of the rights and privileges now held and enjoyed by soldiers, sailors, nurses, and/or other veterans, their wives, widows and children, of the first World War, under existing statutes or under any statute which may hereafter be enacted.

"Sec. 2. Whereas an emergency exists for a more immediate taking effect of this act, this act shall be in full force and effect on and after the first day of April, 1943."

It is evident that Chapter 254, Acts 1943, is a remedial statute and it is well settled that in construing a statute of a remedial character a liberal construction must be applied in order to carry out the humane and benevolent purposes and intentions of the legislature in enacting such statute. See: Lasear, Inc. v. Anderson, 99 Ind. App. 428, 433, and cases cited. Therefore, construing the provisions of Chapter 254, Acts of 1943 in pari materia with Burns' 1933, Section 22-2310, it is apparent that the Legislature intended that all of the humane and benevolent provisions of Section 22-2310 should apply to the orphans or children of soldiers who have served, who are now serving, or may hereafter serve in World War II.

Therefore, it is my opinion that your questions should be answered in the affirmative.

STATE BOARD OF TAX COMMISSIONERS: In re: salary of county superintendents of schools, whether same may be increased during term of office without violation of the constitution.

July 22, 1943.

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

Dear Judge Bedwell:

I am in receipt of your letter of June 10, 1943, requesting an official opinion upon the following questions, to-wit:
"1. Can the salary of the County Superintendent of Schools be increased by a majority of the Township Trustees under the provisions of Chapter 96 at page 506 of the Acts of 1939," (49-1014 Burns' 1933 Supp.) "so as to be effective during the term for which a County Superintendent of Schools was appointed, when such County Superintendent of Schools was serving under such appointment at the time such salary was increased?

"2. If the first question should be answered in the affirmative, can an additional appropriation be made by the County Council to pay an increase in salary of a County Superintendent of Schools, who is serving at the time such additional appropriation is made?

"3. Is Chapter 96 of the Acts of the General Assembly of 1939" (49-1014 Burns' 1933 Supp.) "valid under the provisions of the constitution of the State of Indiana?"

Your questions require an interpretation of certain statutes hereafter referred to.

Burns' R. S. Pocket Supplement 1942, Section 49-1014, which originally was Section 14 of Chapter 21 of the Acts of 1933, as amended by Chapter 96 of the Acts of 1939, provides for an increase in the salary of the County Superintendent of Schools in each of the counties in the state, and reads as follows:

"The salary of the county superintendent, as herein stipulated, may be increased by a majority of the township trustees, to an amount which, in the judgment of a majority of the township trustees, may seem proper, and the county council shall appropriate and the board of county commissioners shall allow the necessary funds to pay such increase in the salary of the county superintendent."

This section of the statute must be construed in connection with any constitutional limitation which may apply to increasing salaries of any official during the term of office for which he is elected.
The only constitutional provision which applies to this question is Section 2 of Article 15 of the Constitution of Indiana, as amended November 2, 1926. This amended section of the Indiana Constitution reads as follows:

"When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the general assembly shall not create any office, the tenure of which shall be longer than four (4) years, nor shall the term of office or salary of any officer fixed by this constitution or by law be increased during the term for which such officer was elected or appointed."

The office of County Superintendent of Schools is not mentioned in the state constitution, but is an office created by the Legislature to assist in administering the public school system of the state, which is under the direction and supervision of the Legislature.

Section 2 of Article 15, supra, has been in full force and effect since the decision of the Supreme Court of Indiana in 1935 in the case of In re Todd, 208 Ind. 168, although the amendment was submitted to the voters of the State of Indiana on November 2, 1926.

In the case of Board of Commissioners of St. Joseph County v. Crowe, 214 Ind. 437, the Supreme Court treated the above amendment as being in effect and construed the same with reference to an increase in salary of the Auditor of St. Joseph County during the term of office for which he was elected, which increase in salary was based upon the census population of St. Joseph County.

The County Superintendent of Schools is elected by the Township Trustees of the County for a fixed term as provided by the following statute:

"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. Such county superintendent shall enter upon the duties of his office
on August sixteenth following and, unless sooner re-
moved, shall hold his office until his successor is elected
and qualified.”

Burns’ R. S. 1933, Sec. 28-702, Acts 1913, Ch. 71,
Sec. 1, p. 160.

Therefore, the question is presented as to whether or not
the county superintendent of schools is an officer within the
purview of the term “officer” as used in Section 2 of Article
15 of the Indiana Constitution, supra.

The Indiana authorities have generally defined a public
officer as one who exercises some part of the sovereign power
of government.

“A public officer may be defined as a position to
which a portion of the sovereignty of the State at-
taches for the time being, and which is exercised for
the benefit of the public. The most important char-
acteristic which may be said to distinguish an office
from an employment is, that the duties of the in-
cumbent of an office must involve an exercise of some
portion of the sovereign power.”

Shelmadine v. City of Elkhart (1920), 75 Ind.
App. 493, 495.

