An examination of Burns' 64-1401, supra, shows the statute specifically points out that county assessors shall only be elected in certain years, namely, in November 1962, and every four years thereafter. It is also emphasized that there is no mention of the successor being elected at the "next General Election," as is the case provided in some statutes. In 1948 O. A. G., No. 28, supra, on page 140, it is stated:

"This would indicate that a distinction must be made between those offices where there is a specific provision as to when elections shall be held therefor and those offices where there is no such provision."

The 1948 O. A. G., No. 28, supra, on page 140, then states:

"The cumulative effect of the application of these rules of statutory construction results in the conclusion that one appointed to a vacancy in the office of county assessor serves for the unexpired term of his predecessor."

Therefore, it is my opinion, that inasmuch as the office of county assessor is an office created by the Legislature, as distinguished from a constitutional office, and since the office of county assessor is one for which the elections are scheduled on a specific four year basis, no election for said office would be proper in 1964 and the present incumbent is entitled to serve the full unexpired term of his predecessor.

OFFICIAL OPINION NO. 12

February 21, 1964

Hon. Ralph H. Waltz
State Representative
Hagerstown, Indiana

Dear Representative Waltz:

In your letter you request an Official Opinion in connection with the work of the School Transportation Study Commission, of which you are chairman. Your question concerns the transportation of parochial school children under the pro-
visions of Acts of 1921, Ch. 253, Sec. 2 and refers to a prior Official Opinion of this office, being 1936 O. A. G., page 415, construing the above statute and holding that a school corporation was not obligated to furnish extra equipment to transport parochial school children if the school bus already in question was not sufficiently large for the transportation of such children. You desire to know if this statute is so clear and unambiguous that a clarification of its meaning by a proviso would be considered unnecessary.

The statute in question is Acts of 1921, Ch. 253, Sec. 2, as amended, as found in Burns' (1948 Repl.), Section 28-2805, and reads as follows:

“In all school corporations of this state, where a school has been abandoned within the last twenty [20] years, or may hereafter be abandoned, the school trustees shall provide and maintain means of transportation for all pupils of such abandoned school who live a greater distance than one and one-half [1½] miles from the schools to which they are assigned; Provided, That township school trustees, boards of school trustees and boards of school commissioners may provide means of transportation for any pupils in any school district or school corporation, if the conditions in the school district or school corporation, in the judgment of the township trustee, board of school trustees or board of school commissioners warrant the same; Provided, further, That school trustees be and they are hereby empowered at their discretion to transport high school pupils. Where school children who are attending any parochial school in any school corporation of this state reside on or along the highway constituting the regular route of a public school bus or conveyance, the school trustee shall afford transportation, without extra charge, by means of such school bus or conveyance, for the children attending any such parochial school, from their homes, or from some point on the regular route nearest or most easily accessible to their homes, to such parochial school, or to the point on such regular route which is nearest or most easily accessible to such parochial school.”
The last sentence of said statute, as amended, is the provision under consideration, and was added by Acts of 1933, Ch. 54, Sec. 1.

The 1936 O. A. G., page 415, at page 416, in reaching such conclusion held:

"Apparently the legislature only intended to extend the privilege of free transportation to parochial pupils where they could be accommodated in the bus or conveyance already in use on such regular route, as otherwise there would have been no purpose in inserting the limiting phrase, 'by means of such school bus or conveyance.' Conversely, if the legislature had intended to impose an unqualified duty on the respective school trustees to afford transportation for parochial school children, regardless of whether or not additional busses would be required for such purposes, then this result would have been accomplished simply by omitting the phrase in question."

The above quoted Attorney General's Opinion has been the interpretation placed on the statute in question for twenty-eight [28] years. It would be impossible for this office to say that a court could not reach a contrary interpretation in a case properly presented to the court. However, the interpretation given in the Attorney General's Opinion of 1936 would be given great weight as it had been adhered to so long without any contrary legislative action.

Indiana Department of State Revenue et al. v. Colpaert Realty Corp. (1952), 231 Ind. 463, 109 N. E. (2d) 415;


If your commission desires to be absolutely certain of a particular interpretation of Burns' 28-2305, supra, then a proviso should probably be proposed. It goes without saying that the determination of whether a proviso should be offered is within the discretion of your commission.