INDIANA TAX BOARD: Whether a school board may legally appropriate funds to defend the members of said board, or a previous board, in tort actions brought against them.

December 8, 1942.

Hon. Henry S. Murray,
Chairman, Indiana Tax Commission,
Indianapolis, Indiana.

Dear Mr. Murray:

I have before me your request for an opinion upon the following question:

"May the Board of School Trustees of a School City appropriate funds from the Special School Fund to be used in defending a suit filed against former members of said Board and present employees of said School City in an attempt to enforce personal liability for acts and duties performed by said Board and its employees in its governmental function as a political subdivision of the State of Indiana?"

In passing upon this question, it would be well to first note in reading the question that the appropriation is to be used in defending these former officers and present employees for acts committed by them while engaged in the bona fide discharge of their official duties. This opinion is limited to the question, as stated.

Considering now your question, the Board of School Trustees are officers of a distinct municipal corporation for school purposes and have authority to exercise those powers conferred upon them by their acts of incorporation. Within the scope of that authority, they can act upon their own discretion, amenable only to those who entrust them with those powers. Looking now to parts of the statutes from whence this body derives the authority to function, they read as follows:

"The school trustees shall take charge of the educational affairs of their respective townships, towns and cities."
The Legislature, by the above, has delegated to the Board of Trustees of a school city the duties of their sovereignty, namely the care and education of school children within their respective jurisdiction.

The following act gave to them the power to levy a tax and designate some of the purposes for which the revenue derived is to be used:

"The trustees of the several townships, towns and cities shall have the power to levy a special tax in their respective townships, towns or cities, for the construction, renting, or repairing of schoolhouses, providing furniture, school apparatus, and fuel therefor, and for the payment of other necessary expenses of the school."

The above sections of the statutes do not abridge the general rule that corporations, including municipal corporations, have the power expressly granted and such incidental powers as may be necessary to carry out those expressly granted and do not inhibit the appropriation of money to a specific purpose or object, but rather supports the general rule when they allow expenditures "for the payment of other necessary expenditures of the school" reasonably connected with or necessary. So the inquiry in this case is merely whether the act of making this appropriation is within or beyond the scope of the authority conferred upon the Board of Trustees of a School City, expressly or implied.

I entertain the opinion that it is within the scope of their authority.

Upon an examination of decisions and text books upon this subject, I find support for this contention. Quoting from American Jurisprudence, Vol. 37, Sec. 130, p. 744, it reads as follows:

"Ordinarily, a municipal corporation has the power to expend money to employ counsel to defend actions brought against municipal officers for acts done in the bona fide discharge of their duties."

Our Indiana Supreme Court adopted this theory in the case of Cullen v. Carthage, 103 Ind. 196. In that case, the Board of Trustees of the town of Carthage employed attorneys to defend the town marshal in an action brought against him.
for false imprisonment. The town then refused to pay them for their services rendered in defending the marshal upon the ground that the employment and contract by the Board of Trustees was ultra vires and void and hence not binding upon the town. The Court said:

"If it should be understood that the marshal of the town is left without support from the governing body, to defend him against all manner of suits that might be instituted against him, the vicious and violent might, by a succession of annoying suits against him, greatly cripple the enforcement of the ordinances. Such an understanding would, at least, have a tendency to embolden the vicious to intimidate the marshal. Upon these considerations and others that might be urged, and upon examination of the whole case, we think that the town had such an interest in the result of the suit against the marshal as authorized the Board of Trustees to employ appellants to make the defense."

What was said in that case would be true in the present question. By a series of annoying suits the lawful operations of the School City would be greatly hampered if those persons charged with the duty of administering the schools were left without protection for their lawful acts.

In view of the holding of the Supreme Court of Indiana in the above case, the facts in which are quite similar to the situation presented by your request, I am of the opinion that the Board of School Trustees may appropriate funds from the special school funds for the purpose of employing Council to defend employees and former Board members under the facts indicated.