OFFICIAL OPINION NO. 21

June 7, 1963

Hon. Lucius Somers
State Senator
R. R. 1
Hoagland, Indiana

Dear Senator Somers:

Your letter of May 22, 1963, has been received and reads as follows:

> "Would you please furnish me with your official opinion as to the interpretation to be placed upon House Enrolled Act No. 1255 entitled An Act to amend Section 5 of an act entitled 'The School Corporation Reorganization Act of 1959' as amended.
>
> "You will note that the act provides in part that in those counties wherein school reorganization is incomplete, a new county committee shall be appointed by the Judge of the Circuit Court and shall thereafter within eight (8) months from the effective date of the amendatory act complete and adopt a preliminary written plan for the reorganization of school corporations within the county. The act also contains the following language:
>
> > "Such plan and the final comprehensive plan shall provide for the incorporation of all areas of the county into one or more administrative units which can provide an efficient and adequate educational program for grades one (1) through twelve (12), and which will meet the minimum standards adopted by the State Commission under Section 6 hereof, except as otherwise provided therein.
>
> "The particular question upon which your opinion is desired is whether or not the new county committee should concern itself in the preparation of its plan with existing school corporations formed under the 1959 act before amended in the event that there be one or more

school corporations in the county formed under the act, must the county committee recognize their existence to the extent of excluding them from its plan, in effect only adopting a plan for the unorganized portion of the county.

"Your opinion as concerns these questions of interpretation would be sincerely appreciated."

The provision in question is the Acts of 1963, Ch. 380, which amends Section 5 of the Reorganization Act of 1959, being the Acts of 1959, Ch. 202, Sec. 5, subsection (2), as found in Burns' (1962 Supp.), Section 28-6105. This subsection as now amended reads as follows:

"(2) Within *eight (8) months after the effective date of this amendatory act,* the County Committee shall complete *and adopt* a preliminary written plan for the reorganization of school corporations within the county.

"Such plan and the final comprehensive plan shall provide for the incorporation of all areas of the county into one or more administrative units which can provide an efficient and adequate educational program for grades one (1) through twelve (12), *and which will meet the minimum standards adopted by the State Commission under section 6 hereof, except as otherwise provided therein.*" (Our emphasis)

That part of the foregoing quoted subsection of the statute which is emphasized is new language added by the 1963 Legislature, and the remainder of the language is the same as originally enacted in 1959. The requirement that the action be taken within eight months after the effective date of the act was inserted in lieu of a previous requirement that the county committee act within one year after the date of the county convention.

From the foregoing, it is clear that the above provision that the comprehensive plan provide for the incorporation of all areas of the county into one or more administrative units,

is part of the old provision of the original statute and is not new legislation.

Since the adoption of the statute in 1959, it has been the consistent construction of the State Committee for the Reorganization of School Corporations, as well as the various county committees throughout the state, that such provision did not thereafter apply to a part of a county that had been reorganized under said statute.

The Legislature was necessarily acquainted with such construction since each of the legislative sessions since 1959 have been furnished detailed reports, under the requirements of said statute, from the State Committee to the Legislature as to how many school corporations have been reorganized and what counties are only partially reorganized. In addition to the foregoing, many local circuit courts have caused notices of elections to be given in the numerous counties of the state for completion of reorganization of the county in those cases where it was only partially reorganized.

Administrative interpretations of long standing are entitled to great weight where a court is construing a statute.

State *ex rel.* Gleason v. Gerdink (1909), 173 Ind. 245, 251, 90 N. E. 70;

State *ex rel.* Shea v. Billheimer (1912), 178 Ind. 83, 96 N. E. 801;

Board of Commissioners v. Botting (1887), 111 Ind. 143, 12 N. E. 151;

Pittsburgh etc. R. Co. v. Hoffman (1928), 200 Ind. 178, 193, 162 N. E. 403;

Zoercher v. Indiana Associated Telephone Corporations (1936), 211 Ind. 447, 456, 7 N. E. (2d) 282;

1950 O. A. G., page 194, No. 48;

1950 O. A. G., page 22, No. 8;

1952 O. A. G., page 94, No. 23.

The Legislature is presumed to be acquainted with the existing law and in legislating on any subject to have in view

its provisions together with the construction placed thereon by the court.

> Stith Petroleum Co. v. Dept. of Audit and Control (1936), 211 Ind. 400, 405, 5 N. E. (2d) 517;
>
> Town of Brownsburg v. Trucksess (1933), 98 Ind. App. 322, 329, 185 N. E. 315.

The primary object of statutory construction is to ascertain and effectuate the intent of the Legislature as shown by the whole act, the law existing before its passage, the changes made and the apparent motive for making them.

> State *ex rel.* Rogers v. Davis (1952), 230 Ind. 478, 482, 104 N. E. (2d) 82;
>
> 1955 O. A. G., page 81, No. 23.

