PUBLIC INSTRUCTION: Transportation by cities or towns of white school children. Statement of conditions under which such transportation may be undertaken.

September 27, 1941.

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

Dear Sir:

This is in answer to your request of September 23rd for an official opinion on the following question:

"May a city or town school corporation legally transport resident white children to schools within the city or town corporation limits?"

Your question hardly permits a categorical answer. There is a special statute which requires school commissioners of a city of the first class to provide transportation under certain conditions for colored children to separate schools maintained for them (Acts 1935, Chap. 296, Burns' Indiana Statutes Annotated 1933, Supp., pages 28-5104) but this special statute applies to situations that do not exist, except with respect to certain colored schools.

By the provisions of Chapter 253 of the Acts of 1921 as amended by Chapter 54 of the Acts of 1933, and by Chapters 27 and 56 of the Acts of 1932 (Burns' Indiana Statutes Annotated, 1933, 28-2801 to 28-2808), school officials are given authority and required to provide transportation for school children to other schools when the school in their neighborhood is abandoned or discontinued, but there are limitations as to the age of pupils and the distance they are required to go. There are also special statutes providing for the transportation of pupils where a consolidated school is established on petition of resident freeholders, and a similar provision covering situations where a high school is abandoned and the pupils are transferred to some other high school. In those cases transportation must be provided.

Section 2 of Chapter 253 of the Acts of 1921, as amended in 1933, referred to above, contains the following provision:

"In all school corporations of this state, where a school has been abandoned within the last twenty (20) years,
or may hereafter be abandoned, the school trustees shall provide and maintain means of transportation for all pupils of such abandoned school who live a greater distance than one and one-half (1½) miles from the schools to which they are assigned; Provided, That township school trustees, boards of school trustees and boards of school commissioners may provide means of transportation for any pupils in any school district or school corporation, if the conditions in the school district or school corporation, in the judgment of the township trustee, board of school trustees or board of school commissioners warrant the same; Provided, further, That school trustees be and they are hereby empowered at their discretion to transport high school pupils."

Following this sentence is a provision with respect to the transportation of parochial school children with which we are not now concerned.


The two provisos in the above quoted Section 2 appear to give broad powers to school authorities in the matter of providing transportation for public school pupils. A familiar rule of statutory interpretation is that provisos in an act are generally used to limit the meaning of the sentence or words which precede the proviso; that is, under such a view, the legislature intended where a school was abandoned, to give school authorities discretion in the matter of transportation regardless of the distance the pupils might be required to go. In my opinion this general rule of interpretation does not give sufficient force to the plain meaning of the words used. I believe by the use of these provisos the legislature intended to confer upon Township School Trustees, Board of School Trustees and Boards of School Commissioners authority to provide transportation for school children, when in the discretion of such school authorities, the conditions, such as distance, roads, and other transportation facilities, made the transportation of the pupils advisable. And in the case of high schools, school trustees may in their discretion, when conditions justify it, provide transportation for high school pupils. Of course any provision for transportation under this statute can not be limited to either white or colored pupils of the public schools.