such obligation would be a charge against the corporate entity making the agreement.

The county board of tax adjustment does not have the legal power and authority under the law to nullify the act of a governing body which has budgeted the employers’ share of the Employes’ Retirement Fund contribution for each office which has determined the cost of its participation in the fund according to law.

Therefore, it is my opinion that a county tax adjustment board is precluded from nullifying the act of a governing body by reducing the tax levy or rate adopted by the governing body when such rate or levy was adopted for the purpose of maintaining membership in the Public Employes’ Retirement Fund and that such rate or levy was made in accordance with the provisions of the Public Employes’ Retirement Act, Burns IND. STAT. ANN., § 60-1622, supra.

OFFICIAL OPINION NO. 63

November 19, 1965

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

Dear Mr. Wilson:

I am in receipt of your letter of October 8, 1965, in which you propound four questions pertaining to the “School Transportation Code of 1965” and request my Opinion as to their answers.

Your four questions are:

“1. Article V State School Bus Committee Section 502. Do the Acts of 1965 Chapter 260 permit the State School Bus Committee to adopt and promulgate rules for safety and conduct of passengers and driver and for operation of the school bus, or is the scope of rule making authority limited as set out in Section 502 of the Act?
2. Article IX Miscellaneous Provisions Section 907. Is Section 907 Chapter 260 of the Acts of 1965 enforceable as to the penal provisions of the Act (a) the driver, and/or (b) the governing body?

3. Are any of the previously promulgated rules and regulations of the State School Bus Committee established by legislation prior to the Acts of 1965 Chapter 260, still in effect?

4. Are standards for equipment for school buses enforceable against those buses which have met and passed a previously set standard when that standard is later changed, or are new standards for equipment enforceable only against new buses?

1. The powers of the State School Bus Committee are set out in Acts of 1965, ch. 260, § 502, the same being Burns IND. STAT. ANN., (1965 Supp.), § 28-3929, which provides:

"SEC. 502. The state school bus committee shall have the power and authority to perform the following functions:

"(a) Prescribe, by official rules and regulations, standards for the construction of school buses;

"(b) Prescribe, by official rules and regulations, standards for the equipment of school buses;

"(c) Provide for the inspection of all school buses, both new and used, which are offered for sale, lease or contract;

"(d) Provide for the annual inspection of all school buses;

"(e) Prepare and maintain an approved list of school buses which have passed inspection tests as required in subsections (c) and (d) of this section; and

"(f) Prescribe standard forms for school bus contracts, subject, however, to the approval of the state board of accounts."

The above portion of the Act does not indicate that the State School Bus Committee is to have the power to adopt and promulgate rules for safety and conduct of passengers and
driver and for operation of the school bus. That indication is further supported by other portions of ch. 260 of the School Transportation Code of 1965. Article VIII of that code, the same being Burns IND. STAT. ANN., (1965 Supp.), § 28-3934—28-3951, is entitled "SAFETY REGULATIONS FOR THE OPERATION OF SCHOOL BUSES" and provides a comprehensive enactment of regulations pertaining to the safe operation of a school bus. As to the conduct of passengers, Acts of 1965, ch. 260, § 905, the same being Burns IND. STAT. ANN., (1965 Supp.), § 28-3947, provides:

"All school children, while being transported on a school bus, shall be under the supervision, direction and control of the school bus driver, and shall be subject to the discipline of the bus driver and the governing body of the school corporation."

Thus it appears that it was not the intent of the Legislature to vest full authority over all matters pertaining to school buses in the State School Bus Committee, but rather to allocate various portions of the authority among several agencies. In this situation the words of the Indiana Supreme Court in Indiana Dept. of State Rev. v. Colpaert Realty Co., 231 Ind. 463, at 479, 109 N.E.2d 415 (1952), are appropriate:

"An administrative board has the undoubted right to adopt rules and regulations designed to enable it to perform its duties and to effectuate the purposes of the law under which it operates, when such authority is delegated to it by legislative enactment. (Citing Cases) But it may not make rules and regulations inconsistent with the statute which it is administering, it may not by its rules and regulations add to or detract from the law as enacted, nor may it by rule extend its powers beyond those conferred upon it by law. . . ." (Emphasis added.)

The State School Bus Committee which was in existence prior to the enactment of the 1965 Code did have the authority to establish regulations pertaining to the operation of school buses. That power was granted by Acts of 1939, ch. 48, § 118, the same being Burns IND. STAT. ANN., (1952), § 47-2132, said Act being entitled "AN ACT regulating traffic on high-
ways. . . .” However, that power was granted at a time when there were few or no statutory provisions for the operation of a school bus, and was specifically granted to “The State School Bus Committee, as provided for and established by Chapter 303 of the Acts of 1935. . . .”

The State School Bus Committee established by ch. 260 of the Acts of 1965 cannot accede to that authority.

It is, therefore, my Official Opinion that the State School Bus Committee may make regulations only in accord with the powers granted that Committee by Acts of 1965, ch. 260, § 502, and, more specifically, that that Committee cannot adopt and promulgate rules for the conduct of passengers and driver and for the operation of the school bus.

2. Acts of 1965, ch. 260, § 907, the same being Burns IND. STAT. ANN., (1965 Supp.), § 28-3949, provides:

“No school bus driver shall be required by the governing body to transport school children for which no seat is available in the bus.”

Subjecting that provision to a simple grammatical transposition from the passive voice to the active voice, which would not change the meaning, would produce this statement:

“The governing body shall not require any school bus driver to transport school children for which no seat is available in the bus.”

It is, therefore, apparent that this section is intended to place a limitation on the power of the governing body rather than to provide a penal sanction against acts of the school bus driver.

3. In answering this question I refer you to that part of the Supreme Court’s opinion in Indiana Dept. of State Rev. v. Colpaert Realty Corp. reproduced in response to your first question. I especially direct your attention to that portion which reads:

“. . . But it may not make rules and regulations inconsistent with the statute which it is administering, it may not by its rules and regulations add to or detract from the law as enacted, . . . .”
The rules and regulations of an administrative board are entirely and utterly dependent upon the statutes they are intended to supplement. They cannot stand alone. Acts of 1965, ch. 260, § 911, the same being referred to in the note under Burns IND. STAT. ANN., (1965 Supp.), § 28-3951, specifically repeals all the statutes upon which the rules and regulations established by the State School Bus Committee prior to that enactment were dependent. The same section even repealed the statute which created the then existing school bus committee.

Therefore, my answer to your third question must be in the negative.

4. The standards mentioned in your fourth question are, of course, those established by regulation of the State School Bus Committee pursuant to the authority granted by Section 502, as set out above. The basic question is whether the Committee may, by regulation, require buses presently operating to meet higher standards.

The answer to that question is a very qualified YES. The Committee is given the authority to establish standards that are applicable to all buses by Section 502, supra, and no express limitation is placed on that authority.

However, there are certain limitations to such authority. One such limitation, as expressed by the court in the Colpaert Realty case, supra, and specifically required by Acts of 1945, ch. 120, § 5, the same being Burns IND. STAT. ANN., (1961), § 60-1505, is that the regulation be in accord with the law.

Another limitation, more pertinent to the instant question, was reaffirmed by the court in Hill v. Review Board of Indiana Employment Security Div., 124 Ind. App. 83, 88, 112 N.E.2d 218 (1953):

"'Rules and regulations promulgated by administrative boards must be reasonable, . . . .'"

Whether it would be reasonable to require buses already in operation to meet the new standard would be dependent upon a number of considerations whose relative importance would be peculiar to the standard involved.