“* * * the duties of a public office are in their
nature public; that is, they involve in their perform-
ance the exercise of some portion of the sovereign
power, whether great or small, in the performance of
which all citizens, irrespective of party, are interested,
either as members of the entire body politic or of some
duly established division of it. * * *”

Harrell v. Sullivan (1942), — Ind. —, 40 N. E.
(2d) 115, 120.

Various considerations are weighed by the courts in de-
termining whether or not the person is a public officer or
merely a public employee, such as statutory provisions con-
cerning the manner of the election or appointment, the filing
of an oath and bond, the name used in designating the person
in his official capacity, the compensation, whether in the form
of wages or salary, the importance or dignity of the position, the exercise of discretion, and the presence or absence of control by other officials. None of these elements, while given weight in determining the question, are regarded as conclusive, but the true test lies in determining, from the duties provided by law, as to whether or not the person has lodged in him the authority to exercise some part of the sovereign power.

State ex rel. Wickens, Prosecutor v. Clark (1925), 208 Ind. 402;

The Legislature has designated a County Superintendent or the position of County Superintendent as an office. (28-701, Burns' 1933 Supp.) He is elected by the Township Trustees for a four-year term, is required to subscribe and take an oath, and to execute a bond in the penal sum of $5,000.00. (28-702, Burns' 1933.) He may be impeached for causes specified by law. (28-703, Burns' 1933.) He is a member of the County Board of Education, and as such is charged with the duty of making certain selections of school books. (28-801, Burns' 1933.) "He shall at all times carry out the orders and instructions of the state board of education and the state superintendent of public instruction, and shall constitute the medium between such state superintendent and subordinate school officers and the schools." (28-704, Burns' 1933.) He has the power to appoint an assistant. He also is required to see that the full amount of interest on school funds is paid. (28-711, Burns' 1933.) But in view of the above cited authorities it is my opinion that these duties do not alone constitute the County Superintendent a public officer.

The County Superintendent has certain duties on appeal from controversies decided by the Township Trustee. The statutes in part provide:

"* * * In all controversies of a general nature arising under the school law, the decision of the county superintendent shall first be obtained; and then an appeal, except on local questions relating to the legality of school meetings, establishment of schools, and the location, building, repair or removal of school houses,
or transfer of persons for school purposes, and resignation and dismissal of teachers, may be taken from his decision to the state superintendent of public instruction on a written statement of facts, certified to by such county superintendent. Nothing in this act, however, shall be construed so as to change or abridge the jurisdiction of any court in cases arising under the school laws of this state; and the right of any person to bring suit in any court, in any case arising under the school laws, shall not be abridged by the provisions of this act. * * *

28-704, Burns’ 1933; Acts 1899, Ch. 143, Sec. 4, p. 240.

Also, the Township Trustee is required by law to obtain an order from the County Superintendent authorizing him to change the site and location of any school building, or to remove a school building to a new site and location. (28-2701, Burns’ 1933; Acts 1893, Ch. 18, Sec. 1, p. 17.)

The question is then presented as to whether or not the duties of the County Superintendent in these matters of appeal from the Township Trustee authorize the County Superintendent to exercise some part of the sovereign power of the State of Indiana. If these duties make such an authorization, the County Superintendent is a public officer.

Although by these provisions concerning appeals the County Superintendent is not authorized to “decide all questions pertaining to the jurisdiction of the trustee, the extent of his powers, and the proper limits to be observed in the exercise of his legal duty,” Jackson School Twp. v. State (1932), 204 Ind. 251, 267, yet it is apparent from the plain meaning of the statutes that the decision of the County Superintendent is final in many matters concerning local controversies, and that in the matter of discretion as to the location of schools, the discretion and the authority of the County Superintendent is final and conclusive.

In the matter of the location or building of school houses, the Township Trustee is authorized by law to exercise the power of eminent domain.

“The General Assembly of Indiana has delegated to school corporations the power of eminent domain, and
to the township trustee the authority to determine the necessity for its exercise. In acquiring lands for a schoolhouse, and for other purposes connected therewith, no right to a hearing as to the necessity or expediency of the appropriation has been reserved to the landowner, either in the Constitution or laws of this State. The discretion conferred upon the township trustee under these statutes is broad, comprehensive and absolute, and the court can not control its exercise in a proceeding of this kind; nor can the court substitute its judgment, or the judgment of the jury, for that of the officer designated by law, as to the expediency or necessity of making the proposed appropriation of land. Braden v. McNutt (1888), 114 Ind. 214; Amoss v. Lassell (1890), 122 Ind. 36; City of Kokomo v. Mahan (1885), 100 Ind. 242; Weaver v. Templin (1888), 113 Ind. 298; State ex rel. v. Sherman (1883), 90 Ind. 123; 2 Lewis, Eminent Domain (2d ed.), p. 891.”

Richland School Tp. v. Overmyer (1904), 164 Ind. 382, 386.

If an appeal should be taken from the Township Trustee to the County Superintendent concerning the location or building of the school house, under the statute the County Superintendent would have the same discretion to decide the matter of the location or building of the school house that the Trustee had, and the statute provides that the decision of the County Superintendent shall be final.

