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gate any situation seeming to exist in this state, which concerns alcoholic beverages and which appears to involve practices, dealings or relationships between permittees tending towards a monopoly, a restraint of trade, or a combination to control the price of alcoholic beverages.

(2) If, after inquiry and investigation, the commission, in its discretion and judgment, should find and determine as a matter of fact that such a monopolistic situation exists by and between permittees, the commission has the authority, and the duty, to take such affirmative action to regulate, control or prohibit, as it may deem necessary, any such offensive practices, dealings and/or relationships which tend to monopolize the public market in favor of certain alcoholic malt beverages to the exclusion of others.

(3) The commission is possessed with the discretionary authority under Burns' 12-402, *supra*, enumerated power numbered (19), to take such affirmative action, as it may deem best, either by means of adjudication of particular violations, or, by promulgation of rules and regulations to control and regulate, or prohibit, widespread practices or dealings which result in such monopolistic practices or dealings.

OFFICIAL OPINION NO. 32

May 10, 1962

Mr. B. B. McDonald, State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. McDonald:

Your letter requesting an Official Opinion has been received and reads as follows:

"We have received several questions regarding the compensation of members of boards of newly reorganized school corporations, which are reorganized under the provisions of Chapter 202 of the Acts of 1959, as amended.

“Some of the county reorganization plans have included a provision relative to compensation of school board members, while other plans have not.

“We would like to receive your official opinion on the following questions:

“1. Is it legal to provide in a county reorganization plan for the compensation of school board members, and may such members legally receive the compensation as fixed under the provisions of such plan?

“2. If the county reorganization plan makes no provisions for the compensation of school board members may such members receive compensation for such service?

“3. If your answer to the second question is in the affirmative, how shall such compensation be fixed?”

It is well settled in this state that public officers are only entitled to compensation as is provided by law:

Applegate v. State ex rel. Pettijohn (1933), 205 Ind. 122, 185 N. E. 911.

Acts of 1959, Ch. 202, Sec. 1, as found in footnotes of Burns' (1961 Supp.), Section 28-6101, clearly states the legislative intent in the enactment of said statute and, in part, provides: “That modifications in the statutory provisions for the combination and the reorganization of school corporations provided in this act are necessary in order to assure the future maintenance of a uniform and efficient system of public schools in the state.”

The word “salary” is not specifically mentioned in said 1959 statute or as amended by the General Assembly in 1961. However, under Section 5(4) of said Act, as amended, as found in Burns' (1961 Supp.), Section 28-6107, the county committee adopting a Comprehensive Plan for the reorganization of said school corporations, is required to determine and specify therein, the following:

“(c) The number of members on the board of school trustees, the designation of the officers of such board

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of school trustees, whether the board of school trustees shall be elected at the primary or at the general election, and, subject to the provisions of subdivisions (3) and (4) of section 9 of this act, the manner in which such board of school trustees shall be elected or appointed: Provided, however, That the total number of school trustees shall not be less than three [3] nor more than seven [7].

“(d) Whether the community school corporation and board of school trustees shall have the rights, powers, duties and liabilities vested in boards of school trustees of cities of the fifth class or the rights, powers, duties and liabilities vested in the board of school trustees of the school corporation which has the largest enrollment and which will be a part of the community school corporation, under the laws of the state of Indiana; * * *”

Like provision is made by Section 5, Clause 8, of said statute, as amended, as found in Burns' (1961 Supp.), Section 28-6111, and in addition thereto under Clause (f) thereof it is provided said county committee shall submit data regarding “the current costs of the educational program and the estimated cost for each proposed reorganization of school corporations.”

Section 9 of said Act, as amended, as found in Burns' (1961 Supp.), Section 28-6120, Subsection (2), provides as follows:

“(2) Except as herein provided, community school corporations *shall have all the powers, rights, duties, and obligations as provided in the plan approved by the county committee and the state commission, and as provided under the general school laws applicable to school corporations of all classes.*” (Our emphasis)

From the foregoing, it is clear the Legislature delegated to the County Committee for the Reorganization of School Corporations the authority and duty of preparing and submitting to the State Commission for the Reorganization of School Corporations a Comprehensive Plan for complete reorganization of such school corporations involved and gave to the

reorganized school corporations all their powers, rights, duties and obligations as provided in said plan, and as provided under the general school laws applicable to school corporations of all classes. Included therewith is the authority of the county committee to fix or provide for the fixing of the salaries of the board of school trustees of the reorganized school corporation since it is a part of the expense of school operation and it has been the current policy of the state to make such provisions under many statutes applying to different kinds and classes of school corporations. Examples of statutes making provision for compensation of such school board members, and/or salary of school trustees in various types of school corporations are as follows:

Acts of 1905, Ch. 141, Sec. 1, as amended, as found in Burns' (1961 Supp.), Section 28-1201, applying to all cities and towns under 58,000 population;

Acts of 1937, Ch. 79, Sec. 5, as found in Burns' (1948 Repl.), Section 28-2066, applying to school cities of 100,000 to 300,000;

Acts of 1947, Ch. 68, Sec. 6a, as added by Acts of 1957, Ch. 244, Sec. 1, as found in Burns' (1961 Supp.), Section 28-1253 f-1, concerning consolidated schools of towns or cities of the fifth class and surrounding townships;

