Hon. George E. Stephenson  
State Representative  
Indiana House of Representatives  
R. R. 2  
Yorktown 4, Indiana

Dear Mr. Stephenson:

This will acknowledge your letter of recent date, by which you request my Official Opinion on the following question:

"Does a school board have a legal right to refuse to hire a qualified teacher simply because his or her spouse teaches in the school system?"

The Acts of 1899, ch. 192, § 1, as amended, and as found in Burns IND. STAT. ANN. (1948 Repl.), § 28-2410, provide, in part, as follows:

"The school trustees shall take charge of the educational affairs of their respective townships, towns, and cities. They shall employ teachers, establish and locate conveniently a sufficient number of schools for the education of children therein, and build, or otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient management of said schools. . . ."

It has been held by the Indiana Courts that under the above-cited statute school trustees are to take charge of the educational affairs of their respective townships, towns, and cities, and to furnish teachers and equipment for the thorough organization and efficient management of the schools, and such trustees and/or school boards have discretionary powers to formulate reasonable rules and regulations to that end. School City of East Chicago v. Sigler, 219 Ind. 9, 36 N.E.2d 760 (1941). It was the law in Indiana that school trustees and boards of school trustees could, in their discretion, adopt rules and regulations against the employment of married female teachers. The Court held that in such cases
marriage could be "a good and just cause" for cancelling teachers' employment contracts in instances where the restriction against marriage was for a limited time and was accepted by the parties knowingly and in good faith prior to or by the execution of the contract. *McQuaid v. State ex rel. Sigler*, 211 Ind. 595, 6 N.E.2d 547 (1937).

From the above, it becomes evident that school trustees and boards of school trustees may and do in their discretion, adopt reasonable rules and regulations with respect to the employment of school teachers, and it would appear that they may lawfully do so, unless there are either express statutes or implied laws forbidding the exercise of that discretion.

On March 1, 1951, ch. 106, § 1, as found in Burns IND. STAT. ANN. (1964 Supp.), § 28-4336, was approved as follows:

"No township trustee, school board, board of school trustees, board of school commissioners or agent of any of the foregoing shall make or enforce any rule or regulation concerning the employment of school teachers which shall, in any manner, discriminate against the employment of school teachers because of the marital status of such teachers."

The act set out immediately above, is presently in full force and effect and it reflects an express statute which is clear in its language and intent, and provides that "*no . . . board . . . shall make or enforce any rule or regulation concerning the employment of school teachers because of the marital status of such teachers.*" (Emphasis added.)

The argument may be advanced that this statute is not applicable unless school boards "discriminate against the employment of school teachers," and that no discrimination exists if the rule against the employment of husband and wife as teachers in the same school system applies with equal force against both male and female teachers. I reject this argument as not logically sound for to follow such contention to an ultimate conclusion, one could hold that a rule not to employ married teachers, either male or female, is not discriminatory, when in fact the statute in question expressly forbids such a classification.
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Therefore, in answer to your question, it is my opinion that school trustees or boards of school trustees may not legally refuse to employ a teacher for the sole reason that his or her spouse is also employed by the same school system. To refuse an employment contract to an otherwise qualified school teacher on the sole ground that he or she is married to a teacher already employed by the same school system, would be a direct violation of an express statute denying school trustees or boards of school trustees the discretionary power to refuse employment because of the marital status of such teacher.

OFFICIAL OPINION NO. 21

June 24, 1965

Hon. William E. Wilson
Superintendent of Public Instruction
227 State House
Indianapolis, Indiana 46204

Dear Mr. Wilson:

This is in answer to your recent request for my Official Opinion on the following question:

"... may a local school corporation adopt a resolution establishing an 'Operating Fund' after July 1, 1965, which fund would become effective on January 1, 1966, under the provisions of Acts of 1965, ch. 414."

Acts of 1965, ch. 414, § 1, reads, in part, as follows:

"Any local school corporation may by resolution of its governing body receive and credit all funds distributed under the provisions of this act into a new fund hereby created to be known as the Operating Fund. All funds heretofore eligible and lawful to be receipted in and disbursed from the tuition fund and special school fund, including funds for the making and paying of temporary loans, and except those for bond principal and interest, lease rental, and those which in the judgment of the Commission on General Education of the State Board of Education are im-