

notice having been given October 22, 1943. Can he hold this sale?"

Likewise, in answer to this question, since the sale of state lands is held as heretofore, the sale of November 15, 1943, was a valid sale.

STATE REPRESENTATIVE: Selection of County Superintendent of schools of Long Beach and Lakeland.

December 22, 1943.

Hon. Henry Kreft, Jr.,
State Representative,
La Porte County,
Michigan City, Ind.

Dear Mr. Kreft:

This will acknowledge receipt of your recent letter which reads as follows:

"At the request of citizens of the towns of Long Beach and Lakeland, I am communicating with you in respect to the rules and regulations covering the selection and authority of the County Superintendent of Schools.

"In the past it has been the practice for the school boards of Long Beach and Lakeland to attend the county meetings with the school trustees but having no voice in the deliberations of the meetings or as to the selection of the county Superintendent of Schools.

"They are now inquiring as to the possibility of operating their own schools and the selection of their teachers, or having a voice in the county meetings.

"Thanking you for an interpretation of the law in respect to the position of these two School Boards of Long Beach and Lakeland."

Answering your letter, I beg to advise that your letter fails to state several pertinent facts which must be known before a complete answer can be given to your letter. In the absence of such statements I must assume that the towns of Long

Beach and Lakeland, referred to in your letter, are incorporated towns in Lake County, Indiana; that the schools in each of these towns are operated and controlled by a duly elected board of school trustees, as provided in Burns' R. S. 1933, Section 28-1201, *et seq.*, and controlled and operated by such school trustees pursuant to Section 28-2410; that the schools in each of these incorporated towns have not been abandoned by the school town to the township school corporation, as provided by Burns' R. S. 1933, Section 28-1205. Assuming that the above stated facts are true and in answering your letter with reference to the selection of the county superintendent of schools, I call your attention to the provisions of Burns' R. S. 1933, Section 28-702, which provides for the election of a county superintendent of schools, and reads in part as follows:

"The township trustees of each county of this state shall meet at the office of the auditor of their county on the first Monday in June, 1917, at ten o'clock a. m., and every four (4) years thereafter, and elect by ballot a county superintendent for their county. * * *"

Under the plain provisions of this section of the statute the county superintendent of schools is elected by the various township trustees in the county and the members of the board of school trustees of the various school towns and school cities in the county have no voice in the selection and election of said county superintendent.

With reference to the county board of education, I call your attention to Section 28-801, Burns' R. S. 1933, which reads as follows:

"The county superintendent and the trustees of the townships, *and the chairman of the school trustees of each town and city of the county shall constitute a county board of education.* Said board shall meet, semi-annually, at the office of the county superintendent, on the first days of May and September (unless the said days be Sunday, and if so, on the day following), a majority of whom shall constitute a quorum. The county superintendent shall preside at the meetings of the board, and shall be allowed to vote on all

questions as other members of the same are allowed to vote. Said board shall consider the general wants and needs of the schools and school property of which they have charge, and all matters relating to the purchase of school furniture, books, maps, charts, etc. The change of text-books, except in cities, and the care and management of township libraries, shall be determined by such board, and each township shall conform as nearly as practicable to its action; but no text-book hereafter adopted by the county board shall be changed within six (6) years from the date of such adoption, except by unanimous vote of all the members of such board: Provided, That any text-book heretofore adopted by the county board of education shall not be changed within three (3) years from the date of its adoption." (Our emphasis.)

Under the express provisions of the above section of the statute, the chairman or president of each board of school trustees of each incorporated school town or city in the county represents the school board as a member of the county board of education, and such chairman or president votes for and on behalf of and represents his school board of trustees as a member of the county board of education. The individual members of the various boards of school trustees in each incorporated school town or city are not members of the county board of education and have no right to vote or participate in the proceedings of the county board of education except by and through the chairman or president of such board of school trustees. See Opinions of the Attorney General, 1933, page 551.

If the facts which I have assumed in this letter are true then, under the express provisions of Section 28-2410, Burns' R. S. 1933, the board of school trustees of each incorporated school town in the county have the exclusive right to employ teachers and operate the school, subject only to the supervision of the county superintendent of schools, as provided in Section 28-704, Burns' R. S. 1933, subject to the exemption provided in Section 28-705.

On the other hand, if the towns referred to in your letter are unincorporated, or the schools therein have been trans-

ferred to the township school corporation, pursuant to statutory provisions therefor, then and in such event the employment of the teachers and the management and control of the schools come under the exclusive jurisdiction of the township trustee.

**STATE SUPERINTENDENT OF PUBLIC INSTRUCTION:
Eligibility of teacher while serving as attendance officer
to draw earned annuity payments from State Teachers'
Retirement Fund.**

December 23, 1943.

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

Dear Dr. Malan:

This will acknowledge receipt of your recent letter which reads as follows:

“Will you kindly give us your official opinion on the following question:

“Is a teacher who has met all requirements to retire, disqualified for annuity benefits because she is employed as attendance officer for a city school system but draws her entire salary from the county auditor?”

The above question is the same identical question propounded to the Attorney General of Indiana in 1942 and which was answered by an official opinion of the Attorney General under date of November 16, 1942. See Opinions of the Attorney General 1942, page 249. In this opinion the then Attorney General answers your question in the following language:

“* * * I am of the opinion, therefore, that an attendance officer working in a city school system, even though paid out of civil county funds, is not—while such relationship exists—eligible to draw his earned annuity payments from the State Teachers' Retirement Fund.”