such pupil in such particular case, results in immorality or misconduct of the pupil, or that
the welfare and discipline of the pupils of the school is injuriously affected by the attendance of such pupil in such school.

In answer to your second and third questions, I wish to advise that under the provisions of Sec. 1 of Art. 8 of the Constitution of Indiana, supra, it is provided that "tuition shall be without charge," and if a pupil is eligible to attend such school, no tuition may be charged therefor.

STATE BOARD OF TAX COMMISSIONERS: TAXATION—
Industrial Loan and Investment Companies not required to put intangible stamps upon their loans.

October 21, 1944.

Opinion No. 88

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

Dear Sir:

This will acknowledge receipt of your letter of August 18th, 1944 in which you state:

"** * * I would like for you to furnish me with an official opinion as to the liability of Industrial Loan and Investment Companies organized under, 'The Indiana Industrial Loan and Investment Act' for the payment of intangible tax upon their loans and for such an opinion to cover the loans of the 'issuer type' as well as the 'non-issuer type' of Industrial Loan and Investment Companies."

It is provided by Section 18-3123 Burns’ R. S. 1933, 1943 Supplement, as follows:

"All industrial loan and investment companies subject to the provisions of this act shall be taxed in the same manner as banks and trust companies pursuant to chapter 83 (§§ 64-801—64-821) of the Acts of the General Assembly of the state of Indiana of 1933. (Acts 1935, ch. 181, § 21A, p. 897.)"