existence and that a corporate entity exists in the surviving life insurance company which would legally entitle it to execute and follow procedures necessary to be permitted to do business in Indiana and empower the Commissioner of the Insurance Department to consider such request.

As a result of the answer to your first question, it becomes unnecessary to answer the second part thereof.

OFFICIAL OPINION NO. 2

January 8, 1964

Hon. Edwin Steers, Sr.
Member, State Election Board
108 E. Washington Street #1108
Indianapolis, Indiana

Dear Mr. Steers:

Your letter of December 17, 1963, has been received requesting an Official Opinion regarding the 1964 election of school board members in The Metropolitan School District of Perry Township, Marion County, Indiana. The facts furnished are that "Prior to the primary election in 1962, a member of the Board of Education of The Metropolitan School District of Perry Township, Marion County, Indiana was appointed to fill a vacancy of a member whose term expired in 1964. At the primary election in 1962, a total of three members were elected, one outside the district of the vacancy and two inside the district and, at the election, neither of the candidates were specifically designated on the ballot as running to fill the unexpired term of an appointed member and were sworn in to serve as Board members without regard to a two or four year term."

The question is: "Whether or not the term of the two Board members would be for a period of four years or one would be a period of two years and the other a period of four years."

Your letter directs attention to the provisions of Acts 1949, Ch. 226, Sec. 18, as amended by Acts 1959, Ch. 261, Sec. 5, and as finally amended by Acts 1963, Ch. 327, Sec. 4, same

being Burns' (1963 Supp.), Section 28-2448, which, in part, reads as follows:

> "If at any time after the first board member election there shall occur a vacancy on the board for any reason including but not limited to the failure of the sufficient number of petitions for candidates being filed, and whether the vacating member was elected or appointed, the remaining members of the metropolitan board of education, whether or not a majority of the board, shall by a majority vote fill such vacancy by appointing a person from the board member district from which the person who vacated the board membership was elected, or if such person, was appointed, the board member district from which the last elected predecessor of such person was elected. In the event of a tie vote among the remaining members of the board or their failure to act within thirty [30] days after any such vacancy occurs, it shall be the duty of the judge of the circuit court in the county where the majority of registered voters of the metropolitan school district reside to make such appointment. A successor to such appointive board member shall be elected at the next primary election which is held more than sixty [60] days after any elected board member vacates membership on the board; or at the primary election held immediately prior to the end of the term for which such vacating member was elected, whichever is sooner. Unless such successor takes office at the end of the term of such vacating member, he shall serve only for the balance of such term. *In any election of a successor board member to fill a vacancy for a two-year balance of a term, whether held before or after the amendment of this section in 1963, nominating petitions for school board membership candidacy need not be filed for or with reference to the vacancy, but elected candidate who receives the lowest number of votes at the election at which such successor is elected shall serve for such two-year term.*" (Our emphasis)

The emphasized portion of the above-quoted provisions of the statute was the only amendment to said provision made

by the 1963 amendment and the emphasized portion thereof is entirely new language added by said 1963 amendment.

In the case of Rogers v. Calumet National Bank (1937), 213 Ind. 576, 585, 12 N. E. (2d) 261, it is stated:

> "There is no constitutional question involved here. It is true that the members of the old board were public officers. *Long* v. *Stemm, et al.* (1937), 212 Ind. 204, 7 N. E. (2d) 188. But 'offices are neither grants nor contracts, nor obligations which can not be changed or impaired. They are subject to the legislative will at all times except so far as the Constitution may protect them from interference. Offices created by the Legislature may be abolished by the Legislature. The power that creates can destroy. The creator is greater than the creature. The term of an office may be shortened, the duties of the office increased, and the compensation lessened, by the legislative will.' *The State, ex rel. Yancey* v. *Hyde* (1891), 129 Ind. 296, 302, 28 N. E. 186."

Since the office of school trustee referred to in your letter was created by the Legislature under the above authority, such office could be shortened by the Legislature and in doing so no constitutional rights are involved.

The 1963 amendment to said statute is the last expression of the Legislature, particularly applying to terms of office of members of school boards created by said statute. As such, the 1963 amendment is controlling.

I am, therefore, of the opinion that the term of office of the person elected in 1962 in the district in which such vacancy had previously occurred, who received the lowest number of votes of the two persons elected from that district, has a term of office so shortened by said statute that the same will expire in 1964 and that such office will be subject to an election in the primary election of 1964. The term of office of the member receiving the highest number of votes from that district in which the vacancy had occurred would, by virtue of his election in 1962, be elected for a four-year term of office, to expire in 1966.