Therefore, it is my opinion that the State Highway Commission should forward fees collected for the issuance of permits to oversized and overweight vehicles, including tractor-mobile home rig permits, directly to the Treasurer of State for deposit in the Motor Vehicle Highway Account.

OFFICIAL OPINION NO. 22

May 22, 1968

ANNEXATION—SCHOOLS—School Corporation Adjusting Boundaries by Annexation or Disannexation of Territory.

Opinion Requested by Hon. Richard D. Wells, State Superintendent of Public Instruction.

This is in answer to your recent request for an Official Opinion with respect to the following question:

> "Would it be permissible for a part of a school corporation to be annexed by an adjoining school corporation if this caused the losing corporation to fall short of the minimum standards established by the State Commission on School Reorganization?"

Your letter also reflects that you seek a clarification of Acts 1963, ch. 296, § 8, and Acts 1959, ch. 202, § 6(3)d, along with other statutory provisions which may be pertinent to your question.

The School Corporation Reorganization Act of 1959, Acts 1959, ch. 202, § 1, as set out in Burns IND. STAT. ANN. § 28-6101, Compiler's Note, declares the reasons and purposes of the Act to be as follows:

> "It is the sense of the Indiana General Assembly now assembled: That the establishment and maintenance of a general, uniform and efficient system of public schools is the traditional and current policy of the State of Indiana; that improvement in the organization of school corporations of the state will provide a more equalized educational opportunity for public school pupils, will achieve greater equity in school tax rates among the inhabitants of the various now existing school corporations, and will provide a more effective use of the public funds expended for the support of the public school system; that existing statutes with respect to the combination and the reorganiation of school corporations are inadequate to effectuate the needed improvement; that modifications in the statutory provisions for the combination and the reorganization of school corporations provided in this act are necessary in order to assure the future maintenance of a uniform and efficient system of public schools in the state; that local electors have an interest in the boundaries of the school corporation in which they reside and will exercise their privileges, as herein provided, to the end of establishing an efficient and economical reorganization plan best suited to local conditions; that the commission, committees, and the public officers charged with authority under this act will perform their duties wisely in view of the objective of this act as set forth in the title of this act."

Under Acts 1959, ch. 202, as amended, and as found in Burns § 28-6102(2), the reorganization of schools is defined as follows:

> " 'Reorganization of school corporations' shall mean and include the formation of new school corporations, the alteration of the boundaries of established school corporations, and the dissolution of established school corporations, through or by means of (a) the uniting of two or more established school corporations; (b) the subdivision of one or more school corporations; (c) the transfer to any established school corporation of a part

of the territory of one or more school corporations, and/or the attachment thereto of all or any part of the territory of one or more school corporations, and/or the transfer of said established school corporation; and (d) any combination of the methods aforementioned."

After detailing many provisions not directly applicable to your question, Acts 1959, ch. 202, as amended, § 6(3)(d) as found in Burns § 28-6115(d) provides the following:

> "The State Commission shall formulate and adopt a set of minimum standards in furtherance of the policy expressed in Section 1 [note to § 28-6101] of this Act, which all proposed reorganized school corporations must meet, insofar as feasible. Such minimum standards shall include, but shall not necessarily be limited to, the inclusion of all the area of the county in a school corporation or school corporations, in order to furnish efficient and adequate educational opportunity for all the pupils in grades one (1) through twelve (12). The County Committee and the State Commission may arrange a conference to review and consider problems encountered by the County Committee in the formulation of a reorganization plan. This conference may, but need not necessarily, be held prior to the adoption of a preliminary written plan. Following such conference, the State Commission may give a written order to the County Committee stating that for a specified geographical area, the meeting of such minimum standards would not be feasible. Each plan must provide for a community school corporation or corporations which meet said minimum standards unless the State Commission shall have given a prior written order to the County Committee stating that for a specified geographical area, the meeting of such minimum standards will not be feasible."

Pursuant to the foregoing statutory provision, the State Commission for the Reorganization of School Corporations, created subject to the Act, adopted and had promulgated pertinent rules and regulations still in force as follows:

"1. Each proposed reorganized school corporation shall be sufficiently large in population to provide an average daily attendance of not less than 1,000 resident pupils in grades one [1] through twelve [12] as indicated by the average daily attendance reported on Form 30, for the 1959-60 school year by school corporations existent at that time.

"2. If more than one [1] administrative unit is proposed for the county, no such unit shall have a tax base of less than $5,000 adjusted assessed valuation per resident pupil in average daily attendance as evidenced by the 1959-60 average daily attendance reported on Form 30, for the 1959-60 school year by the school corporations existent at that time and by the 1959 adjusted assessed valuations for taxes payable in 1960.

