

The Legislative intent is expressly stated in the title of the Act.

“An Act concerning labor, and providing means for protecting the liberty, safety and health of laborers, providing for its enforcement by creating a department of inspection, and making an appropriation therefor, repealing all laws in conflict therewith.”

The first portion of the section above quoted, down to the word “except,” was originally section 3, chapter 142, Acts 1899; the remainder or proviso part of the section being enacted as an amendment in 1933.

It is clear that the Legislature intended to “protect the liberty, safety and health of laborers.” It will be noted that the amendment of 1933 in fact only added a provision which enlarged this protection by restricting the number of hours and days of employment under certain circumstances.

It is therefore my opinion that this section of the statute does not prohibit one plant or industry from operating separate departments simultaneously under each portion of this section.

ACCOUNTS, STATE BOARD OF: School town, division of taxes levied before organization; whether such towns are required to pay for school buildings built by township before organization of town and within boundaries of such town.

December 17, 1937.

Honorable Wm. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that in November of this year there was incorporated in Michigan Township, LaPorte County, Indiana, the Town of Lakeland. You also state that there are three school buildings owned and operated by said Michigan Township and that two of these buildings are within the limits of the Town of Lake-

land. Upon the basis of the above statement of facts, you submit the following questions:

(1) "Is a newly created school town entitled to part of the school funds in the hands of the township trustee, and is it entitled to a part of the moneys to be received from the state and from local taxation during the ensuing year?"

(2) "Would Michigan Township be entitled to any compensation for the buildings taken by the new town of Lakeland?"

Answering your second question, I desire to call your attention to section 28-3305 of Burns Indiana Statutes Annotated, 1933, which provides that:

"In all cases where any city or incorporated town of this state shall hereafter annex any territory, *or where any town shall be hereafter incorporated*, in which territory so annexed or incorporated there shall be real estate of any school township held by it for school purposes, and such school township shall at the date of the annexation have paid for said school property or school building, or both, or shall be indebted in whole or in part either for the purchase of said real estate or for buildings constructed thereon, it shall be and is hereby made the duty of the common-school corporation of such city or incorporated town, to pay the present value of such property or buildings, or both, as the case may be, where they have been paid for; or, in case they have not been paid for, then to pay the present value thereof, less any unpaid bonded indebtedness incurred in the purchase or building thereof, and, in addition thereto, pay such indebtedness, the indebtedness to be paid to the bondholders, and the value as herein fixed, less indebtedness to be paid to the school township from which the property and buildings are taken, and such city or town school corporation is hereby made liable therefor."

The section proceeds to set out in detail the method of determining the value of such real estate.

Upon the basis of the above statute, your second question is answered in the affirmative.

Your first question is also answered in the affirmative.

In support of the above conclusion, I call your attention to the cases of Johnson, et al., School trustees, v. Smith, School Trustee, 64 Ind. 275; and Hon. v. The State, ex rel., Hottel, et al., 89 Ind. 249.

In the first case above cited the facts were quite similar to the facts recited in the opening sentences of this letter and with reference to that situation the court said on page 283:

“Whatever sums of money the appellee had received, by reason or on account of the school children, residing within the territorial limits of the school town of Monroe City, or transferred thereto for school purposes, the appellants, as soon as they had qualified and organized, as by law required, as the trustees of said school town, had the right to demand and receive from the appellee, and he could not lawfully withhold it upon any ground.”

Johnson, et al., School Trustees v. Smith, School Trustee, 64 Ind. 275; at page 283.

The appellee in the above case was the township school trustee.

In the case of Hon. v. The State, ex rel., Hottel, et al., supra, the court followed the decision in the case of Johnson, et al., School Trustees, v. Smith, School Trustee, supra, and held, quoting from page 251, that

“Where the school trustees of a town are elected after money has been received by the trustee of the township, they become, upon proper qualification, entitled to the money allotted by law to the school town, and it is the duty of the trustee, on demand, to pay it over to them. The right of the township trustee to the custody of the money terminates with the due organization of the board of school trustees for the incorporated town.”

In the case of School City of Terre Haute v. Harrison School Township of Vigo County, 184 Ind. 742, a distinction is made between state funds which have been improperly distributed and expended by a township trustee and where the funds are either unexpended or if expended were raised by

local taxation. In that case it was held that where the funds involved were the state funds and they had been expended by the trustee, he could not be compelled to make good the loss, but the court in no sense departs from the rule as earlier established in the case of Johnson et al., School Trustees, v. Smith, School Trustee, supra.

I am returning herewith the letter of Messrs. Conboy and Pusch, which accompanied your request.

GROSS INCOME TAX DIVISION: Limitation as to time within which assessment may be made.

December 22, 1937.

Mr. Clarence A. Jackson,
 Director Gross Income Tax Division,
 141 South Meridian Street,
 Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue in response to the following inquiry:

“The provisions of Section 12 (d) of Chapter 50 of the Acts of 1933 contain the following provision:

‘(d)—If the Department of Treasury discovers from the examination of any return, or otherwise, that the gross income of any taxpayer, or any portion thereof, has not been properly assessed, it may, at any time *within two years* after the time when the return covering such income was filed * * * assess the same, * * *’

“Section 12 (a) of Chapter 117 of the Acts of 1937, which amended the original Gross Income Tax Act, contains the following provision:

‘Section 12 (a)—If the Department discovers from the examination of any return or otherwise, that the Gross Income Tax of any taxpayer, or any portion thereof, has not been properly assessed, it may, *at any time within three years* after the time when the annual return covering such gross income was filed * * *, assess the same * * *.’

“The Gross Income Tax Division has information that a taxpayer whose annual return for 1934 was filed