happy to answer every such request. However, I should point out that the Clerk and Reporter of the Supreme and Appellate Courts apparently have available to them a more authoritative source of legal advice. In both *Ex parte Brown,* 166 Ind. 593, 78 N.E. 553 (1906) and *Ex parte Fitzpatrick,* 171 Ind. 557, 86 N.E. 964 (1909), the Clerk of the Supreme and Appellate Courts successfully petitioned the court for advice concerning fees. In *Ex parte Sweeney,* 126 Ind. 583, 27 N.E. 127 (1891) the clerk was advised on what cases to transfer to the Appellate Court and in *Ex parte Sweeney,* 131 Ind. 81, 30 N.E. 884 (1892) on whether a bond was essential to the effectiveness of a term-time appeal. In *Ex parte Griffiths,* 118 Ind. 83, 20 N.E. 513 (1889) the court advised the Reporter that a statute requiring the judges to write a syllabus for each opinion was unconstitutional. *Ex parte France,* 176 Ind. 72, 78, 95 N.E. 515 (1911) advised the Clerk as to the validity of a statute concerning the Appellate Court.

OFFICIAL OPINION NO. 18

July 10, 1967

SCHOOLS AND SCHOOL CORPORATIONS—ZONING—Applicability of Zoning Master Plan to School Building Construction.

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

This is in reply to a request of your predecessor for an Official Opinion, which request reads as follows:

> "Wayne County is in the process of preparing a Master Plan, pursuant to Chapter 174, Acts of 1947.

"The Board of School Trustees of Richmond Community Schools has requested and I am asking for an opinion concerning the following:

"1. Can a Master Plan determine the location of future school sites even though the school corporation has previously purchased land for the purpose of erecting a school building?

"2. If the answer to the above is in the affirmative, what appeal does the school corporation have?"

(I interpret the first question as being concerned with a prohibition against building on the land now owned by the school corporation rather than with a direction to build on one or more parcels of land not presently owned by the corporation.)

Your specific questions also require a determination of whether a County Plan Commission has authority to regulate the location and construction of schools.

Acts 1947, ch. 174, as amended, as found in Burns §§ 53-701 through 53-795, provides that a board of county commissioners may provide for a county plan commission whose purpose is partially set out by Section 32 of that Act (Burns § 53-732) as follows:

"So as to assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development, the plan commission shall prepare a master plan. . . ."

Acts 1947, ch. 174, § 35, the same being Burns § 53-735, provides in part:

"A master plan may include:

"1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

"2. Maps, plats, charts and descriptive material presenting basic information, locations, extent and character of any of the following: . . .

"o. Education, including location and extent of schools, colleges and universities. . . .

"3. Reports, maps, charts and recommendations setting forth plans for the development, redevelopment, improvement, extension and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in Section 1 of this act."

The several sections of the Act following the section partially set out above provide for a hearing on the proposed master plan, the preparation of an ordinance embodying the plan, and the passage of that ordinance by the county commissioners.

The specific inclusion of schools, colleges and universities as matters to be considered in formulating the master plan indicates that the County Plan Commission does have authority to regulate the location of schools.

Schools generally are subject to zoning and similar land use restrictions, as is illustrated by the case of *Board of Zoning Appeals v. School City of Mishawaka,* 127 Ind. App. 683, 145 N.E. 2d 302 (1957). A zoning ordinance in the City of Mishawaka required buildings along a given street to have a minimum setback of 25 feet from that street. The Mishawaka High School is located on that street. Wishing to build an addition to the gymnasium wing of that school, the school city applied to the Board of Zoning Appeals for a variance on the theory that strict adherence to the setback provision would cause unnecessary hardship inasmuch as the existing school facilities were inadequate and any alternative method of enlarging such facilities would involve substantially greater costs. The Board of Zoning Appeals denied the variance and the school city petitioned the Superior Court to review the action of the Board. The Superior Court reversed the decision of the Board, and, when the Board carried the question on appeal to the

Appellate Court, the decision of the Superior Court was affirmed. Both courts based their decision on the sufficiency of the evidence supporting the allegation of unnecessary hardship rather than on any purported school immunity from zoning ordinances.

Therefore, the location and construction of school buildings is subject to the provisions of a properly adopted master plan of a county plan commission.

