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
Circuit Court to serve a sentence of 10-21 years with a fine of $100 and costs of $14.25 for auto banditry.

"The records are marked that November 4, 1928, this sentence was ruled illegal by Attorney General Gilliom and his sentence was changed to 10 years determinate but no change was made in his commitment. As all institutional records had been changed to show Newby as doing a 10-year determinate sentence, he was transferred outside to work and escaped from our honor farm October 24, 1930, and was apprehended and returned April 23, 1932. After having had six temporary paroles, on September 10, 1936, he was granted a Governor's parole by executive order No. 9831. This parole was granted on his doing a 10-year determinate sentence.

"Newby was ordered returned by the department of public welfare and was returned July 19, 1938. If his reduction of sentence is legal he will be eligible for discharge on his ten-year July 30, 1938.

"Your opinion is sought as to whether the reduction of Newby's sentence from 10-21 years to a 10-year determinate sentence is legal and if so the proper procedure in having his commitment changed to that effect. Further that if the changing of sentence is illegal, should he not have his Governor's parole revoked and he be brought before the board for his violation or would we have to disregard all action which has been taken and bring him before the board at the expiration of his minimum as an indeterminate sentence?"

The opinion of former Attorney General Gilliom, to which you refer in the second paragraph of your letter, was handed down November 4, 1928, and may be found in the Opinions of the Attorney General 1927-1928, page 412. In the course of this opinion Attorney General Gilliom said:

"Section 2548 provides sentences for automobile banditry for determinate periods of not less than ten years nor more than twenty-five years. Sentences for indeterminate periods under this section are erroneous. Sentences of imprisonment under this section for the indeterminate period from 10 to 25 years are subject
to the construction that they are at least determinate for the minimum period of ten years, and should be treated as being sentences for the determinate period of ten years.

"There seems to be no limitation on the Governor’s power to commute sentences that would prevent a commutation for an indeterminate period with ten years as the maximum.

"In my opinion, the Legislature did not intend that diminution for good behavior provided by statute should apply to commuted sentences, but I think the Governor could make such allowance a part of the commutation."

At the time this opinion was rendered there may have been some question as to the proper sentence under the automobile banditry statute, section 10-4710 Burns' Indiana Statutes 1933, the penalty clause of which provided that:

"Upon conviction thereof, shall be imprisoned in the state prison for any determinate period not less than ten years nor more than twenty-five years."

However, all doubt upon this question was resolved by the opinion of the Supreme Court of Indiana, in the case of Daly v. Carr, 206 Ind. 554, in which it is held that where offenders between the ages of sixteen and thirty are convicted of automobile banditry under a general statute fixing a determinate sentence of not less than ten nor more than twenty-five years, that such provisions as to punishment will be controlled by a special statute fixing indeterminate sentences for offenders within such ages and therefore an indeterminate sentence of not less than ten nor more than twenty-five years is proper.

It follows that, in so far as former Attorney General Gilliom's opinion is in conflict with this decision, the opinion of Mr. Gilliom must be considered to be superceded. Consequently, the opinion of the Attorney General and the action of Warden Daly in reliance thereon, which resulted in a changing of the prison records in the case of Scott Newby and in changing his sentence to a ten-year determinate term, were unauthorized and must now be deemed ineffective to work any change in the terms of his original commitment.
Newby, therefore, is serving an indeterminate term of ten to twenty-five years under his original commitment.

On September 10, 1936, Governor McNutt paroled Newby by executive order No. 10631. In this order it was recited that Newby had been sentenced and committed to the Indiana State Prison for a ten-year determinate term and that the parole was effective as of the date of issue, with the provision that Newby should report to the proper authorities until the expiration of his maximum term, which, as stated in the executive order, was ten years. It is clear that Governor McNutt was misinformed as to the terms of this man's commitment and that the order was based upon such misinformation. I am forced to construe the executive order in the light of the prisoner's actual commitment and, therefore, hold that although the Governor was authorized to issue the order, that because of a mistake of fact it was ineffective to provide a parole for Newby. For purposes of the record, I am directing the department of public welfare to ask for a revocation of the Governor's order paroling Newby, a procedure quite proper in the circumstances in view of his recent parole violation.

On July 19, 1938, Newby was ordered returned to the Indiana State Prison by the department of public welfare as a parole violator. I have learned that this order of the public welfare department was based upon a report of one of their investigators showing that Newby was caught in a larceny and burglary of a poultry house in Terre Haute on July 8, his bond set at $3,000 and a date set for arraignment on these charges. In view of the fact that Newby was not in the state prison because of an escape between the dates of November 24, 1930, and April 23, 1932, his minimum term of ten years under the indeterminate sentence would not expire until July 30, 1938. This being true, there is no question as to the authority of the department of public welfare in its jurisdiction over parolees to order Newby returned to the state prison. It is, therefore, my opinion that Newby is serving under an indeterminate sentence of ten to twenty-five years and that his return to prison for parole violation is proper and that the executive order paroling him, under date of September 10, 1936, was ineffective, and that he is now under the jurisdiction of the prison board as are all
prisoners serving under indeterminate sentences. On July 30, 1938, which date will mark the expiration of the minimum of ten years of his sentence, he will be eligible for discharge by the prison parole board or for any other disposition of the case that they choose to make in the light of this recent parole violation. You are directed to change the records of the institution in the Newby case in conformity with this opinion, and are instructed that the authority under which you hold Newby in custody is based upon the original commitment forwarded to you by the Vigo Circuit Court in 1927.

PUBLIC INSTRUCTION, DEPARTMENT OF: Right of appeal to county superintendent cases of decision upon transfers. Unfavorable to wishes of parents.

July 29, 1938.

Hon. Grover Van Duyn,
Assistant Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to an official opinion of my predecessor dated August 30, 1933, in which it was held that in case a transfer from one school corporation to another is mandatory owing to the fact that the first corporation does not maintain a commissioned high school, the trustee of the first corporation may use his discretion in selecting the school to which the child is transferred.

You submit the following question:

"In a situation such as this, does the parent have a right to appeal the case to the county superintendent when the trustee has made the transfer to a school unsatisfactory to the parent?"

Section 28-2405 of Burns' Indiana Statutes Annotated (1933) provides as follows:

"Appeals shall be allowed from decisions of the (township) trustees relative to school matters to the county superintendents, who shall receive and promptly determine the same according to the rules which gov-