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-
possible or impractical of receipt and disbursement from such fund shall thereafter be received in and disbursed from said Operating Fund. Such action shall take effect on January 1 of the calendar year following the adoption of such resolution, provided such resolution is adopted prior to July 1 of any year."

The Act contains an emergency clause, which reads as follows:

"SEC. 3. Whereas an emergency exists for the more immediate taking effect of this act, the same shall be in full force and effect on and after July 1, 1965."

The answer to your question hinges on both the intent of the Legislature in enacting Chapter 414 and the construction to be placed on said chapter. In ascertaining the intent of the Legislature in enacting any statute and when construing a statute, reference must be made to the entire statute and not isolated sections thereof.

It is clear from a casual reading of ch. 414, supra, that the General Assembly intended to permit any local school corporation to establish an "Operating Fund" as soon as possible so as to simplify the management of school corporation monies on a local level. The presence of an emergency clause in ch. 414, supra, indicates that the General Assembly intended for local school corporations to take advantage of the provisions of said Act during the school year of 1965-66.

It is a fundamental principle of statutory construction that the intention of the Legislature should control over a strict interpretation of the terms of a statute.

In 1964 O.A.G., p. 26, No. 60, the following statement is found:

"The intention of the Legislature ascertained from the act as a whole will prevail over the strict literal meaning of any word or term used therein, and will control the strict letter of the statute. In other words, the spirit or intention of the law prevails over the letter thereof.

"The rule of construction according to the spirit of the law is especially applicable where adherence to the
letter would lead to injustice, absurdity, or contradictory provisions, and in adhering to this rule words may be modified or rejected and others substituted. Likewise the meaning of the words used in a statute may be enlarged or restricted according to their real intent.' (Our emphasis.)

"'In the case of Town of Kewanna, etc. v. Indiana Employment Security Board, 131 Ind. App. 400, 404, 405, 171 N.E.2d 262 (1961), the Court said:

"'In the construction of statutes, this court is bound by those definitions which are set out in the act and in this particular amendment, unless it appears that they are inconsistent or are repugnant to the manifest intention of the Legislature.

"'In construing an Act of the Legislature, its intention from a consideration of the Act, as a whole will prevail over the literal meaning of the terms used therein. Stated differently it appears that the spirit or intention of the law prevails over the letter thereof. Brown v. Grzeskowiak (1951), 230 Ind. 110, 101 N.E.2d 639; Combs Auditor, et al. v. Cook (1958), 238 Ind. 392, 151 N.E.2d 144. (Numerous other cases may be cited.) It likewise has been held that in a construction of a statute, the important object is to seek, determine and carry out the purpose and intent of the Legislature, and in order to determine that aim, the language used should first be considered in its literal and ordinary signification, and, if by giving the words used such a signification, the meaning of the whole instrument is rendered doubtful, or is made to lead to contradictions or absurd results, the intent, as collected from the whole instrument, must prevail over the literal import of the terms and control the strict letter of the law. Decatur Twp. v. Board of Comrs. of Marion Co. (1942), 111 Ind. App. 198, 38 N.E.2d 479. Northern Indiana R. Co. v. Lincoln Nat. Bank (1910), 47 Ind. App. 98, 92 N.E. 384. (Other cases may be cited.)

"'It has likewise been held that the rule of construction according to the spirit of the law is espe-
cially applicable where adherence to the letter of the law would lead to injustice, absurdity, or contradictory provisions. *City of Indianapolis v. Evans* (1940), 216 Ind. 555, 24 N.E.2d 776; *Peoples Trust & Savings Bank v. Hennessey* (1926), 106 Ind. App. 257, 153 N.E. 507.’ (Our emphasis.)

“In the case of Lewis v. Smith’s Estate (1959), 130 Ind. App. 390, 395, 162 N.E.2d 457, the court said:

‘‘... Statutes must be interpreted in the light of the purposes with which they deal. To hold otherwise than we do would defeat the express purpose of the statute.’ (Our emphasis.)

“In Adams v. Slater (1961), 132 Ind. App. 105, 175 N.E.2d 706, 709, the court said:

‘‘... If it appears that more than one construction is possible then it is the duty of this Court to give the construction which will give meaning to its purpose or object. ...’ (Our emphasis.)”

In 1962 O.A.G., page 200, No. 40, in construing the 1961 amendment to the “Motor Fuel Tax Law,” we held that refunds to purchasers of motor fuel used for non-highway purposes could be made to those properly applying during the six months period prior to the effective date of said statute (July 6, 1961), even though said statute did not come into effect until July 6, 1961, and according to its strict wording did not contemplate a refund except to those thereafter purchasing such motor fuel and requesting such funds. In other words, the statute was held to apply retroactively as well as prospectively, consistent with the evident intent of the Legislature.