Generally speaking, a master plan provides a land use plan for all area subject to the jurisdiction of the body adopting same, including ground purchased for a specific use prior to its adoption. The question of whether land purchased for a specific use prior to the adoption of a plan may be zoned for a different use by the adoption of the master plan has been decided by the Indiana Supreme Court in the case of *Lutz v. New Albany City Plan Comm'n,* 230 Ind. 74, 81, 101 N.E. 2d 187, 190 (1951), wherein that Court said:

> "The zoning ordinance herein is, of course, subject to any vested rights in the property of appellants acquired prior to the enactment of the zoning law. But where no work has been commenced, or where only preliminary work has been done without going ahead with the construction of the proposed building, there can be no vested rights. The fact that ground had been purchased and plans had been made for the erection of the building before the adoption of the zoning ordinance prohibiting the kind of building contemplated, is held not to exempt the property from the operation of the zoning ordinance. *O'Rourke v. Teeters* (1944), 63 Cal. App. 2d 349, 352, 146 P. 2d 983, 985. Structures in the course of construction at the time of the enactment or the effective date of the zoning law are exempt from the restrictions of the ordinance. 58 Am. Jur., Zoning, § 149, p. 1022. The service station was not in the course of construction so as to give to appellants vested rights, and was not a nonconforming use existing at the time of passage of the ordinance."

Thus, the Wayne County Board of County Commissioners may establish a plan commission and adopt a master plan

which fixes the use of land for other than school purposes even though the land was previously purchased by a board of School Trustees for erecting a school thereon, unless the actual construction of the school has commenced prior to the effective date of the master plan as adopted.

Your second question is answered by Acts 1947, ch. 174, § 66, as found in Burns § 53-767, which charges the Board of County Commissioners adopting a zoning ordinance or a master plan with the responsibility of creating a board of zoning appeals. The board of zoning appeals so created is authorized and empowered by Section 77 of the Act, Burns § 53-778, to grant, in cases of hardship, such variances from the terms of the zoning ordinance as will not be contrary to the public interest nor be contrary to the intent and purposes of the ordinance. Should the board of zoning appeals refuse to grant a variance permitting the construction of a school on property owned by the school corporation when such refusal causes an unnecessary hardship on the school corporation, that decision may be appealed pursuant to Acts 1947, ch. 174, § 82, as amended, and as found in Burns § 53-783, which provides:

> "Every decision of the board of zoning appeals shall be subject to review by certiorari.
>
> "Any person or persons, firm or corporation jointly or severally aggrieved by any decision of the board of zoning appeals, may present to the circuit or superior court of the county in which the premises affected is located a petition duly verified, setting forth that such decision is illegal in whole or in part, and specifying the grounds of the illegality. The petition shall be presented to the court within thirty days after the entry of the decision or order of the board of zoning appeals complained of.
>
> "No change of venue from the county in which the premises affected is located shall be had in any cause arising under the provision of this section."

An erroneous decision by a court is also appealable to a higher court. I again refer you to *Board of Zoning Appeals v. School*

City of Mishawaka, supra, wherein the school caused the zoning board's refusal to grant a variance to be reviewed and reversed by the St. Joseph Superior Court, and the zoning board in turn appealed that reversal to the Indiana Appellate Court.

It is, therefore, my opinion that a properly adopted master plan could prohibit the construction of a school on land purchased for that purpose before the plan was adopted if construction had not begun prior to adoption of the plan. If inability to construct the school creates a hardship, the Board of School Trustees may petition the Board of Zoning Appeals for a variance from that plan. If the variance is not granted the Board of School Trustees may have the refusal reviewed by the Circuit or Superior Court of the county and, if necessary, may appeal that court's decision to the Appellate Court of Indiana.

OFFICIAL OPINION NO. 19

July 11, 1967

BOARDS AND COMMISSIONS—STATUTES—Anti-Secrecy Law—Refusal to Reveal Votes of Members of Board on Government Functions.

Opinion Requested by Mr. Donald H. Sauer, Director, Department of Financial Institutions.

I am in receipt of your letter advising that the Members of the Department of Financial Institutions have by majority vote adopted the policy that neither the numerical vote nor the indication as to how individual Members of the Department vote on any issue is to be made public, and in which you pose the following two questions: