OFFICIAL OPINION NO. 4

February 5, 1963

Mr. Robert R. McClarren, Director
Indiana State Library
140 North Senate Avenue
Indianapolis 4, Indiana

Dear Mr. McClarren:

This is in response to your letter of December 5, 1962, wherein you request an Official Opinion from me. Your request pertains to the Acts of 1919, Ch. 59, Sec. 218, as amended in 1941 and found in Burns' (1961 Repl.), Section 64-2101, which reads as follows:

> "It shall be the duty of all *county* officials, all *township* officials, all *school town, school city, school township* officials, all *city and town* officials, on or before the first day of June and December of each year to furnish to the county treasurer of their respective counties the names and addresses of all officers, deputies, and employees in their employment as officers, deputies, or employees of their respective subdivisions of government. Upon receipt of such names and addresses the county treasurer shall search his records to ascertain if any person so certified to him is delinquent in the payment of his taxes as shown by the tax duplicates in his office." (Our emphasis)

Your specific question is stated, in your letter, as follows:

> "Is the president or other member of a public library board, or the director or head librarian of a public library, an official within the meaning of the above specified law, and thus must provide the County Treasurer of the respective county or counties with the names and addresses of all officers, deputies and employees of the library on or before the first day of June and December of each year, for the purpose of ascertaining whether any employee is delinquent in the payment of taxes shown in the tax duplicate in the County Treasurer's office?"

It will be noted that Burns' 64-2101, *supra,* makes no specific reference to libraries, library boards or librarians. This section contains no mention or reference to "the president or other member of a public library board, or the director or head librarian of a public library." Therefore, to answer your question, it is necessary to seek the legislative intent discernible in such enactment, as to whether libraries are includible in the terms, "county," "township," "school town," "school city," "school township," "city and town."

In 2 R. S. (1852), Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201, it is stated:

> "The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:
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> "First. Words and phrases shall be taken in their plain, or ordinary and usual, sense * * *"

The Supreme Court in State *ex rel.* Roberts v. Graham, Trustee (1952), 231 Ind. 680, 110 N. E. (2d) 855, stated:

> "Courts interpret statutes for the purpose of ascertaining legislative intent. *Zoercher* v. *Indiana Associated Telephone Corp.* (1937), 211 Ind. 477, 7 N. E. 2d 282; 50 Am. Jur., Statutes, 200. Such intent must be determined primarily from the language of the statute itself, 50 Am. Jur., Statutes, 210, which language must be so reasonable and fairly interpreted as to give it efficient operation and to give effect, if possible, to the expressed intent of the legislature, *State* v. *Griffin* (1948), 226 Ind. 279, 79 N. E. 2d 537."

In 26 I. L. E. Statutes § 130, pages 340 and 341, it is said:

> "Statutes which relate to the same thing or general subject matter are in pari materia and should be construed together, although they have been enacted at different times, and by different Legislatures, and contain no reference to one another, provided they are consistent with each other.

> "Under this rule, where the meaning of a statute is doubtful, in determining legislative intent, the court will consider statutes on the same subject matter, whether or not repealed and whether passed before or after the enactment of the statute under interpretation."

Your letter indicates your question resulted from an inquiry to you, from the Director of the Muncie-Center Township Library, a library operating under the Library Law of 1947, as amended. The pamphlet, "Statistics of Indiana Libraries 1961," pages 1 and 2, issued by the Indiana State Library, shows all public libraries, in Indiana, now operate under the provisions of the 1947 Act, except a few school board libraries, township libraries and libraries either endowed or organized under special laws.

Therefore, as an additional aid in seeking the legislative intent as to included officials in Burns' 64-2101, *supra,* let us observe that the Library Law of 1947, being the Acts of 1947, Ch. 321, Sec. 3, as amended and found in Burns' (1962 Supp.), Section 41-903, provides the following definition:

> "Library board shall mean the official governing body, known also as 'board of trustees,' of a public library system that is supported wholly or in part by public taxes."