Acts of 1949, Ch. 226, Sec. 6, as amended, as found in Burns' (1961 Supp.), Section 28-2436, concerning a consolidation under the Metropolitan Consolidation Statute;

Acts of 1949, Ch. 226, Sec. 16, as amended, as found in Burns' (1961 Supp.), Section 28-2446, concerning a metropolitan district under the Metropolitan Consolidation Statute;

Acts of 1947, Ch. 123, Sec. 6, as amended, as found in Burns' (1961 Supp.), Section 28-5906, being a consolidated school corporation under the 1947 Consolidation Act;

Acts of 1953, Ch. 88, Sec. 8, as found in Burns' (1961

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Supp.), Section 28-2462, regarding school boards created in township school corporations;

Acts of 1935, Ch. 193, Sec. 9, as amended, as found in Burns' (1961 Supp.), Section 28-1274(c), applying to school boards for joint high schools.

It is also clear that any such Comprehensive Plan which gives the reorganized school corporation the classification and authority of a certain class city, would also give to said board the authority to fix its own board members' compensation if such authority is otherwise found in the general school laws applying to a school corporation of that classification. It is recognized that one statute may incorporate the terms including detailed procedures, of another by reference. On this question reference is made to the following quotation in an Official Opinion of this office as found in 1958 O. A. G., page 184, No. 42, where on page 186, it is stated:

“This method of adoption by reference has been approved by our Supreme Court in *State ex rel. Board of Comrs. of County of Hendricks v. Board of Comrs. of the County of Marion* (1908), 170 Ind. 595, 619, 85 N. E. 513, wherein the Court said:

“It is well settled that one statute may adopt a part of or all of another statute by a specific and descriptive reference thereto, and the effect is the same as if the law or statute, or the part thereof adopted, had been written into the adopting statute. 2 Lewis's Sutherland, Stat. Constr. (2d Ed.), §§ 405-407; *State, ex rel., v. Leich* (1906), 166 Ind. 680, 682, and authorities cited. *When so adopted only such portion is in force as relates to the particular subject of the adopting act, and is applicable and appropriate thereto.* 2 Lewis's Sutherland, Stat. Constr. (2d ed.), §405.’” (Our emphasis)

Also see:

Reome v. Edwards et al. (1948), 226 Ind. 229, 79 N. E. (2d) 389; and

State *ex rel.* Miller v. Leich (1906), 166 Ind. 680, 78 N. E. 189.

It is further presented that in the instant case, the Legislature has directed the county committee to determine which of the existing school corporation classifications shall apply to the new school board. The Legislature may delegate the power to amplify or implement legislation under standards prescribed and to an extent reasonably practicable. State *ex rel.* Standard Oil Co. v. Review Board (1951), 230 Ind. 1, 101 N. E. (2d) 60. This case made a clear distinction between the delegation of power to making law, which necessarily involves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution, to be exercised under and in the pursuance of the law.

The foregoing authorities are considered in connection with the quoted provisions of said Reorganization Statute, as well as a consideration of the general intent and purposes of said Reorganization Statute. I am, therefore, of the opinion your questions should be answered as follows:

1. In answer to your first question, I am of the opinion that it is legal for the County Committee for the Reorganization of School Corporations to provide, as a part of the Comprehensive Plan, for the compensation of school board members. The county committee could establish a reasonable compensation for such school board members or it could provide that the school board fix its own compensation in a reasonable amount and that such compensation could be received by such board members.

2. If the Comprehensive Plan devised by the county committee makes no provision relative to the compensation of the school board members then the board must serve without compensation. However, if the county committee does in fact establish a certain classification for the school corporation then the compensation of the school board members would be the same as that already established by law fixing, or providing for the fixing, of such compensation for that particular classification of school corporation. If such school corporation is so classified and no compensation is provided in the general law for board members in that classification, and no means

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provided for the fixing of such compensation, then the board members of the reorganized school must also serve without compensation.

3. The answers given herein with respect to your questions Nos. 1 and 2 provide, in part, the answer to your third question. However, if the Comprehensive Plan does not provide a compensation, or does not delegate the fixing of compensation to the board itself, or places the school corporation in a classification under the general law which does not provide a compensation for such school board members then the school board members must serve without compensation.

OFFICIAL OPINION NO. 33

May 15, 1962

Mr. Earl M. Utterback, Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis 4, Indiana

Dear Mr. Utterback:

This is in reply to your request for an Official Opinion on the following question:

“What constitutes substitute teaching and for how long may a teacher substitute and not jeopardize his retirement benefits (teachers drawing retirement and doing substitute teaching)?”

The Indiana statutes require that all teachers' contracts be in writing.

Acts of 1899, Ch. 111, Sec. 1, as found in Burns' (1948 Repl.), Section 28-4302;

Acts of 1921, Ch. 91, Sec. 1, as found in Burns' (1948 Repl.), Section 28-4304;

Board of School Commissioners of the City of Indianapolis *et al.* v. State *ex rel.* *Wolfolk* (1936), 209 Ind. 498, 199 N. E. 569;

1962 O. A. G., page 102, No. 24.