DEPARTMENT OF PUBLIC INSTRUCTION: Whether teacher may become a tenure teacher in a joint school owned and operated jointly by a school town and a township.

September 2, 1943.

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

Dear Dr. Malan:

This will acknowledge receipt of your letter of August 31, 1943, which reads as follows:

"Will you kindly give me your official opinion relative to the following question:
"Can a teacher become a tenure teacher in a joint school, owned and operated jointly by a school town and a township?"

It is my opinion that a full and complete answer to your question is found in the decision of the Supreme Court of Indiana in the case of Harris et al. v. State ex rel. Allen (1937), 212 Ind. 386. The facts in this case were as follows:

One Ray Allen had been employed as a teacher under contract by the trustees of the school board of the consolidated schools of school town of Odon, Indiana, and Madison school township of Daviess county, Indiana, during the school years from 1929 to 1935, inclusive. The board of school trustees of such consolidated school refused to renew Allen's teaching contract for the school years of 1935 and 1936 and refused to recognize his status as a tenure teacher. Allen filed suit for a writ of mandate to compel said school authorities to renew his contract and recognize his status as a tenure teacher.

The question presented to and decided by the Supreme Court was whether or not the teacher's tenure law, which is Burns' 1933, Section 28-4307, applies to teachers of consolidated schools owned and operated by a school board of a school town and school township. In deciding the case, the Supreme Court considered the provisions of the teacher's tenure law in connection with the provisions of the statutes for the creation, maintenance and operation of consolidated schools and used the following language, to-wit:
"The provision, in effect and for all practical purposes, where there is a consolidation of a town school and township school or a township school and a city school of the fifth class, makes such consolidated school a town school corporation or a city school corporation. This was evidently the intention of the legislature.

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"* * * Moreover, consolidated schools partake of the form and character of town and city schools. A township school is governed entirely by the trustee and county superintendent while a town or city school is governed by the trustees and city superintendent of schools. A consolidated school is clearly not a township school as recognized by law.

"* * * Under the law and facts as presented, the appellee Ray Allen is entitled to be recognized as permanent teacher of said consolidated schools."

The above case has never been modified, distinguished, or overruled by the Supreme Court of Indiana and stands as the last expression of the law applicable to your question. Therefore, it is my opinion that your question should be answered in the affirmative.

AUDITOR OF STATE: In re: Sale of small island in Wabash River near Lafayette.

September 4, 1943.

Hon. Richard T. James,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an opinion as to the status of an island in the Wabash River near Lafayette, improved and occupied since 1940 by Frank McCoy and taxed to him. Mr. McCoy holds the land in behalf of the Big Four Railway Club. The island was formed about 1913 and was never sold by the state. It appears that the high water of 1943, which might be called an avulsion, flooded the island and filled in a