of his services up to September 27, 1932, and that he was thereafter no longer recognized as the superintendent and teacher in the Galveston schools. Such being the case, it is my opinion, that such mutual agreement on September 27, 1932, constituted an oral resignation by Mr. Pleasant and an immediate acceptance thereof by the School Board, in lieu of the written resignation which became ineffective on September 1, 1932, by reason of such failure to comply with its conditions.

It is, therefore, my opinion that Mr. Pleasant was a teacher under contract until September 27, 1932, the date of his oral resignation and its acceptance by such school board.

TAX COMMISSION: Taxation—county tax adjustment board, authority of as to specific levies to pay obligations incurred prior to August 8, 1932.

October 7, 1933.

Hon. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion as to the effect of the act of a county board of tax adjustment in removing a specific tax levy made by the proper local officers of a municipality for the purpose of providing funds for the payment of obligations of the municipality incurred prior to August 8, 1932.

Section 4 of chapter 237, of the Acts of 1933, provides in part as follows:

"The county board of tax adjustment shall have no authority under this act to reduce specific tax levies made by the local officers for the purpose of providing funds for the payment of obligations of the several municipal corporations incurred prior to August 8, 1932, or funding or refunding obligations of such municipal corporations heretofore or hereafter authorized or issued for the purpose of procuring funds to pay obligations incurred prior to August 8, 1932, or any judgment against such municipal corporation or obligations issued to refund the same, below the amount re-
quired to meet such obligations and the interest thereon at the times and in the amounts required by the terms of such obligations. It shall be the duty of the proper governmental bodies and officers charged with the levying of taxes to levy taxes in an amount necessary, after applying all funds then available from other sources, to pay the principal and interest of such obligations as the same become due.” (Our italics.)


By appropriate language earlier in the section, it is made the duty of the county board of tax adjustment “to examine and, if it deems such action necessary, revise, change or reduce, but not increase, any tax levy and any corresponding items of the budgets on which such tax levies are based and apportion the total of all of said levies so that the total levy on property within any municipal corporation for all municipal corporations for which the property therein is taxable, including the state levy referred to in section 1, shall not exceed the applicable total rate as provided in section 3” of the act.

The language first quoted, therefore, must be considered as a limitation upon the authority of said board, but it cannot be considered as depriving said board of all authority with respect to such specific levies. The limitation is that the board shall have no authority to reduce such specific levies “below the amount required to meet such obligations and the interest thereon at the times and in the amounts required by the terms of such obligations.”

In my opinion, if said board does reduce such specific levies “below the amount required” as above stated, such action is clearly beyond its authority. But I do not think such action is ipso facto void so as to enable a ministerial officer to disregard it. In other words, I do not think the county auditor would be authorized to decide that the reduction made by the county board of adjustment is below the amount required and thereupon extend the levy originally made by the county council. Nor do I think the question is raised by an appeal to the state board of tax commissioners. It is raised, in my opinion, by an action brought by an interested party to have the action of said board set aside, and in the event the plaintiff prevails, the original levy should then be extended upon the duplicates;
but I do not think there is any authority in any officer to extend the original levy on the duplicates until and unless in a proper proceeding the action of the county tax adjustment board is set aside.

HIGHWAY COMMISSION: Whether Fayette County Democrat is entitled to publish legal notices.

October 10, 1933.

Hon. James D. Adams,
Chairman, State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Adams:

Your letter of date October 3, 1933, requesting an official opinion is at hand. You state in your letter that the Fayette County Democrat, a semi-weekly newspaper, published in Fayette County since the month of August, 1933, desires to publish legal notices of the state highway commission as provided by section 11 of chapter 18 of the Acts of the Indiana General Assembly for the year 1933. You also state that the Fayette County Democrat and one other paper, a Republican newspaper, established for over five years, are the only two newspapers published in Fayette County. You desire to know whether or not the Fayette County Democrat not having been published for five consecutive years in the same city or town is entitled to published these notices.

Section 11 of said chapter 18, provides that “it shall be the duty of the chairman, when any part of such state highway is ordered to be constructed or improved, to advertise for proposals, and he shall give notice by one publication in two newspapers of general circulation throughout the state, and in two newspapers representing the parties casting the highest and next highest vote in the county, of general circulation in the county, where the work is to be performed.”

The question, therefore, is whether or not chapter 96 of the Acts of the Indiana General Assembly for the year 1927, which states that “the term ‘newspaper’ as used in this act shall be construed to mean a weekly, semi-weekly, tri-weekly or daily newspaper which shall have been published for five consecutive years in the same city or town” applies.

Section 6 of said act, provides as follows: