

desiring additional representation on the plan commission unless they can look to the authority of the circuit judge, already discussed herein, to make such appointments.

In answer to your final question, it is my opinion that the parties do have authority to amend or modify the contract provided for so that the township trustee will have authority to make more than one appointment to the plan commission pursuant to Burns' 53-1211, *supra*.

OFFICIAL OPINION NO. 27

May 29, 1964

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

Dear Mr. Wilson:

This is in reply to your letter requesting an Official Opinion on certain questions which have developed in connection with a reorganization of schools in Sullivan County. The specific questions, as stated by you, are as follows:

- "1. May the new boards drop the levy for free textbooks, since the new corporations have been formed, as they will drop a cumulative building fund levy. If not, is the new board mandated to furnish to all children as is now furnished to the children of one township?
- "2. May the textbooks that have been purchased be used as a part of the textbook rental program?"

A. Before attempting to set out pertinent statutory provisions of the statutes involved, I would point out that the fundamental rule in the construction of Indiana statutes is to ascertain the intent of the Legislature as therein expressed.

Roth v. Local Union No. 1460 of Retail Clerks Union
et al. (1939), 216 Ind. 363, 24 N. E. (2d) 280;

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State *ex rel.* Clemens v. Kern *et al.* (1939), 215 Ind. 515, 20 N. E. (2d) 514;

State of Indiana v. Mears (1938), 213 Ind. 257, 12 N. E. (2d) 343.

In ascertaining the legislative intent, an act must be construed in its entirety and together with other legislative enactments which are in *pari materia* to such act.

Schulz v. Graham; Kercheval (1955), 234 Ind. 243, 126 N. E. (2d) 1;

Wedmore v. State of Indiana (1954), 233 Ind. 545, 122 N. E. (2d) 1;

Starr v. City of Gary (1934), 206 Ind. 196, 188 N. E. 775;

Fleenor v. State of Indiana (1928), 200 Ind. 165, 162 N. E. 234.

The Acts of 1935, Ch. 105, Sec. 1, as found in Burns' (1948 Repl.), Section 28-624, reads as follows:

"The township trustee, board of school trustees or board of school commissioners of any township, town or city of this state shall provide a school library for their respective school corporations, containing such textbooks as may be adopted by the board of the department of education and the legally authorized local officials, in sufficient numbers and of such gradation as will meet the needs of each resident pupil, classified in each of the grades one to eight [1-8], inclusive, of the elementary schools, if a petition, signed by at least fifty-one [51] per cent of the registered voters of any such school corporation requesting the establishment of such a library be filed with the township trustee, board of school trustees or board of school commissioners of such school corporation, as hereinafter provided." (Our emphasis)

The statutory provision relative to the form of "petition," referred to above, is found in the Acts of 1935, Ch. 105, Sec.

2, as found in Burns' (1948 Repl.), Section 28-625, which reads, in part, as follows:

“* * * All such petition papers shall be in substantially the following form:

“To the township trustee, board of school trustees or board of school commissioners of the school corporation of _____.

“We, the undersigned voters of the school corporation of _____ respectfully petition the township trustee, board of school trustees or board of school commissioners of the school corporation of _____ to establish a school library and to lend school text-books free of charge therefrom to the resident pupils of the school corporation of _____, as provided for in chapter 105 of the Acts of the General Assembly of 1935.”

While I do not have before me a copy of the petition or petitions involved in the question which you have presented, such petition or petitions undoubtedly identify the petitioners as voters of the school corporation of some one specific township, town or city of this state. Moreover, the Acts of 1935, Ch. 105, Sec. 5, as found in Burns' (1948 Repl.), Section 28-628, reads as follows:

“The books of the library so established *for the respective corporation* shall be available to any *resident pupil of such corporation*, at any time, free of charge, under such regulations as are herein provided or as may be prescribed by the county superintendent and trustee in the township, the city superintendent and board of trustees or board of school commissioners in cities and the town superintendents and board of trustees in towns.” (Our emphasis)

Finally, the Acts of 1935, Ch. 105, Sec. 6, as found in Burns' (1948 Repl.), Section 28-629, reads as follows:

“If any township, town or city shall avail itself of the provisions of this act, *there shall be levied each year, by the township advisory board, board of school trustees or board of school commissioners*, in the same

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manner and at the same time that other taxes for school purposes are levied, *a tax* at a rate sufficient to produce a fund necessary to purchase the books as needed in establishing such library and to administer the provisions of this act. Such fund shall be designated as the school library fund, shall be subject to deposit as other public funds and shall be used for no other purpose whatsoever except the purchase and care of such library books.” (Our emphasis)

The statutory enactment relative to the providing of free textbooks in *high schools* is found in the Acts of 1939, Ch. 85, Sec. 1, as found in Burns’ (1948 Repl.), Section 28-640, which reads, in part, as follows:

“Whenever the residents of any city, town or township have provided for free text-books in grades one [1] to eight [8], inclusive, of the elementary schools of such city, town or township under the provisions of chapter 105 of the Acts of the 79th General Assembly of the state of Indiana, *the township trustee, board of school trustees or board of school commissioners of any such township, town or city of this state shall provide a high school library for their respective school corporations* * * *” (Our emphasis)

The statutory provision relative to a “petition” for the establishment of a high school library to provide free textbooks is found in the Acts of 1939, Ch. 85, Sec. 2, as found in Burns’ (1948 Repl.), Section 28-641, and reads, in part, as follows:

“* * * All such petition papers shall be in substantially the following form:

“To the township trustee, board of school trustees or board of school commissioners of the school corporation of _____.

“We, the undersigned voters of the school corporation of _____ respectfully petition the township trustee, board of school trustees or board of school commissioners of the school corporation of _____ to establish a high school library and to lend school text-books free of charge therefrom to the resident high school pupils

of the school corporation of _____ as provided for in chapter _____ of the Acts of the General Assembly of 1935.”

Again, I would assume that if any petition or petitions of this type were involved in the question which you have presented, such would identify the petitioners as voters of the school corporation of some one specific township, town or city of this state. Moreover, the Acts of 1939, Ch. 85, Sec. 6, as found in Burns’ (1948 Repl.), Section 28-645, provides as follows:

“If any township, town or city shall avail itself of the provisions of this act, *there shall be levied each year, by the township advisory board, board of school trustees or board of school commissioners, in the same manner and at the same time that other taxes for school purposes are levied, a tax at a rate sufficient to produce a fund necessary to purchase the books as needed in establishing such high school library and to administer the provisions of this act. Such fund shall be designated as the high school library fund, shall be subject to deposit as other public funds and shall be used for no other purpose whatsoever except the purchase and care of such library books.*” (Our emphasis)

The Acts of 1939, Ch. 85, Sec. 10, as found in Burns’ (1948 Repl.), Section 28-649, further provides:

“*The township trustee, board of school trustees, and board of school commissioners, shall provide for sufficient library facilities for safekeeping, care and protection of such books as may best accommodate the resident pupils of the corporation, and they shall provide for the fumigation or destruction of such library books, at such times and under regulations prescribed by the local and state health authorities.*” (Our emphasis)

Finally, the Acts of 1943, Ch. 249, Sec. 7, as found in Burns’ (1948 Repl.), Section 28-660, provides, in part:

“* * * Further, *each such school corporation, is and shall be, fully authorized and empowered to borrow money to buy such books and to issue its notes* * * *” (Our emphasis)

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The above numerous quotations have been set out by me so as to accurately demonstrate the legislative intent in this area. Thus, the Acts of 1935, Ch. 105 (concerning the establishment of free textbooks' libraries in elementary schools) as well as the Acts of 1939, Ch. 85, and the Acts of 1943, Ch. 249 (concerning the establishment of free textbooks' libraries in high schools) all envision the school corporations of townships, towns or cities of this state establishing such libraries "for their respective school corporations." In my opinion, when the individual school corporations of such townships, towns or cities in this state cease their independent existence, the taxing authority specifically granted such corporations under the above acts must also be deemed to have terminated. Thus, the Legislature, in regard to a reorganized school corporation, has specifically provided, in the Acts of 1959, Ch. 202, Sec. 9, subsections (7) and (8), as amended and now designated subsections (10) and (11) of said section, as found in Burns' (1963 Supp.), Section 28-6120 (10) and (11), as follows:

(10) "The transfer of powers, duties, property rights, other assets, liabilities, contracts both as to rights and obligations, and all else connected with the *transfer of authority from existing school corporations to the community school corporation shall take place at the time of the formation and creation of the community school corporations and are hereby declared vested in the community school corporations of that time.*

(11) "*Every board of school trustees created under this act shall have the power annually to levy such amount of taxes as in the judgment of such board, made a matter of record in its minutes, should be levied to produce income sufficient to conduct and carry on the public schools committed to such board, and it is hereby made the duty of such board to annually levy a rate that will produce a sum sufficient to meet all payments of principal and interest as they mature in the year for which such levy is made on the bonds, notes, or other obligations of the community school corporation. The power of such board in so making tax levies shall be exercised within existing statutory limits and said*

levies shall be subject to the same review as school city levies. *Such levies shall be at a uniform and equal rate on all taxable property located within the boundaries of the community school corporation.*" (Our emphasis)

In this general area of the law, the Legislature has seen fit to allow the school corporations of townships, towns and cities of this state to provide free textbooks on both the elementary and high school level. When, however, the school corporation of any township, town or city in this state ceases to maintain its own individual existence, but, instead, becomes encompassed within some larger community school corporation, such community school corporation is without authority to enforce and collect such special tax levy as is above provided for, but is rather required to levy a uniform and equal rate of tax on all taxable property encompassed within the boundaries of such community school corporation.

Thus, in answer to your first question, it is my opinion that the board of school trustees of a newly-created community school corporation not only *may* drop such special tax levy, *but, in fact, is without authority* to continue to levy such special tax. Rather, such board may only levy a uniform and equal rate of tax on the assessed valuation of all taxable property within the boundaries of such community school corporation as specifically provided by Burns' 28-6120 (11), *supra*.

In view of my answer to the first sentence of your first question, it becomes unnecessary to answer the second sentence of that question.

B. In answer to your second question, please be advised that the Acts of 1959, Ch. 202, Sec. 5 (4), as amended, as found in Burns' (1963 Supp.), Section 28-6107, reads, in part, as follows:

"In instances where existing school corporations are not divided the assets, liabilities, and obligations of the existing school corporations are to be transferred to and assumed by the new community school corporation of which they are a part, without any provision therefor being made in the plan." (Our emphasis)

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Therefore, if there be no division of a pre-existing school corporation and no provision to the contrary in the plan of reorganization, the assets of a pre-existing school corporation, including textbooks owned by such corporation, would be transferred to the new community school corporation. The Acts of 1935, Ch. 171, Sec. 1, as amended, as found in Burns' (1963 Supp.), Section 28-638, reads as follows:

“Any board of school commissioners, board of school trustees, school township trustee, joint or consolidated school board, county board of education, or the governing body of any school corporation of this state may purchase from the publishers, at the net wholesale or net contract price, any text-book or series of text-books selected by the state board of text-book commissioners and the local text-book committee of such cities, towns or such counties outside of cities and towns as provided by law, and rent said text-books or series of text-books to the pupils of their respective schools at an annual rental of not to exceed twenty-five [25] per cent of the retail price of said books.” (Our emphasis)

Thus, in answer to your second question, specific authority is given to a consolidated school corporation to rent textbooks at an annual rental of not to exceed twenty-five per cent of the retail price of said books. That textbooks are acquired from a pre-existing school corporation, rather than from a publisher, cannot be held to interfere with the general authority to rent textbooks which has been granted consolidated school corporations.

OFFICIAL OPINION NO. 28

June 22, 1964

Mr. James C. Courtney, Commissioner
Indiana Department of State Revenue
202 State Office Building
Indianapolis 4, Indiana

Dear Mr. Courtney:

This is in response to your request for my Official Opinion in answer to the question presented in the third paragraph of your following letter: