

**PUBLIC INSTRUCTION: Election of County Superintendent,
method of voting.**

May 22, 1941.

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

Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

- "1. May a trustee vote by proxy for County Superintendent?
- "2. May a trustee have someone vote for him for County Superintendent by power of attorney?
- "3. Must township trustees fix the salary of County Superintendent on day of election?"

Section 28-702 of Burns' Indiana Statutes Annotated, 1933, provides in part as follows:

"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." * * *

No provisions are set out in the statute authorizing voting by proxy or by power of attorney.

In the case of corporations the rule is stated in 5 Fletcher Cyclopedia Corporation, page 167, as follows:

"A stockholder or member of a corporation cannot give a proxy or power of attorney to another to represent him and vote at a corporate meeting, unless the right to do so is given by the charter or a general constitutional or statutory provision, or by a valid by-law."

I think the same rule would apply in the case of the election of a County Superintendent as provided by the above statute.

It follows that your first and second questions must both be answered in the negative.

Your third question involves a construction of Section 49-1014 of the December, 1940, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated 1933, which provides 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."

I do not think that the above provision requires that the additional salary shall be fixed at the time when the election occurs. It should, however, be fixed prior to the time when the budget must be laid before the council for action.

ADJUTANT GENERAL: Whether payments should be made to The Peoples State Bank, in connection with final transfer of property from Armory Board Trustees to State.

May 22, 1941.

Colonel J. D. Friday,
The Acting Adjutant General,
State House,
Indianapolis, Indiana.

Dear Colonel Friday:

This will acknowledge your letter of May 14, 1941, asking for an official opinion. I here set out your request.

"During its recent session, the General Assembly appropriated \$6,600.00 to pay certain expenses, including attorney's fees, for causing the conveyance of National Guard Armory properties to the State of Indiana when all the bonds against these several properties and interest due thereon shall have been paid. Such conveyances of a large number of these properties will