ACCOUNTS, STATE BOARD OF: State aid. Whether town and township in case of consolidation should be treated as separate units for the purpose of auditing State aid claims. Schools, consolidated, whether town and township lose their identity by consolidation under chapter 148, Acts of 1917:

July 25, 1938.

Hon. W. P. Cosgrove,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in part as follows:

“A school town and a school township consolidated under the provisions of chapter 148 of the Acts of 1917 (Greencastle Plan). They have continued to operate as separate units in the matter of costs of maintaining the consolidated schools. It is also contended by the school officials that, under section 9 of the Act, the township is the corporation required to transport its pupils to the schools at the township’s expense, independent of the school town. We have felt that after the consolidation was effected, the school township no longer existed as such, and that the “school corporation,” referred to in section 9, would be the consolidated school corporation. Under section 6, of the Act, the school trustees are authorized to make the tax levy to meet the costs apportioned against the town and the township. Each unit has controlled the proceeds of its levy.

State aid claims have been filed for the town and township separately, the town’s claim showing a surplus and the township a deficit.”

You submit the following questions:

“1. In making an audit of claims for state school relief purposes, covering units consolidated under the provisions of chapter 148, Acts of 1917, should we audit the claims of each unit independent of the other, or should the claims be audited together as one unit? (Example: If audited independently and the town showed a surplus of $1,200.00 and the township a
deficit of $1,200.00, can payment be legally made to the township in the amount of $1,200.00?)

"2. Is transportation of children to be provided by the township, or by the consolidated school unit?"

I think your questions are fully answered by the decision of the court in the case of Ehle, Trustee, v. State, ex rel., 191 Ind. 502, where the court, in construing the 1917 Act referred to, said, quoting from page 508:

"The Act, supra, permits school corporations to consolidate their schools. That is to say they may consolidate their primary schools only, or high schools only, or they may consolidate both. In either case provision is made for their control, management, and maintenance. The Act does not expressly make such consolidated schools a separate and distinct corporation, but on the contrary recognizes the corporate bodies entering into such consolidation as an existing entity. Each being represented on the consolidated school board, each required to pay the cost of transporting its own pupils to the consolidated school, and each separately to control, manage and maintain its schools not consolidated. The Act apportions the cost of maintaining consolidated schools 'in proportion to the number of children of school age enumerated in each corporation.' While such cost is determined and the tax levy to meet it is made by the consolidated school board, yet the burden of producing the required revenue thus apportioned falls uniformly upon the taxable property of each corporation entering into the authorized school plan. In other words, in theory and in practice, each school corporation, to the extent that it enters into such plan, is taxed only to meet the cost of educating its own children of school age, and is not in opposition to the rule that taxes apportioned to a taxing district must be borne ratably by those constituting the public of that district." (Our italics.)

It was accordingly held that the two consolidating corporations did not thereby become a new, independent school corporation but that each consolidating corporation continued to maintain its identity.
This decision was followed by the court in the case of Harris, et al. v. State, ex rel. (decided by the Supreme Court of Indiana on June 1, 1937), 8 N. E. (2d) 594, where the court said, quoting from page 597:

"We are convinced that the construction upon the Act by the court in said case is correct and that the Legislature did not intend by the terms of said Act to disturb the then existing school corporations."

Your question numbered 1 is in three parts. The first part is answered in the affirmative; the second part is answered in the negative; and the third part, contained in parenthesis, is answered in the affirmative.

With reference to your question numbered 2, your attention is directed to section 28-1228 of Burns' Indiana Statutes Annotated (1933) which is section 9 of the 1917 Act already referred to in your letter and which provides as follows:

"Said school board shall be governed by the laws of the state now in force for the transportation of pupils to such consolidated schools: Provided, That if a consolidated school is maintained within the corporate limits of a city or town, then said school board shall provide and maintain means of transportation for all pupils that live at a greater distance than two (2) miles and for all pupils between the ages of six and twelve (6 and 12) years that live less than two (2) miles and more than one (1) mile from and outside of the corporate limits of such city or town; And, provided, That the school corporation required to transport pupils shall bear the expense of such transportation; And provided, further, That if, by reason of condition of roads or streams or distance, it would not be advantageous for certain children of school age to be transported to any consolidated school established and maintained under this Act, then said school board may maintain separate schools and provide schoolhouses for such children so affected by condition of roads, streams or distance to consolidated schools."

The position which you have taken, as indicated by your letter, is based upon the proposition that the consolidation under the 1917 Act creates a new school corporation. The
decisions of the court are to the contrary, however, thus completely removing the basis upon which your contention rests. While the language used on this particular subject by the court in the above cases may be classed as dictum, it is interesting to note what was said. In the Ehle case, supra, the court said on page 508 (191 Ind. 502 at page 508):

"The Act does not expressly make such consolidated schools a separate and distinct corporation, but on the contrary recognizes the corporate bodies entering into such consolidation as an existing entity. Each being represented on the consolidated school board, EACH REQUIRED TO PAY THE COST OF TRANSPORTING ITS OWN PUPILS TO THE CONSOLIDATED SCHOOL, and each separately to control, manage and maintain its schools not consolidated." (Our capitals.)

In the Harris case supra (8 N. E. (2d) 594 at p. 597) the court said on page 597:

"Section 9 provides that each corporation shall be required to bear the expense of transporting its own children."

I think the above construction is correct. The answer to your question numbered 2 is that the township is required to provide the necessary transportation for its own children.

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STATE PRISON, INDIANA: Change of prisoner's sentence by warden. Validity of Governor's parole.

Erroneous opinion July 27, 1938.

Mr. Alfred F. Dowd,
Warden of the Indiana State Prison,
Michigan City, Indiana.

Dear Sir:

I have your request for an official opinion dated July 23 in which you set out at some length the circumstances surrounding the commitment and discharge of one Scott Newby, your register No. 11790. Your statement of facts is here set out:

"Scott Newby, our register No. 11790, was committed to this institution June 17, 1927, by the Vigo