STATE BOARD OF ACCOUNTS: Attendance officers. Whether such officers are within the provisions of Chapter 112 of the Acts of 1943 fixing minimum compensation for teachers; would professional training and years of experience as a teacher be considered in determining the minimum salary.

June 19, 1943.

Hon. Otto K. Jensen,
State Examiner,
Department of Inspection,
Supervision Public Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I am in receipt of your letter dated June 11th, 1943, requesting my opinion upon the following questions, to-wit:

"1. Is an attendance officer appointed for a local school attendance district within the provisions of Chapter 112 of the Acts of 1943, fixing the minimum compensation of teachers?

2. If your answer to question No. 1 is in the affirmative, would the professional training and years of experience as a teacher, if any, be considered in determining the minimum salary of such attendance officer?"

An answer to your questions requires a consideration of each of the following statutes:

-Burns' R. S. 1933, Section 28-501, provides for the appointment of attendance officers in the several attendance districts, as therein defined. Said statute reads in part as follows:

"* * * The county superintendent of schools shall nominate and the county board of education may appoint an attendance officer who shall be qualified as required by this act and by the state board of attendance and who shall act as an attendance officer for every school corporation of the county not organized as a separate attendance district. * * *"
Burns' R. S. 1933, Section 28-502, as amended by Section 1 of Chapter 294, Acts 1943, provides, among other things, that:

"* * * No person shall be nominated or appointed to the position of attendance officer nor shall any person, except an ex officio attendance officer, hold such appointment, who has not completed the work of the elementary public schools, and who is not qualified in the manner, and in accordance with the standards and regulations determined by the state board of attendance.

"Every appointive and ex officio attendance officer shall serve subject to the rules, direction and control of the superintendent of schools of the attendance district of said attendance officer. * * *

"* * * Appointive attendance officers unless otherwise provided in this act shall have their salaries fixed by the appointing board * * * and shall further receive actual expenses necessary to the proper performance of their duties, * * *.”

Burns' R. S. 1933, Section 28-4201, provides for the licensing of school officers and employees and reads as follows:

"The licensing of all superintendents, supervisors, principals, teachers, attendance officers, and of all other regular public school employees shall hereafter be vested in the state board of education.”

Burns' R. S. Pocket Supplement 1942, Section 28-4319, reads as follows:

"The term 'teacher' as used in this act shall be construed to include legally licensed and regularly employed teachers, * * *.”

As amended by Section 1 of Chapter 112, Acts 1943, said Section 28-4319 now reads as follows:

"The term 'teacher' as used in this act shall be construed to include all persons working in the public schools who are required by law to secure a license from the State as a prerequisite to the performance
of such work and all the terms of this act shall apply to all such teachers for as long a period as their work in the public school shall continue with the exception that kindergarten teachers may be engaged for a school term of less than eight months.”

Under the language contained in Section 28-4319, prior to the enactment of Chapter 112, Acts 1943, its provisions were clearly and expressly restricted and limited to persons legally licensed and regularly employed as teachers in the public schools. The language contained in the amendment of 1943 is much broader and now includes all persons working in the public schools who are required by law to secure a license from the State as a prerequisite to the performance of their work.

It is a familiar rule of statutory construction that if any new provision is incorporated in a statute by an amendatory act, or there is a change in the phraseology, it must be presumed the Legislature intended to change the existing law.

Chism v. State, 203 Ind. 241;
Department etc. v. Muessel, 218 Ind. 250;
State ex rel. v. Board, 196 Ind. 472.

Again, statutes must be given a literal interpretation, if the words and language contained therein are plain, definite and unambiguous, and the statute must be held and construed to mean what it plainly says.

Cheney v. State, 165 Ind. 121;
Pabst etc. v. Schuster, 55 Ind. App. 375;
Conter v. State ex rel., 211 Ind. 659.

The language contained in each of the statutes heretofore cited is broad, plain, definite and unambiguous and under the rules of statutory construction above stated, these sections of the statutes must be construed to mean exactly what they say, and the intention of the Legislature in enacting them must be given full force and effect.

As heretofore pointed out, the attendance officer is required by law to secure a license from the state board of education as a prerequisite to the performance of his duties. See Sec-
tion 28-4201, and Section 28-502, as amended by Section 1, Chapter 294, Acts 1943.

It will be noted that Sec. 28-502, as amended by Section 1 of Chapter 294, Acts 1943, provides that

"Every appointive and ex officio attendance officer shall serve subject to the rules, direction and control of the superintendent of schools of the attendance district of said attendance officer. * * *.”

Under this language, the superintendent of schools of the attendance district has the power and authority to adopt and promulgate rules prescribing and requiring the attendance officer of the district to perform specified duties to aid, assist, and promote the attendance of delinquent and truant school children, and to perform such duties as will assist the regular teaching staff in the efficient administration of the school system of Indiana.

Therefore, in answer to your first question, it is my opinion that an attendance officer comes within the definition of a teacher as defined by the broad language contained in Section 1 of Chapter 112, Acts 1943, provided such attendance officer is required to perform any duties in connection with teaching or instruction to promote attendance under a rule, or rules, duly adopted by the superintendent of schools as above stated.

With reference to your second question, I call your attention to the fact that Section 1 of Chapter 112, Acts 1943, provides that the schedule of compensation for teachers, as set forth in said Act, is based upon their experience and professional training, and this same rule is required in all of the statutes pertaining to the subject of issuing licenses to persons engaged in performing work in the public schools of Indiana, and it is my opinion that it was the purpose and intention of the Legislature that the same principle should be applied with reference to attendance officers in the matter of issuing licenses to them, or in fixing the standards and regulations for such officers as required by Section 1, Chapter 294, Acts 1943.

Therefore, it is my opinion that the proper answer to each of your questions is in the affirmative.

As stated in your letter, neither Chapter 112 nor Chapter 294, Acts 1943, contain an emergency clause and they will
not take effect until the Acts of 1943 have been duly promulgated as provided by law. Therefore, the construction placed upon these statutes in the one which will apply when, and after these Acts take effect.

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INSURANCE COMMISSIONER: Whether some mutual benefit health and accident associations are required to pay the $3 tax.

June 21, 1943.

Hon. Frank J. Viehmann,  
Insurance Commissioner,  
State House,  
Indianapolis, Indiana.

Dear Mr. Viehmann:

I have your letter of the 26th in which you set forth the provisions of the Nebraska Law with regard to Mutual Assessment Life and Accident Associations. (Sec. 44-902 Comp. St. Supp., 1937.) Such provision, in substance, permits assessment associations to operate as mutual companies upon maintenance of certain reserves and surpluses. In regard to Mutual Benefit Health and Accident Association of Omaha, which is now operating in a large number of states as a mutual company but still retains the assessment provisions in its Indiana contract, you have asked the following questions:

"(1) Does the opinion of the former Attorney General prevail now that the Nebraska law has been amended and the company at least in several instances taken advantage of this amendment?

"(2) Is it still impossible for this Department to exact and demand such tax from this company in line with the former opinion? Does the Department have the authority to force the company to change its classification in the State of Indiana as it has in various States to take advantage of the amendment to the Nebraska Statute?

"(3) Does the Department under the provisions of the amendment to the Nebraska Act have the au-