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OFFICIAL OPINION NO. 24

November 4, 1966

**EDUCATION—STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION—Payments under School Corporation
Financing Act—Definition of Average Daily
Attendance.**

Opinion Requested by Hon. William E. Wilson, State Superintendent of Public Instruction.

I have your letter requesting an Official Opinion as follows:

“Under the provisions of Section 5, Chapter 38 of the Special Session of the 1963 Acts of the Indiana General Assembly, as amended by Section 1, Chapter 278 of the 1965 Acts, should the certification of Resident A.D.A., by the State Superintendent of Public Instruction to the County Auditor, be on the basis of grades kindergarten through twelve, or one through twelve, in each school corporation within the County?”

The statute to which you refer may be found in Burns IND. STAT. ANN., §§ 28-1114—1123, and may be cited as the “Supplemental School Corporation Financing Act.” The Act applies to any county in the state in which there are located three (3) or more cities of the second class, Act, § 3(b), Burns § 28-1116(b), which, at the present time, limits its application to Lake County. The purpose of the statute as set out therein is to modify previous statutory provisions pertaining to the levying of tax rates for school purposes to provide for a more satisfactory use of the taxable wealth of qualifying counties for school purposes.

Section 5 of the Act originally provided in part as follows:

“On or before July 10 of each year the State Superintendent of Public Instruction shall deliver to any

such county auditor a certified statement of the number of pupils in average daily attendance *in grades one through twelve* residing in each school corporation in any such county for the immediately preceding school year." (Emphasis added.)

The 1965 amendment to the Act, Acts 1965, ch. 278, § 1, as found in Burns § 28-1118, made only one change. The words "in grades one through twelve" were deleted. Therefore, the statute now requires you to certify to the county auditor a statement of "the number of pupils in average daily attendance residing in each school corporation."

Each change made in the language of an original statute by an amendment passed by the General Assembly raises a presumption that the Legislature intended thereby to change the meaning of the statute. *Daubenspeck v. City of Ligonier*, 135 Ind. App. 565, 183 N.E. 2d 95 (1962), *transf. den.*, 191 N.E. 2d 100 (1963).

It is my opinion that the only intention which may reasonably be ascribed to the General Assembly's deletion of the words "in grades one through twelve" as modifiers of the word "pupils" in the statute is the intention to include within the definition of "pupils" all those pupils properly in attendance at a school governed by the statute, regardless of the grade in which the pupil is enrolled. Therefore, kindergarten pupils in attendance, if any, must be included in the number of pupils certified. The 1965 Legislature also provided that kindergarten pupils may be counted by local school corporations for purposes of distribution of state funds to local schools, the 1965 Appropriations Act, Acts 1965, ch. 191, at 411, noted at Burns § 28-1030.

It should be noted, however, that § 3(a) of the Supplemental School Corporation Financing Act, as found in Burns § 28-1116(a), defines "average daily attendance" for the purposes of the Act as follows:

"(a) The term 'average daily attendance' shall refer to the average daily attendance as used and defined under the rules and regulations established by the state commission on general education pursuant to chapter

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247 of the acts of 1949 as it may be amended from time to time.”

Therefore, although the pupils which are to be counted include all pupils in the school, the “average daily attendance” of those pupils must be determined in accordance with the rules and regulations of the state commission on general education pursuant to the 1949 Act cited above, which may be found in Burns §§ 28-1021—1028.

OFFICIAL OPINION NO. 25

November 16, 1966

INDIANA STATE FAIR BOARD—Governor’s Power to Appoint Members—Other Statutes Applicable to Board.

Opinion Requested by Hon. Roger D. Branigin, Governor.

You have requested my opinion concerning your authority to appoint the Secretary and the Superintendent of Grounds and Buildings for the Indiana State Fair. In 1943 O.A.G. 55, the then Attorney General stated that the Superintendent of Grounds and Buildings must be appointed by the Governor. An examination of that opinion, the statutes creating and governing the State Fair Board, and cases relevant thereto, shows that the result reached in the opinion was occasioned by a peculiar situation prevailing in the manner of selection of the Fair Board itself.

The present Indiana State Fair Board was established by Acts 1947, ch. 214, as amended, which may be found in Burns IND. STAT. ANN., §§ 15-216—229. The first section of the act describes the property of the Fair Grounds as “trust prop-