

1967 O. A. G.

In summarization of the foregoing answers, it is my opinion that should a clerk-elect die subsequent to election but prior to qualification the incumbent clerk, if he is eligible to hold that office, will continue in office until his successor is both elected and qualified. If the incumbent is not eligible the office may be deemed vacant as of the date he becomes ineligible and the Governor may appoint an eligible person to fill that vacancy. Completion of eight successive elected years in office, two elected terms, renders an individual ineligible to hold the office of clerk during the ninth year and thus, if his successor has not been elected and qualified a vacancy in that office will occur. Clerks are to be elected in each county at four year intervals and there should be no elections to that office other than in accord with that interval. If a person has been appointed to fill a vacancy in the office occasioned by the ineligibility of an incumbent to hold over, the person elected to that office at the next election held in accord with the four year interval should assume office the first day of January first following his election.

OFFICIAL OPINION NO. 41

November 28, 1967

SCHOOLS—TAXATION—Maximum Tax Levy for School Corporation General Fund.

Opinion Requested by Mr. Larry R. Mohr, Chairman, State Board of Tax Commissioners.

You have requested my Official Opinion interpreting section 3 of the Acts of 1967, ch. 328 (hereinafter referred to as the "General Fund Act"), Burns § 28-2429b. This section reads as follows:

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“SEC. 3. The tax levy and rate for the General Fund shall not be greater than four dollars and ninety-five cents (\$4.95) per one hundred dollars (\$100) of adjusted valuation in the school corporation.”

Your questions are :

- “(1) Whether or not a school corporation under Chapter 328, Section 3, can levy a tax rate in excess of \$4.95 per one hundred dollars of assessed valuation?
- “(2) If your answer to question No. 1 is in the affirmative, under Section 3, since the word assessed is omitted from the language, do you interpret this to mean that the rate could be as high as \$14.85 per one hundred dollars of assessed valuation?”

The “General Fund” to which reference is made by the above-quoted section must be established by the governing body of each school corporation in the State of Indiana not later than January 1, 1968.

The General Fund is to replace all of the funds specifically named in both sections 2 and 7 of the Act, Burns §§ 28-2429a and 28-2429f, which sections provide :

“SEC. 2. The governing body of each school corporation in the State of Indiana shall establish a General Fund for the operation and maintenance of local schools and levy a tax therefor. All receipts and disbursements heretofore authorized by law for school funds and tax levies for the Tuition Fund, Special School Fund, Special Fund, Vocational Fund, Recreation Fund, Compulsory Education Fund, School Library Fund, High School Library Fund, Public Employee’s Retirement Fund, Operating Fund, transportation tax and county wide school tax shall, on and after January 1, 1968, be received in and disbursed from the General Fund. Tax levy and rate for the General Fund shall be established by the governing body of

each school corporation for the 1968 calendar year and all succeeding calendar years. Any balances of all the aforesaid funds on January 1, 1968 shall be transferred to the General Fund.”

“SEC. 7. All references to and authority granted by existing laws for tax rates and levies for the Tuition Fund, Special School Fund, Special Fund, Vocational Fund, Recreation Fund, Compulsory Education Fund, School Library Fund, High School Library Fund, Public Employee’s Retirement Fund, Operating Fund, transportation tax, county wide school tax and any other tax rates established for any fund except the Debt Service Fund and Cumulative Fund shall hereafter be incorporated in and made a part of the General Fund after the effective date of this Act.”

Thus, this General Fund is to become the fund from which school expenses of a current operational character must be paid. As explained in my Official Opinion No. 32 of 1967 appearing at p. 211, *supra*, the General Fund Act was one of a package of bills prepared by a legislative study commission created for the purpose of consolidating and simplifying school accounting procedures. The commission was directed by Acts 1965, ch. 470, to study the statutes, rules and regulations governing Indiana local school budgeting and accounting procedures for the purpose of proposing consolidation and simplification of those procedures. Neither the purpose of the commission nor the titles of the bills introduced (not all of which were enacted) indicate that any of them were intended to make radical changes in the amount of local taxes to be imposed for local public schools.