In 1945 O.A.G., page 492, No. 115, it was held that the State Board of Textbook Commissioners could legally adopt a textbook list after the latest date fixed by law for the adoption of said textbook list since the Act under which said list was to be adopted did not become effective within time to allow said Commission to make such adoption prior to the latest date fixed by the Act.
At page 496 of 1945 O.A.G., No. 115, supra, the following language is found:

"Generally those directions which are not of the essence of the thing to be done, but which are given with a view merely to the proper, orderly and prompt conduct of the business, and by the failure to obey no prejudice will occur to those whose rights are protected by the statute, are not commonly considered mandatory. Likewise, if the act is performed but not in the time or in the precise manner directed by the statute, the provision will not be considered mandatory if the purpose of the statute has been substantially complied with and no substantial rights have been jeopardized.

* * *

"... Likewise, where the time, or manner of performing the action directed by the statute is not essential to the purpose of the statute, provisions in regard to time or method are generally interpreted as directory only.'

"'Also see 46 Corpus Juris, "Officer," Section 306. In 53 Corpus Juris, "Statutes," Section 631, pp. 1073 and 1074, said rule is stated as follows:

"'... On the other hand, the language of a statute, however, mandatory in form, may be deemed directory whenever legislative purpose can best be carried out by such construction, and the legislative intent does not require a mandatory construction. ... Whether a statute is mandatory or directory depends on whether the thing directed to be done is of the essence of the thing required, or is a mere matter of form. Accordingly, when a particular provision of a statute relates to some immaterial matter, as to which compliance with the statute is a matter of convenience rather than substance, or where the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business it is generally regarded as directory, unless followed by words of absolute prohibitions; and the same is true where no substantial rights depend on the statute, no injury
can result from ignoring it, and the purpose of the legislature can be accomplished in a manner other than that prescribed, with substantially the same results. . . ."

"Also see In Re McQuiston's Adoption (1913), 238 Pa. 304, 86 A. 205, 206.

"Said rule of construction as specifically applied to the time for performance of official duties is found in 59 Corpus Juris, 'Statutes,' Section 634, pp. 1078 and 1079, and is as follows:

"'A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others, and made with a view to the proper, orderly, and prompt conduct of business, is usually directory, unless the phraseology of the statute, or the nature of the act to be performed and the consequences of doing or failing to do it at such time, is such that the designation of time must be considered a limitation on the power of the officer. So a statute requiring a public body, merely for the orderly transaction of business, to fix the time for the performance of certain acts which may as effectually be done at any other time is usually regarded as directory. . . .'

"In Hisley, Auditor v. Rumble (1924), 81 Ind. App. 578, with respect to interpretation of tax laws, the court said:

"'There is a general rule founded on sound reason and principle which requires that when construing a tax law all those provisions which are intended to secure methodical procedure shall be regarded as merely directory, and that only those provisions which are necessary to the protection of the citizen shall be regarded as mandatory. . . .'

"Further exemplification and explanation of the rule is found in Jones v. Swift (1883), 94 Ind. 516, at page 523, in regard to remedial statutes:

"' . . . It will not do to hold that this statute may be used as a weapon against the successful litigant, for
whose protection it was enacted, by rendering ineffectual the judgment rendered in his favor, because the judge violated or failed to observe its provisions. To avoid such injustices the statute must be construed as directory. It is said in Sedgwick on Statutory and Constitutional Law, 316, that "When statutes direct certain proceedings to be done in a certain way or at a certain time, and a strict compliance with these provisions of time and form does not appear essential to the judicial mind, the proceedings are held valid, though the command of the statute is disregarded or disobeyed. In these cases, by a somewhat singular use of language, the statute is said to be directory."

It is my opinion that the Legislature intended that local school corporations be permitted to take advantage of the provisions of ch. 414, *supra*, during the school year of 1965-66. Therefore, the governing body of any local school corporation may adopt a resolution creating an "Operating Fund" immediately after July 1, 1965, to become effective January 1, 1966.

OFFICIAL OPINION NO. 22
July 20, 1965

Mr. Charles W. Kirk, Jr.
Executive Director
Department of Commerce and
and Public Relations
333 State House
Indianapolis, Indiana

Dear Mr. Kirk:

The following is my answer to your request for an Official Opinion, which request reads as follows:

"We are presenting the following question for your opinion in regards to an application to the Federal Housing and Home Finance Agency for an urban planning grant. This opinion would serve a twofold purpose."