"3. If it is impossible to meet both of the above requirements and if it is also impossible to form a countywide administrative unit, then the minimum shall be a geographical area of not less than 144 square miles. . . .

"5. Each proposed reorganized school corporation shall provide an efficient and adequate educational opportunity for all the pupils in grade one [1] through twelve [12]. . . .

"7. Each community school corporation shall be as nearly as practicable a natural social and economic community, but may include all the territory of a county, or all of the territory of a county and territory from contiguous counties."

As found in Burns Indiana Administrative Rules and Regulations, Volume 2, School Corporation Reorganization Act, pages 358 and 359.

It is common knowledge that numerous community school corporations throughout Indiana have been created pursuant to Acts 1959, ch. 202, as amended and subject to the cited rules and regulations.

An examination of Acts 1963, ch. 296, as found in Burns §§ 28-6201 to 28-6208, shows that this Act was passed by the Legislature to authorize the governing bodies of certain school corporations, to annex or disannex territory by adjusting their boundaries and thus increase or decrease the size of the affected school corporations. A further study of the Act shows that it was the intention of the Legislature to authorize the governing bodies of the affected school corporation to effectuate the annexation or disannexation of school corporation territory without necessitating the approval of other county or state agencies.

Acts 1963, ch. 296, as found in Burns §§ 28-6201, 28-6202, reads as follows:

> "SECTION 1. As used in this act, the following terms have the following meanings:
>
> "(a) 'School corporation' shall be any school corporation created pursuant to Chapter 202, Acts 1959, as originally adopted or as from time to time amended, and shall also be any other school corporation established under any other act or acts of the State of Indiana, which school corporation has common boundaries with any school corporation or corporations formed pursuant to Chapter 202, Acts 1959, as originally adopted or from time to time amended, but shall not include any public school corporation located in whole or any part in a county containing a civil city of the first class.
>
> "(b) 'Annex,' 'annexing,' 'annexation' and 'school annexation' shall refer to any action whereby the boundaries of any school corporation are changed so that additional territory, constituting all or a part of any one or more other school corporations, is transferred to it.
>
> "(c) 'Acquiring school corporation' shall be the school corporation which acquires territory as a result of annexation.
>
> "(d) 'Losing school corporation' shall be any school corporation which loses territory to an acquiring school corporation by annexation.

"(e) 'Annexed territory' shall be the territory acquired by an acquiring school corporation as a result of annexation from a losing school corporation.

"(f) 'Resolution' of a school corporation shall refer to a resolution duly adopted by its governing body.

"SEC. 2. Subject to the limitations and procedure set out in this act, any school corporation may annex territory from any other school corporation by resolutions of the acquiring and losing school corporations as provided in Section 3."

From the foregoing it appears as though Acts 1963, ch. 296, may be used by qualified school corporations to join two or more school corporations into one, and it is evident from the Act that school corporations may exchange, acquire, or disannex a part or all of their territory under the Act. As the Act specifically provides:

"'Annex,' 'annexing,' 'annexation' and 'school annexation' shall refer to any action whereby the boundaries of any school corporation are changed so that additional territory, constituting *all or a part of any one or more other school corporation,* is transferred to it." (Emphasis added.)

Thus the essence of your question becomes pertinent to determine whether a community school corporation reorganized subject to the minimum standards and requirements of Acts 1959, ch. 202, as amended, can defeat the purposes of that Act, by using Acts 1963, ch. 296, to disannex so much of its territory as to leave a school corporation below the standards set by the State Commission for the Reorganization of Schools.

Section 8 of Acts 1963, ch. 296, provides in its applicable part as follows:

"All laws or parts of laws in conflict herewith are hereby repealed. This act shall not, however, be construed to repeal any part of Chapter 202, Acts 1959, or any act concerning the consolidation of two or more school corporations, to which this act shall be supple-

mentary, except to the extent that said Chapter 202 conflicts with the subsequent provisions of this section. No annexation that is undertaken pursuant to, or that results by operation of, any Section of this act shall require, for its effectiveness, any approval of any county committee or state commission or committee created pursuant to, or referred to in, said Chapter 202, Acts 1959."

It will be noted that Section 8, *supra,* expressly provides that "this act shall not, however, be construed to repeal any part of Chapter 202, Acts 1959." Section 8 also provides that Acts 1963, ch. 296, shall be supplementary to Acts 1959, ch. 202.