The obvious purpose of the General Fund Act, as introduced, was the elimination of a number of overlapping and intertwined special funds and tax levies at varying rates. See my Official Opinion No. 32 of 1967, p. 211, *supra*. Research into the many sundry statutes repealed by the General Fund Act manifestly supports the conclusion of the Legislature that simplification, clarity and control were needed in this field.

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However, the General Fund Act, as enacted, has another purpose — limiting the amount of local property tax which may be levied and collected for school current operating expenses. The plain meaning of Section 3 of the Act, Burns § 28-2429b, stating: “The tax levy and rate for the General Fund *shall not be greater than* four dollars and ninety-five cents (\$4.95) per one hundred dollars (\$100). . . .” (Emphasis added.) is to limit General Fund expenditures by establishing an absolute maximum ceiling on the tax rate. The legislative history of the Act makes this purpose even more evident. As originally introduced, section 3 of the General Fund Act (H. B. No. 1441 of 1967), contained a proviso permitting a greater tax levy and rate if advertised by the school corporation and approved by the State Board of Tax Commissioners. After the bill had passed the House, and during the closing days of the session, the Senate amended that section by deleting the proviso. The House concurred. Thus the General Assembly eliminated the “escape clause” in the bill as introduced. The only purpose and effect which that amendment can have is to limit the tax local school corporations may impose.

The only basis for any difference of opinion concerning the meaning of section 3 stems from the fact that the maximum rate of four dollars and ninety-five cents (\$4.95) is to apply to “adjusted valuation.” The term “adjusted valuation” is not defined in this statute. That language was in the bill for the act, as introduced (House Bill No. 1441 of 1967), and was not changed by the General Assembly. Your questions may, therefore, be restated as follows:

- (1) What is the meaning of the term “adjusted valuation” in section 3 of the General Fund Act?
- (2) Does the word “valuation” in the phrase “adjusted valuation” mean “true cash value”?

After considerable research, I have reached the conclusion that “adjusted valuation,” as used in section 3 of the General Fund Act, means “adjusted *assessed* valuation.”

The two major funds replaced by the General Fund Act are the special school fund and the supplementary tuition

fund. Since 1945, the General Assembly has limited the maximum combined tax rate which could be levied for those two funds. (See Acts 1945, ch. 39; Acts 1947, ch. 232; Acts 1951, ch. 247; Acts 1953, ch. 181; Acts 1955, ch. 318; Acts 1957, ch. 345; Acts 1959, ch. 386; Acts 1965, ch. 414 [permitted creation of an "operating fund" to replace the other two funds]). The acts of 1945 through 1955 each established a maximum rate which could be levied "on each one hundred dollars worth of taxable property." The subsequent acts established a maximum rate which could be levied on "each one hundred dollars worth of taxable property based on the *adjusted assessed* valuation in the school corporation." (Emphasis added.) This phrase is identical to that contained in the General Fund Act except that the latter omits the word "assessed."

Since the tax is obviously a tax on property in the school corporation, the question becomes how to determine the initial "valuation" of that taxable property, and then how to "adjust" that valuation for the purposes of the school tax. Since the word "adjusted" is not defined, its meaning must be determined by reference to some other statute or recognized principle of law. The same is true for the word "valuation." There are not a great number of possible interpretations.

