

in addition to the statutory qualifications for the office, also shall be of the same political affiliation as the assessor failing to qualify or being removed. Furthermore, *if a vacancy should occur from any other cause*, the county assessor is to make the appointment, with the approval of the State Board of Tax Commissioners and the person so appointed shall meet the statutory qualifications for the office, which do not include the requirement of any particular party affiliation.

Therefore, for the reasons hereinabove stated, it is my opinion that where a vacancy is created by the death of a township assessor, the county assessor is not required to appoint, as a township assessor, an individual of the same political faith as the assessor whose death caused the vacancy. Thus, the county assessor may appoint an individual of opposite political faith to that of the deceased township assessor.

OFFICIAL OPINION NO. 13

April 25, 1963

Hon. Bernard J. Krampe
State Senator
Ferdinand, Indiana

Dear Senator Krampe:

Your letter of April 19, 1963, has been received requesting an Official Opinion on the following questions:

- “1. Can the civil cities of Cannelton and Tell City annex territory from the M. S. D. of Troy Township?”
- “2. Can the school cities of Cannelton and Tell City annex territory from the M. S. D. of Troy Township?”
- “3. If a civil city annexes territory, does the school city automatically extend its jurisdiction over the annexed territory?”

In the case of *Fort Wayne Community Schools v. State ex rel. New Haven Public Schools et al.* (1959), 240 Ind. 57, 159 N. E. (2d) 708, the civil city of Fort Wayne had annexed

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territory adjacent to the city, which territory was included within the jurisdiction of the New Haven public schools for school purposes. In determining the effect of such action for school purposes, the Supreme Court of Indiana on pages 64 to 66 of the opinion said:

“We thus have a history of legislation upon the subject of Consolidation of Schools which has an intent manifestly different from that motivating the annexation of civil units of government. The earlier statutes governing the normal identification of school districts with the boundaries of civil units of government upon annexation have served a useful purpose in the situation they were intended to encompass. But we have not been directed to any evidence that these statutes were intended to be extended to school consolidations which frequently have as their purpose the obliteration rather than the recognition of civil boundary lines in the interest of a better education system. The 1948 Consolidation Act under which the instant consolidation was effected is a more recent legislative expression than the annexation statutes under which the civil annexation was accomplished; and of course the rule is well settled that in case of conflict between statutes upon a particular subject matter, it is the later expression of the legislature which controls.

“See: *Hamilton County Council v. State ex rel. Groff* (1949), 227 Ind. 608, 613, 87 N. E. 2d 810; *Brumfield, Tr. v. State ex rel. Wallace* (1934), 206 Ind. 647, 654, 190 N. E. 863.

“We believe that the annexation statutes can be construed in a manner compatible with the purpose and intent of the school consolidation statutes, without defeating the purpose of annexation and without causing untold confusion between the civil and school corporations in a particular area. And as the annexation statutes do not expressly provide for the acquisition of a consolidated school corporation, we do not believe the language and construction given the earlier annexation statutes should be extended to cover the acquisition of

consolidated school districts in the face of the spirit and intent of the school consolidation statutes which militate to the contrary.

* * *

“It is our conclusion that the finding and judgment of the lower court were correct in holding that for school purposes the territory annexed by the city of Ft. Wayne in the annexation proceedings remained under the jurisdiction of appellee, New Haven Public Schools, and did not by reason of the civil annexation come within the jurisdiction of appellant, Ft. Wayne Community Schools.”

For the reasons assigned in said opinion, no distinction could be made between an annexation into territory of a consolidated school or a metropolitan school district. The reasoning would be equally applicable.

From the foregoing, I am of the opinion your questions should be answered as follows:

1. In answer to your first question, annexation by the civil cities of Cannelton and Tell City of territory in Troy Township would only annex such territory for civil purposes and would not affect the Metropolitan School District of Troy Township for school purposes.

2. In answer to your second question, school cities may not annex territory from a metropolitan school district. Any such change of boundaries may only be affected by mutual agreement of the school corporations involved pursuant to the procedure of requirements of applicable statutes.

3. In answer to your third question, in some instances if a civil city annexes territory the school cities automatically extend their jurisdiction over the annexed territory. However, such annexation would not affect for school purposes territory included within a metropolitan school district.