Section 5 of said 1947 Act, as found in Burns' (1952 Repl.), Section 41-905, provides as follows:

> "All library districts in Indiana, organized or otherwise coming under the provisions of this act *are hereby declared to be and are made public corporations for library purposes, separate and distinct from the civil or municipal corporations comprising such library districts,* and shall be known and designated as _____ Public Library, as the case may be, *and by such name may contract and be contracted with, sue and be sued in any court of competent juris-*

> *diction, and shall constitute a separate and independent library taxing district."* (Our emphasis)

The use of the words *"separate and distinct from the civil or municipal corporations"* is particularly emphasized in the above statutory provisions. Section 18 of said 1947 Act, as amended and found in Burns' (1962 Supp.), Section 41-918, provides as follows:

> "The library board shall determine and fix the rate of taxation of said library taxing district necessary for the proper operation of the library * * *"

A reading of the above provisions, as well as a reading of the other powers and authority granted to said library boards, further strengthens the indication of the legislative intent that libraries which come within the provisions of the Library Law of 1947 are separate and distinct entities from the municipal corporations comprising such library districts.

In my 1960 O. A. G., page 204, No. 34, I considered two questions relative to the 1957 Interlocal Cooperation Act and its application to a library board under the Library Law of 1947, *supra*. The following statements appear in said Opinion:

> *"Obviously not being either a city, town, county,* agency of the United States, or another state, or political subdivision of another state, a library board is a 'public agency' within the meaning of the Interlocal Co-operation Act if it is either a 'political subdivision' or an 'agency of the State of Indiana.'
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> * * *
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> "While the library board of a library district organized or operating under the Library Law of 1947 may not be a 'true' political subdivision as above narrowly defined, it is certainly within the broad definition. Specification of all units of local government having a generalized function (with the possible exception of townships) would leave the meaning of 'other political subdivision of this state' in Burns' 53-1103, *supra,* prac-

> tically meaningless unless the legislative intent was to include as a 'public agency' those political subdivisions, broadly speaking, which have more specialized functions. A library district is a public corporation constituting a separate and independent taxing district according to Burns' 41-905, *supra.* Under the circumstances, it is a political subdivision within the meaning of 'public agency' as defined by the Interlocal Co-operation Act." (Our emphasis)

See also: 1960 O. A. G., page 255, No. 45.

In my opinion, the members of a public library board, the director or head librarian of such a public library, organized or otherwise coming under the provisions of the Library Law of 1947, *supra,* do not fall within any of the enumerated classifications contained in Burns' 64-2101, *supra.* The specific classifications contained in said last named section, makes appropriate the use of the maxim *expressio unius est exclusio alterius* as an aid in seeking the legislative intent. In the case of Shupe v. Bell *et al.* (1956), 127 Ind. App. 292, 298, 141 N. E. (2d) 351, the court said:

> "* * * One of the oldest maxims of the law is, 'The express mention of one person or thing is the exclusion of another.' Wharton's Legal Maxims, p. 11. Otherwise stated, 'What is expressed makes what is silent to cease.' Coke Litt., 210a; *Woodford et al.* v. *Hamilton et al.* (1894), 139 Ind. 481, 39 N. E. 47. 'When the law is in the affirmative that a thing should be done by certain persons or in a certain manner, this affirmative manner contains a negative that it shall not be done by other persons or in another manner.' 26 Am. and Eng. Ency. Law, (2nd ed.), 605, and cases cited therein; *State ex rel.* v. *Home Brewing Co.* (1914), 182 Ind. 75, 95, 105 N. E. 909."

In a consideration of your question, the language used in Poyser v. Stangland (1952), 230 Ind. 685, 689, 106 N. E. (2d) 390, is particularly in point, wherein the court said:

> "* * * We cannot under the guise of construction put something into a statute that the legislature apparently designedly omitted * * *"

Thus, applied to your query, we cannot under the guise of construction conclude that an independent library district is includible within the terms "county," "township," "school town," "school city," "school township," "city and town," the officials of which have the duty imposed by Burns' 64-2101, *supra,* when the Legislature itself has stated specifically that such a library district is "separate and distinct from the civil or municipal corporations comprising such library districts." Only with respect to such libraries as are a part of and under the control of a "county," "township," "school town," "school city," "school township," "city and town" would Burns' 64-2101, *supra,* apply inasmuch as libraries of such class would be includible within such terms.

Therefore, in my opinion, the provisions of Burns' 64-2101, *supra,* are not applicable to a public library, such as the Muncie-Center Township Public Library, or any other public library operating under the Library Law of 1947, *supra.* However, such libraries as are not separate, independent library districts under the Library Law of 1947, *supra,* but which are a part of the governmental operations of a county, township, school town, school city, school township, city or town, do come within the enumerated classifications wherein compliance with the provisions of Burns' 64-2101, *supra,* is required, the employees of such libraries, in fact, being employed by county, township, school town, school city, school township, city or town government and not by a separate, independent library district.