In an action for eminent domain—

“The landowner cannot show in defense of this proceeding that a less quantity of land than that described will suffice, or that another location would be more convenient and could be had for a less price. Kansas, etc., Railway v. Northwestern, etc., Co., supra; Atlantic, etc., R. Co. v. Penny, supra; City of Dallas v. Hallock, supra; Coffman v. Griffin (1880), 17 W. Va. 178.”

Richland School Tp. v. Overmyer (1904), 164 Ind. 382, 388.
It is well settled that the exercise of the power of eminent domain is an exercise of sovereign power.

"The right to take private property for public use, without the consent of the owner, is called the right of eminent domain, and belongs alone to the sovereign. It embraces all cases where, by the authority of the State and for the public good, the property of the individual is taken, without his consent, for the purpose of being devoted to some particular use, either by the State, in its sovereign capacity, or by a corporation, public or private, or by a private citizen to whom such right has been granted by the State."

The Consumers' Gas Trust Company v. Harless (1891), 131 Ind. 446, 450, 451.

It would be difficult to find a more clear-cut case of person exercising the sovereign power of the state than is presented in the case of the exercise of the power of eminent domain. Therefore, I am of the opinion that the County Superintendent of Schools does have statutory authority to exercise some part of the sovereign power of the state, and for that reason he is a public officer within the meaning of the term as used in Section 2 of Article 15 of the Constitution of Indiana as amended November 2, 1926.

Since the County School Superintendent is a public officer, it becomes important to determine whether his salary is "fixed * * * by law" within the meaning of the term as used in Section 2 of Article 15 of the Constitution.

In construing constitutional provisions, words are to be taken in their general and ordinary sense.

Gaiser v. Buck (1931), 203 Ind. 9, 16;

When the entire section of this amendment is examined, it is apparent that its framers were meaning statutory law when they used the term "law". No term of office or salary fixed by law can be increased during the term for which the officer was elected or appointed. It is submitted that "fixed by law" means fixed by statute, and this is to be distinguished
from a fixing *pursuant to* law or statute. The statute *itself* must fix and determine the salary, and a salary thus fixed may not be increased during the term of office.

Section 49-1004, Burns 1933; Acts 1933, Chapter 21, Section 4, page 88, fixed the salary of every county School Superintendent in the state. However, 49-1014, Burns 1933; Acts 1933, Chapter 21, Section 14, page 88 provided:

“The salaries of the county superintendent as herein stipulated may be increased upon written request of a majority of the township trustees to the county council, who may increase such salary to an amount which in the judgment of the county council may seem proper.”

This section was amended in 1939 to permit a majority of the township trustees to increase the salary “to an amount which, in the judgment of a majority of the township trustees, may seem proper, * * *.” (49-1014, Burns 1933 Supp.; Acts 1939, ch. 96, Sec. 1, p. 506.) *supra.*

If prior to the 1939 amendment, the county council, or subsequent to the 1939 amendment, a majority of the township trustees did nothing with reference to raising the salary of the County Superintendent, his salary was fixed by section 4 of the general fee and salary act, and hence his salary was “fixed by law”.

But if the salary was raised, either by action of the county council or by a majority of the township trustees, then, although the salary was fixed “pursuant to law” it was not “fixed by law” or statute, since the vote of the county council or trustees could not in any sense be construed to be a law or a statute.

Therefore, in answer to your first question, if the salary of a superintendent had not been raised over the amount fixed by section 4 of the general fee and salary act of 1933 before the county superintendent began his term, then his salary was “fixed by law” when his term began, and so could not be increased during his term. But if the salary of the county superintendent had been fixed by action, either of the county council or of a majority of the township trustees, then his salary was not “fixed by law”, and there would be nothing in
the constitutional prohibition against raising the salary, and a majority of the township trustees may now raise his salary.

State ex rel. v. City of New Orleans (1930), 171 La. 670, 131 So. 843.

In answer to your second question, it is my opinion that if a salary raise is constitutional within the principles just stated, then it would be mandatory upon the county council to make the appropriation for the salary as increased.

Your third question calls for an explanation of the effect of Section 2 of Article 15 of the Constitution upon Section 49-1014, Burns 1933 Supplement. The courts have generally construed such constitutional prohibitions as holding in abeyance the operation of the statute as it applies to officers whose terms are within the prohibition. The act is not void, but its operation is merely suspended as to such officers until a new term begins. 46 C. J. 1022. Therefore, it is my opinion that the act is not void; it may permit increases to some county superintendents now, and it does authorize future increases to those within the prohibition for their new terms.

STATE BOARD OF TAX COMMISSIONERS: Intangibles tax, whether issuer of intangible is liable for the tax.

July 22, 1943.

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

Dear Mr. Bedwell:

I have before me your letter which is in part as follows:

“A corporation organized under the laws of and domiciled in the State of Indiana has authorized an issuance of bonds in the amount of $130,400.00, to be issued and delivered in exchange for preferred stock of the corporation that has been deposited with it under a reorganization plan. The bonds are registered