By Acts 1949, ch. 225, The General Assembly first required land to be assessed at not to exceed thirty-three and one-third percent (33 $\frac{1}{3}$ %) of market or sale value as of March 1, and improvements at not to exceed the same percentage of average reproduction cost. Personal property as well as land and improvements were required to be assessed at thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the "true cash value" of the property, by Acts 1961, ch. 319, see section 109, Burns § 64-309. The reason for such statutes has been explained by the Supreme Court:

"Although the statutes pertaining to the assessment of property have, from the time of the adoption of § 1 of Article 13, *supra*, of the Constitution of Indiana, to 1949, provided that property should be assessed at its 'true cash value,' it is common knowledge and a fact of which we take judicial notice, that assessing

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officials have always assessed property at a part only of its 'true cash value,' and we see no reason why the Legislature should not add some uniformity to this method of assessment by requiring that all real estate and improvements thereon shall be assessed at a fixed per cent of its true cash value as determined by standards fixed in the statute, thus eliminating inequalities which have existed between the various taxing districts within the State." *Allen v. Van Buren Township*, 243 Ind. 665, 671-672, 184 N.E. 2d 25, 192 N.E. 2d 316 (1962).

In that case, the Court decided that the word "value" in the phrase "value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes" as contained in Art. 13, § 1 of the Constitution, meant "assessed value."

The word "value" used in a statute and applied to taxable property has been held to mean assessed value rather than true cash value. *Datiman v. Gary Pub. Library*, 241 Ind. 83, 93, 170 N.E. 2d 55 (1960). The interpretation of "one (1) per cent of the value of property taxable for library purposes" as used in a statute was at issue. The court said

"Generally, statutory debt limitations on taxable property refer to the value of taxable property within the taxing district as ascertained by the last assessment for State and local taxes. It seems clear to us that this is what the Legislature meant by 'value of property taxable' as it is used in § 20 of the Act, (§ 41-920, *supra*). This is in our judgment a reasonable construction which makes such provision of the Act intelligible, and under such circumstances it will be upheld if it does not conflict with some provision of the Constitution of Indiana." 241 Ind. 93-94.

It thus appears that ordinarily, in a statute setting a limit on tax rates, the word "value" means "assessed valuation." The court indicated in the *Datiman* case that the reasonableness of the result obtained may also influence the court's

interpretation of the word. Therefore, unless the result is unreasonable, the word "valuation" in section 3 of the General Fund Act must be interpreted to mean "assessed valuation."

Interpreting the word "value" in the General Fund Act to mean other than "assessed value" would result in awesome and inexplicable consequences. As previously set out, the assessed value of real and personal property is required by Acts 1961, ch. 319, § 109, Burns § 64-309, to be thirty-three and one-third percent ($33\frac{1}{3}\%$) of "true cash value."

A rate of \$4.95 levied on each \$100 of true cash value would produce, from a taxpayer with property having a true cash value of \$300, a tax of \$14.85. If the same rate of \$4.95 were levied on each \$100 of the same taxpayer's property valued at its assessed valuation (which is one-third [$\frac{1}{3}$] of the true cash value, or \$100), the rate would produce \$4.95. In my opinion, the Legislature did not and could not have intended to permit such an increase in the tax burden on local taxpayers. In addition to the fact that the word "value" in such a statute is ordinarily understood to mean "assessed valuation," the whole purpose of the General Assembly in setting a limit on the tax rate would be defeated by such an interpretation. Keeping in mind the fact that the bill for the Act, as introduced, contained an "escape clause" permitting a higher tax rate when approved by the State Board of Tax Commissioners, and the fact that the Legislature intended to limit the tax by the deletion of that "escape clause," it is relevant to compare the \$4.95 rate on adjusted assessed valuation with the rates permitted under prior statutes.

The last two prior Acts which established maximum rates for the special school fund and the supplementary tuition fund were Acts 1959, ch. 386, and Acts 1965, ch. 414 (the 1965 Act authorized creation of an "operating fund" to replace the other two funds). Each established a maximum rate of \$4.25 per "each one hundred dollars worth of taxable property based on the adjusted *assessed* valuation in the school corporation." (Emphasis added.) All of the additional minor levies then authorized (such as the vocational levy, transportation levy, recreational levy, county-wide levy, compul-

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sory education levy, school lunch levy and public employees' retirement fund levy), when added to the \$4.25 levy and rate on adjusted assessed valuation did not quite amount to a rate as high as \$4.95 on adjusted assessed valuation of the property. Therefore, in my opinion, the Legislature cannot have intended to impose a maximum rate of \$4.95 on each one hundred dollars of property valued at its true cash value which, as previously shown, could subject local property taxpayers to three times the dollar tax responsibility for schools as that which existed at the time the General Fund Act was passed. The General Assembly intended to, and did, preserve the status quo (with a few cents leeway), by imposing a maximum tax rate of \$4.95 on each one hundred dollars of adjusted *assessed valuation* of property in the school corporation.