In the case of *Lost Creek School Township v. York.* 215 Ind. 63, 21 N.E. 2d 58 (1939), the Indiana Supreme Court accepts a definition of a supplemental act set out on page 641, at 60 of 21 N.E. 2d, as follows:

> " 'A supplemental act has quite a different meaning (from an act to amend.) "It signifies something additional, something added to supply what is wanting." . . . It is that which supplies a deficiency, adds to, or completes, or extends that which is already in existence, without changing or modifying the original.' "

In 26 I. L. E. Statutes, § 130, page 340 we find the following:

> "Statutes which relate to the same thing or general subject matter are in pari materia and should be construed together, although they have been enacted at different times, and by different Legislatures, and contain no reference to one another, provided they are consistent with each other."
>
> See also: *Huff v. Fetch,* 194 Ind. 570, 577, 143 N.E. 705, 707 (1924);
>
> *Sherfey v. City of Brazil,* 213 Ind. 493, 497, 13 N.E. 2d 568, 570 (1938).

In the case of *Walgreen Co. v. Gross Income Tax Div.,* 225 Ind. 418, 75 N.E. 2d 784, 785 (1947), it is stated:

> "Statutes are not to be considered as isolated fragments of law, but as part of one great system. . . .
>
> " 'A statute is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws."

In my opinion, Acts 1959, ch. 202, as amended and Acts 1963, ch. 296, are in *pari materia* and they are bound together by an express Legislative provision which makes the acts supplemental to each other and which provides that the provisions of the former act are not to be considered repealed by the latter act. Consequently, the two acts are to be, and should be, applied and considered in conjunction with each other, with the former act outlining the procedures by which reorganized community school corporations are to be created, and the latter act so applied as to give full force and applicability to both acts without destroying the provisions of either.

In *Marks v. State,* 220 Ind. 9, 40 N.E. 2d 108, 111 (1942), the Supreme Court of Indiana stated the following:

> "In Lewis' Sutherland Statutory Construction, a long-recognized and respected authority, it is said (Vol. 1, § 267, pp. 510, 511): 'If two statutes can be read together without contradiction, or repugnancy, or absurdity, or unreasonableness, they should be read together, and both will have effect. It is not enough to justify the inference of repeal that the later law is different; it must be contrary to the prior law. It is not sufficient that the subsequent statute covers some or even all the cases provided for by the former, for it may be merely affirmative, accumulative or auxiliary; there must be positive repugnancy; and even then the old law is repealed by implication only to the extent of the repugnancy. If, by fair and reasonable interpretation, acts which are seemingly incompatible or contradictory may be enforced and made to operate in harmony and without absurdity, both will be upheld, and the later one will not be regarded as repealing the others by construction or intendment. As laws are

presumed to be passed with deliberation and with a full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable.' And it is also said (Vol. 2, § 377, p. 725): 'It is always presumed, in regard to a statute, that no absurd or unreasonable result was intended by the legislature.'

" 'It is presumed that the Legislature does not intend an absurdity, and such a result will be avoided if the terms of the act admit of it by a reasonable construction; and "absurdity" meaning anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion.' Words and Phrases, Permanent Edition, Vol. 1, p. 177, and cases cited."

To say that Acts 1963, ch. 296, may be used to allow a community school corporation created subject to "The School Corporation Reorganization Act of 1959" and subject to the minimum standards set under the Act, to disannex so much of its territory as to destroy those standards and the purposes for which it was created would be to allow an absurd application and construction of the statute. Such is contrary to proper statutory construction.

State ex rel. Glenn v. Smith, 227 Ind. 599, 87 N. E. ed 813 (1949).

To place such a construction on Acts 1963, ch. 296, would be to say that the Legislature passed the Act as an instrument by which school corporations reorganized under Acts 1959, ch. 202, could undo that which school reorganization has accomplished and allow school corporations to revert back to their corporation status before reorganization. Such an interpretation would lead to an absurd conclusion and result, con-

trary to the purposes and intent of the Legislature, which passed Acts 1963, ch. 296, as a supplemental aid to Acts 1959, ch. 202, as amended, and not to destroy its intent and purposes.

In my opinion Acts 1963, ch. 296, was passed with the legislative intent and purpose to give school corporations a tool by which they may adjust their boundaries by annexation or disannexation of school corporation territory and by which a losing school corporation may add all of its territory to existing community school corporations which meet the minimum standards set by the State School Reorganization Commission. It may not be used by a losing school corporation to give so much of its territory to other school corporations as to leave itself a school corporation below the standards set by the Commission and to destroy the work of that Commission and the various county committees reorganizing Indiana schools under Acts 1959, ch. 202, as amended.

OFFICIAL OPINION NO. 23

May 27, 1968

CONTRACTS—STATUTES—Power of Alcoholic Beverage Commission to Enforce Fair Trade Agreements or Price Fixing Contracts.

Opinion Requested by Hon. Robert E. Mahowald, State Senator.

This is in response to your letter of April 23, 1968, in which you request an opinion answering the following question:

> "Does the Alcoholic Beverage Commission, or for that matter the General Assembly, have the power to enforce