ACCOUNTS, STATE BOARD OF: Transfer of schools from town to township, whether obligation to State Common School Relief fund is assumed.

December 28, 1939.

Mr. E. P. Brennan,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have your letter of inquiry concerning the abandonment of a town school upon an agreement with the township trustee. The latter was accompanied by a copy of the agreement between the town board of trustees as one party and the township trustee and advisory board as the other party; also attached were copies of resolutions adopted by the town board and by the township advisory board.

From the agreement, it appears that it was entered into pursuant to chapter 291, Acts 1919, p. 818 (sections 28-1200 to 28-1210 Burns Indiana Statutes Annotated 1933). The agreement lists the indebtedness, called the "stated indebtedness," of the school town not including an indebtedness to the State Common School Relief Fund which was separately referred to therein. The agreement provides for a request for appraisement of the property of the school town at not to exceed the stated indebtedness, which stated indebtedness was to be assumed by the township. It also provides for the transfer of the property of the school town to the township. The civil town agreed to assume the school town's indebtedness to the State Common School Relief Fund. By the resolutions which you submitted, the board of trustees of the town and the advisory board officially acknowledge the provisions of the agreement.

You ask whether or not the township, on taking over the school property and the operation of the schools of the school town, assumed the school town's obligation to the State Common School Relief Fund.

If the township assumed liability for that obligation, it did so solely by virtue of some statutory provision as it obviously was not the intention of either party to the agreement that the township should be liable for the school town's indebtedness to the State Common School Relief Fund. The statute controlling the situation is as follows:
Whenever any school town in any township desiring to abandon and discontinue its management and control of public schools within such incorporated town is indebted in any amount when such abandonment and discontinuance is proposed, or whenever the corresponding civil town or whenever both such corporations are so indebted for school purposes, it shall be lawful for the township to purchase the school building, buildings and equipment, at a valuation which shall be fixed by the county superintendent, auditor and assessor, at an amount not exceeding such indebtedness; Provided, Such indebtedness does not exceed one (1) per cent of the combined assessed valuation of the township and town, and, in case of such purchase, such township shall assume such indebtedness of such school and civil town and such school trustees of said town shall make out and deliver to such township trustee a record of such indebtedness, and the page of the record where recorded, the date of the bonds or other evidence of indebtedness assumed, the denominations thereof, the rate of interest they bear, when the same become due and where payable and when and where the interest thereon is payable, and transfer such building, buildings and equipment to the township, by making and causing to be made, a good and sufficient deed, conveying all real estate belonging to such school town to the township in which such incorporated town is located, and shall transfer all the personal property and fixtures belonging to such school town to such township, all of which shall be accepted and held by such township trustee for the use and purpose of the school township wherein such property is located.” (Section 28-1209, Burns etc. 1933. Acts 1919, ch. 291, section 2, p. 818.)

The foregoing statute contemplates that the township may purchase the school town's property for a sum less than the school town's indebtedness as is indicated by the fact that the valuation shall not exceed such indebtedness. However, in making such purchase it is also apparent that the township shall assume the indebtedness of the school town. This provision of the statute apparently was made for the protection of creditors of the school town in order that they might look to the unit acquiring the school property for payment of the
indebtedness created for school purposes. Therefore, the statute makes possible a situation wherein the township might become liable for indebtedness in excess of the valuation fixed upon the school property which it would receive. Since the valuation which is fixed by the appraisers designated by the statute constitutes the purchase price as between the two units of government, the town, upon abandonment of the school town, would have the power to obligate itself to the township for the excess of the indebtedness assumed by the township over and above the purchase price of the school property.

Therefore the effect of the statute is that as between the township and all creditors of the school town, the township is liable for all indebtedness of the school town whose property it has acquired, including the debt to the State Common School Relief Fund; but as between the two units, township and town, the latter is liable to the township, under the contract, for the indebtedness owed to the State Common School Relief Fund.

GOVERNOR'S OFFICE: Authority to receive and act upon report of committee created by concurrent resolution of General Assembly to investigate merits of claim.

December 29, 1939.

Hon. M. Clifford Townsend,
Governor of the State of Indiana,
Indianapolis, Indiana.

My dear Governor:

I have before me your letter in which you propound two questions for answer, as follows:

"By virtue of House Concurrent Resolution No. 4, chapter 167, Acts of 1939, is the Governor of the State of Indiana authorized to receive a report of the investigating committee? If so, what action is the governor authorized to take in this matter?"

The Concurrent Resolution referred to reads as follows:

"WHEREAS, Through a misunderstanding and lack of complete information, a mistake may have been made in a settlement of a charge contained in a report of an examination made by the State Board of Ac-