The next step required is the determination of the meaning of the word "adjusted."

The term "adjusted" as applied to assessed valuation is defined in Acts 1949, ch. 247, Burns §§ 28-1021—28-1028. Section 5 of that Act, as last amended by Acts 1961, ch. 284, § 1, Burns § 28-1025, (hereinafter referred to as the "State Aid Act") provides for a state-wide assessment study, the determination of an adjustment ratio factor, and the application of that factor to the assessed valuation of each school corporation in computing the amount of money to be given each public school in the State of Indiana from the state-financed minimum foundation program. The reason for the establishment of the adjustment factor was clearly set out in 1962 O.A.G., p. 253. At page 256 of 1962 O.A.G., the Attorney General discussed the personal property assessment act in effect in 1949, which required the assessment of all personal property at its true cash value. He then stated:

" . . . Even though this section of the former tax law theoretically provided for a uniform rate of assessment of all personal property, in that such was to be assessed 'at the true cash value', nevertheless, I am reliably informed that studies on a state-wide basis disclosed that substantially similar personal property was valued for assessment purposes at differing rates

in different counties, and also that different classes of personal property were assessed at rates differing from the rate used in the assessment of other classes of personal property within the same county.

“ . . . This explains the purpose and function of the Acts of 1949, Ch. 247, *supra*, with respect to the distribution of state funds for local school purposes. That act clearly acknowledged the lack of uniformity of the rate of assessment on a state-wide basis, and, so that state funds would be distributed fairly to local school units, set forth the requirements in Section 5 of the Acts of 1949, Ch. 247, as amended. . . .” 1962 O.A.G. at 257.

“ . . . It is clear that this adjusted assessed valuation, computed by means of the adjustment percentage factor, was for the purpose of requiring the particular local school corporation to levy a minimum local tax proportionately equal to that imposed by other local school corporations throughout the entire state. The receipt by local school corporations of state aid is made dependent upon such corporations' qualifying for the same by contributing certain minimum amounts to the costs of education. In order that the contribution by the local school corporation, required to qualify it for such state aid, is fairly determined, it is necessary that the tax rate levied by it be equivalent to the minimum cents on each one hundred dollars applied to the assessed valuation of property in the local school corporation computed by means of a uniform standard. Thus, the adjustment of the assessed valuation of each school corporation, by application of the adjustment percentage factor, is the means of determining a tax base, uniform in proportion to the sales price of real estate throughout the state. The minimum levy . . . assures a minimum 'local effort'. . . .” 1962 O.A.G. at 259-260.

Further, state aid has been provided to local public schools pursuant to Acts 1959, ch. 328, as amended by Acts 1961, ch. 198, Burns §§ 28-1029—28-1034, and most recently, by

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the 1967 Appropriations Act, Acts 1967, ch. 298, § 2, see footnote to Burns § 28-1030. These statutes all require distribution of state funds to be based upon a local tax levied on "adjusted assessed valuation." Beginning in 1957, the Acts establishing maximum rates for the two major school funds superseded by the General Fund based the maximum rate on "adjusted assessed valuation." Acts 1957, ch. 345; Acts 1959, ch. 386; Acts 1965, ch. 414. Since 1949, the word "adjusted" as applied to "assessed valuation" in school tax statutes has been understood to require the application to the assessed valuation of the adjustment factor provided in the state aid statute.

