DEPARTMENT OF PUBLIC INSTRUCTION: Schools for tubercular children—basis for determining per capita costs; whether transfer to such school should be made by the corporation in which the school is located. Interpretation of Chapter 93 of the Acts of 1941.

May 6, 1942.

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

Dear Sir:

I have before me your request for an official opinion concerning certain features of Chapter 93 of the Acts of 1941, Section 1 of which provides as follows:

"That the school corporation wherein shall reside a child seven to twenty-one years of age, not a graduate of high school, who shall be a patient in a sanatorium maintained solely for the treatment of tuberculosis, approved by the State Board of Health and for the purposes of this section by the Board of Department of Education, and under the direction of legally licensed physicians, shall issue a certificate of transfer for such child and shall pay for such kind and extent of instruction as such child is capable of receiving at such institution. The cost of such instruction shall be deemed to be the remuneration received by the legally licensed teacher thereof in no case in excess of forty dollars per semester per child. The State Board of Department of Education shall be authorized to order and the auditor of state shall pay not more than three-fourths the amount of such transfer tuition, but such child shall not be counted as a basis for computing any other regularly distributed state funds to such transferring school corporation. The township trustee or board of school trustees of the school corporation wherein shall be located the tuberculosis institution shall receive the transfer tuition money and the instruction of such child or children shall be under the direction of the city or county
superintendent of schools having jurisdiction in such corporation in accordance with rules and regulations as laid down by the State Department of Education. Such instruction shall be evaluated by such superintendent of schools and upon his recommendation shall be accepted as full credit in the school of the corporation wherein the child shall reside."


The questions submitted are:

"1. What is the basis for determining the per capita cost?

"2. Is a child having residence within the corporation of the sanatorium school to be considered as a transfer to the sanatorium school?"

An examination of Chapter 93 of the Acts of 1941, Section 1 of which has been set out above, discloses that no basis is fixed therein for the determination of the costs per capita to be paid by the transferring school units. The sole statement on the subject is:

"* * * The cost of such instruction shall be deemed to be the remuneration received by the legally licensed teacher thereof in no case in excess of forty dollars per semester per child. * * *"

Your first question is as to how the cost per each child is to be determined. In the absence of a specific method in the above section, I think the provisions of Section 28-3717 of the December, 1941, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated 1933 applies. Said section provides, in part, as follows:

"Whenever children are transferred from one public school corporation in this state to another school corporation in this state, under the provisions of any law authorizing or requiring such transfers, the corporation receiving such transfers shall, on or before the thirty-first day of July of each year, file with the debtor corporation a verified statement showing the name of the debtor corporation, the names of all chil-
The above language is very broad and includes by its express terms any transfers from one public school corporation to another public school corporation. This is such a case. If the 1941 Act covered the subject of per capita costs, being the later Act, its provisions would, of course, govern; but there are no such provisions in the '41 Act and, therefore, the provisions of the '35 Act, insofar as applicable, must be held to apply.

I have thus far quoted from Section 28-3717, supra, to show the breadth of the language used and to show that in the absence of a specific provision made in the '41 Act as to per capita costs, the provisions of the '35 Act prevail.

I now desire to point out more specifically the method for determining the per capita cost in the ordinary case as provided in Section 28-3717, supra. That method is contained in subdivision (b) of Section 28-3717, supra, which provides as follows:

"The annual per capita costs shall be computed from the average daily attendance and the total expenditures of the current school year, as set out in the classified budget forms prescribed by the state board of accounts, excluding fixed charges, capital outlay, debt service, and cost of transportation, and shall be separately computed for the (1) elementary schools, excluding kindergartens, (2) junior high schools and (3) senior high schools of the creditor corporation."

to be used are not the "total expenditures" of the entire school corporation but are expressly limited in the 1941 Act to "the remuneration received by the legally licensed teacher." Otherwise, the section, in its entirety, applies.

In answer to your second question, in computing costs, I think it is clear that a child having residence within the corporation where the sanatorium school is located should be considered as transferred to the sanatorium school.

INDIANA CIVILIAN DEFENSE DIRECTOR: Bridges: —Ownership of, when located on abandoned road; legal procedure for disposing of such bridges.

May 6, 1942.

Mr. Clarence A. Jackson,
Indiana Civilian Defense Director,
300 Board of Trade Building,
Indianapolis, Indiana.

Dear Mr. Jackson:

I have before me your request that an official opinion issue in response to two specific inquiries relative to utilizing abandoned steel and iron bridges and structures under the War Production Board's urgent Salvage Program.

Your first question is:

"1. Who holds title to a bridge when it is on a strip of road abandoned by the State Highway system?"

Bridges and structures as a part of public highways are built pursuant to legislative authority, and in the absence of statutory provision to the contrary, the ownership thereof is in the State of Indiana rather than in some local subdivision thereof.