That the Legislature did not intend for the new county committees appointed pursuant to the 1963 amendment to the statute to prepare comprehensive plans for areas of the county already reorganized under said statute is clearly indicated by subsection (10) of said amendment to Section 5 of said Act, *supra,* which provides:

> "(10) All those reorganization plans heretofore approved by the State Commission are hereby declared void on the effective date of this amendatory act, *except, with respect to any community school corporation, where:*
>
> "(a) any such plan has received a majority affirmative vote at an election; or
>
> "(b) such plan has been certified by the clerk of the circuit court as being petitioned in by fifty-five per cent (55%) or more of the registered voters for any such reorganized school corporation and notice has been duly published by the County Committee pursuant to the provisions of the act as originally enacted in 1959 and as amended by the General Assembly in 1961;
>
> "(c) the plan provides for a school corporation meeting the qualifications for formation of a community school corporation under section 7 (2a) of this act.

> "The County Committee and other government officials shall, with respect *to any such voided reorganization plan,* take all actions necessary for the preparation of a comprehensive plan as if no prior plan had been submitted, and within the time prescribed by the foregoing provisions of this section of this act." (Our emphasis)

All the foregoing language contained in said subsection (10) is new language inserted by the 1963 Legislature. It clearly provides that previous reorganization plans which have (a) received a majority of affirmative votes at an election; or (b) such plan which has been certified by the clerk of the circuit court as being petitioned in by 55% or more of the registered voters and notice thereof duly published by the county committee, pursuant to the requirements of the act before amendment; or (c) the qualifications for formation of a community school corporation and which could come into being by "stipulation" under Section 7 (2a) of said Act would not be voided. It specifically requires the county committee and other government officials to include such voided reorganization plans within their new comprehensive plans as if no prior plan had been submitted. This clearly contemplated that those plans which were not voided would not be so included in any comprehensive plan prescribed under said section of said act. The three methods outlined in said subsection (10) of said section of the statute are the three methods provided by the Reorganization Act under which a reorganized school corporation may be created and all school corporations now reorganized, whether they comprise the whole county or only part of a county, were placed into effect pursuant to one of the three procedures referred to.

In addition to the foregoing, the continuity of school corporations already reorganized is clearly recognized by the Legislature by other provisions of said statute as well as by other associated statutes. Some of these are as follows:

1. The amendment to Section 5 of said Act, Acts of 1963, Ch. 381, *supra,* by subsection (3) (d) provides for the voiding of all petitions of a township, city, or town to be included in the reorganization plans of an adjoining county except "* * *

where no comprehensive plan has been submitted by the County Committee to the State Commission or *where community school corporations have been created which include the areas so petitioned.*" (Our emphasis) This is recognition that the previously reorganized corporation continues in existence;

2. Under the Acts of 1963, Ch. 377, Sec. 1, subsection (3), the purposes of the act are stated, with the requirement that the State Commission shall include in its biennial report to the General Assembly a specific detailed report on progress made in the reorganization of school corporations following the enactment of said amendatory act. It further states: "* * * Such report shall include detailed information concerning all school corporations created under the provisions of this act, either by petition or election or under the provisions of subsection (2a) of Section 7 of this Act, and shall include also a full report on those elections in which proposed plans for community or united school corporations shall have been rejected * * *." This clearly recognizes the continued existence of school corporations previously created with a desire on the Legislature's part to have information concerning those which fail;

3. The Acts of 1963, Ch. 380, Sec. 1, which amends Section 7 of said Reorganization Act under subsection (2), after providing for an election on a comprehensive plan, provides: "If a majority of the votes cast at such special election on such questions are in favor of the formation of such corporation, a community school corporation shall be created and come into being on July 1 or January 1 following the date of publication of said notice, whichever date is the earlier * * *" This is substantially a reenactment of the language of the statute before amendment. Its effect is that if there is a comprehensive plan containing two or more proposed school corporations in a county, if one is favorably voted in by a majority of the registered voters, it goes into effect even though the other school elections in the county fail. This is what the Legislature has intended from the inception of this legislation;

4. Under the Acts of 1963, Ch. 358, Sec. 1, which adds Section 20A to said Reorganization Act, it is provided: "In any community school corporation heretofore formed, the board

of school trustees may by resolution provide for making payments to civil townships as provided in subsection 18 (1) and shall levy taxes as provided in Section 19 as if such provision had been included in the reorganization plan adopted."

5. The Acts of 1963, Ch. 338, is a statute authorizing the adjustments of school corporation boundaries by annexation; but, under its terms, applies only to the adjustment of boundaries between a school corporation formed pursuant to Ch. 202 of the Acts of 1959, as originally adopted or as amended, and another school corporation. This could only occur where continuity of previously created reorganized school corporations continue in existence.

From the foregoing, I am of the opinion newly appointed county committees under the above referred to reorganization statute must recognize the existence of community or united school corporations previously created under the reorganization statute and concern itself only with the adoption of a preliminary and comprehensive plan for the remainder of the county.

OFFICIAL OPINION NO. 22

June 12, 1963

Mr. Joe McCord, Director
Department of Financial Institutions
1024 State Office Building
Indianapolis, Indiana

Dear Mr. McCord:

Your recent letter requesting my Official Opinion presents the following questions:

> "May a State chartered building and loan association purchase either conventional mortgage loans, or mortgage loans insured or guaranteed in whole or in part by an agency of the Federal Government?
>
> "In the event you find that any loans of the types mentioned above may be purchased, may the purchasing association enter into an agreement with the seller