Therefore, in my opinion, there can be no doubt that the word "adjusted" as used in the General Fund Act as a modifier of "valuation" means that an adjustment percentage factor determined pursuant to the state aid acts shall be applied to the assessed valuation of each school corporation in computing the maximum rate per hundred dollars of assessed valuation which the school corporation may levy for its general fund.

It should be noted that, for the sake of convenience, the State Board of Tax Commissioners and the school corporations of the state have expressed the result of the application of the adjustment factor to assessed valuation by adjusting the rate of the tax as it applies to the valuation as assessed.

Paragraph C of section 5 of the State Aid Act, as amended in 1961, Burns § 28-1025, reads as follows:

"The assessed valuation of each school corporation shall then be multiplied by the assessment ratio factor and the resulting figure shall be used as the adjusted assessed valuation for the purpose of computing state distribution of funds under this act and the actual rate to be applied to the actual assessed valuation in order to provide the amount of the levy."
(Emphasis added.)

Pursuant to the emphasized portion of that section (which has not been changed since its enactment in 1949), the adjust-

ment factor has been used to adjust the tax rate rather than the assessed valuation, to achieve the same dollar tax result for each individual whose property is subject to tax.

This opinion does not reach the conclusion which I would prefer to reach. Through numerous conferences in my office with school officials and members of the State Board of Tax Commissioners, and through reading newspaper accounts of the situation, I am well aware that the General Fund Act creates an impossible situation for certain school corporations in the state, and makes performance of their duties difficult for many others. At least six appear to be unable to fulfill teachers' contracts by 1968-69. Many others must curtail or eliminate services which are popularly felt to be necessary, such as summer school, special education, remedial reading and 4-H activities.

At the time the 1967 Legislature was in session, school officials and others interested in the operation of the schools agreed that a \$4.95 rate on adjusted assessed valuation would be sufficient to permit schools to operate in the same manner in which they had been operating during the previous biennium, even without authority to exceed the maximum rate when approved by the State Board of Tax Commissioners. However, after the General Assembly adjourned, in 1967, the State Board of Tax Commissioners, pursuant to section 5 of the State Aid Statute, Acts 1949, ch. 247, as last amended by Acts 1961, ch. 284, § 1, Burns § 28-1025, investigated the ratio of assessed valuation to sales prices in the various school corporations of the state and established new assessment ratios for the same. Factors in some counties increased and in others decreased. Most of the school corporations which are in serious trouble are in counties in which the adjustment factor has decreased, resulting in a lower maximum rate after adjustment than the school corporations had anticipated. It is notable, also, that in many of the school corporations in which a problem exists, the taxable property is residential only. This spotlights another serious situation underlying many of our school woes — the tax isolation of residential communities which produce school children, from industrial communities which produce tax revenue.

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Nevertheless, although I am fully aware of the problems created by this statute, I cannot misconstrue the law as enacted by the Legislature to ameliorate the hardship on certain school districts, even though this would be a laudable result.

Therefore, it is my opinion that the words "adjusted valuation" as used in section 3 of Ind. Acts 1967, ch. 328, Burns § 28-2429b, mean "adjusted assessed valuation." The result is that the \$4.95 tax rate, adjusted by the factor established by the State Board of Tax Commissioners pursuant to Ind. Acts 1949, ch. 247, § 5, as last amended by Acts 1961, ch. 284, § 1, Burns § 28-1025, is the maximum rate which may be levied by a school corporation for its General Fund on each \$100 of the assessed valuation of taxable property in the school corporation.

OFFICIAL OPINION NO. 42

November 29, 1967

INDIANA AGENCY FOR THE BLIND—Administrative Procedures With Respect to the Federal Vocational Administration Act.

Opinion Requested by Dr. A. C. Offutt, State Health Commissioner.

I am in receipt of your recent inquiry for an opinion concerning the administrative structure of the Indiana Agency for the Blind. Your letter, in pertinent part, reads as follows:

"The Office of the General Counsel has advised the Vocational Rehabilitation Administration, Department of Health, Education, and Welfare, to seek clarifica-