Reorganization Act as to school boards and their manner of appointment or election.

I am further of the opinion such merger of the two reorganized school corporations could be effected under the procedures provided in Sec. 11 of the Reorganization Act of 1959, Burns’ (1961 Supp.), Section 28-6122, supra, since this procedure is specifically authorized and provides for an election on the plan, including an election by the entire county pursuant to the provisions of Burns’ (1961 Supp.), Section 28-6118, being Sec. 7 of the Reorganization Act.

In answer to your second question, I am of the opinion both Section 10 and Section 11 of said Reorganization Act, supra, contemplates an approval by the State Commission for the Reorganization of School Corporations, if in existence, or if not in existence by the General Commission of the State Board of Education, prior to the time such consolidation of said two units becomes effective.

OFFICIAL OPINION NO. 23

March 23, 1962

Mr. Harold F. Brigham, Secretary
Indiana Commission on Public Records
Indiana State Library
140 North Senate Avenue
Indianapolis 4, Indiana

Dear Mr. Brigham:

This is in answer to your recent letter requesting an Official Opinion upon the following questions:

“1. Does the Commission on Public Records continue in existence and, if so, what are its powers and duties with reference to those of the Department of Administration?

“2. To what extent are the powers and duties of the State Library affected by the Administration Act of 1961 in reference to public records?

“3. What are clearly the powers and duties of the Administration Department under its Act of 1961,
Sec. 4, Parag. (i) as they relate to the Public Records Commission Act of 1935 (Chapter 219) and to the Act of 1925 (Chapter 58) governing the Indiana Library and Historical Department?

The following statutory references are cited in your letter.

1. Acts of 1961, Ch. 269, Sec. 4(i), as found in Burns' (1961 Repl.), Section 60-104(i), which concerns the new Department of Administration, provides in part:

"The department shall have the following duties and functions, subject to the other provisions of this act and to other laws not inconsistent therewith:

* * *

"(i) Develop standards and procedures of record making and record keeping; insure the maintenance and security of records; establish and operate such state record centers as may be needed to safely and economically store records which must be preserved for a time or permanently, but which need not be retained in expensive office space and equipment; prescribe and enforce schedules for records retention, destruction, or transfer to a records center; provide microfilm services for state agencies which do not need full-time microfilming equipment.

"‘Records’ shall include any paper, book, photograph, motion picture film, map, drawing, or other document, or any copy thereof which has been made by any agency of the State of Indiana or received by it in the trans- action of public business. All records shall be the prop- erty of the State of Indiana and shall be preserved, stored, disposed of and otherwise managed in accordance with the provisions of this act. Such records shall be delivered by outgoing officials and employees to their successors. The head of each agency shall file only such records as are deemed necessary: (1) for the continued effective operations of the agency, (2) to constitute an adequate and proper recording of its activities, and (3) to protect the legal rights of the State of Indiana and of its people."
2. Acts of 1935, Ch. 219, Secs. 1 and 2, as found in Burns' (1951 Repl.), Sections 63-1901 and 63-1902, provide in part:

"SECTION 1. * * * a commission is hereby created in the executive department of the state government which shall be known as the commission on public records. The commission on public records shall consist, ex-officio, of the governor, the secretary of state, the state examiner of the state board of accounts, the director of the state library and the director of the historical bureau. The commission shall elect one of its members to be chairman. The director of the state library shall be the secretary. The members of the commission shall serve without compensation and shall receive no reimbursement for any expenses which they may incur.

"SEC. 2. It shall be the duty of the commission on public records to determine:

"(a) What public records, if any, are no longer of official or historical value.

"(b) What public records are of current official value and should be retained in the office where they are required to be filed.

"(c) What public records are of official value but are consulted and used so infrequently that they are no longer of appreciable value to the officer with whom they are required to be filed.

"(d) What public records are of no apparent official value but which do have a historical value."

3. Acts of 1925, Ch. 58, Secs. 6 and 30, as amended, as found in Burns' (1951 Repl.), Sections 63-806 and 63-830, provide in part:

"SEC. 6. In addition to its duties as a general library for the State of Indiana, the library shall have the following powers and perform the following duties:

"(a) To care for and have the custody of any and all official archives which may come into the possession of the state; to collect materials bearing upon the history of the state and of the territory included therein; and
to diffuse knowledge in reference to the history of the state; and to encourage historical work and research.

“(b) To examine and classify documents and records not of present day use to their respective departments.

* * *

“SEC. 30. (a) Any state, county or other official is hereby authorized and empowered, at his discretion, to turn over to the department for permanent preservation, any official books, records, documents, original papers, newspaper files or printed books or materials not in current use in his office.

“(b) The director of the state library is hereby authorized, at his discretion, to make a copy, by photography or in any other way, of any official book, record, document, original paper, newspaper, or printed book or material in any county, city, or other public office, for preservation in the state archives. County, city and other officials shall permit such copies to be made of the books, records, documents and papers in their respective offices.”

To answer your questions, it will be necessary to ascertain the legislative intent of the above-cited statutes. General rules applicable to the circumstances here involved were summarized in the case of Payne v. Buchanan (1958), 238 Ind. 231, 148 N. E. (2d) 537, wherein the Supreme Court of Indiana at page 238, stated the following:

“** (1) Repeals by implication are not favored; and (2) Where there are two acts on the same subject, effect should be given to both if possible; and (3) But, if the two are repugnant in any of their provisions, the later act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even when two acts are not in express terms repugnant, yet if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act **”

In regard to your first question, I am of the opinion that the Commission on Public Records continues to exist. The
1961 Act, *supra*, discloses no specific repeal of the 1935 Act, *supra*, and, as noted above, the courts do not favor implied repeals. When abolishing an agency or commission, it has been the policy of the Legislature in the past to do so specifically. For example, when the Legislature abolished the Battle Flags Commission, the Board of Control of the Soldiers' and Sailors' Monument, and the Board of Trustees for the Indiana World War Memorial, by the Acts of 1957, Ch. 218, the Legislature clearly and unambiguously indicated their intent. And, as I have already noted in my 1961 O. A. G., page 110, 120, No. 24:

"It is important to note that although many of the powers and duties of several of the major state agencies are apparently lodged in this Department of Administration, only two [2] of the existing agencies are abolished—the Division of Public Works and Supply and the State Personnel Bureau * * * This is a clear indication that it was the intent of the General Assembly that the other agencies, new and old, should begin or continue to function subject to the provisions of the Department of Administration Act * * *"

Since repeals by implication occur only when the legislative intent is clear, it must be held that the Legislature intended both statutes to be given full force and effect. A reading of the two statutes reveals that in some aspects they cover the same subject matter. Consequently, they should be construed with reference to each other that effect may be given to all the provisions of each so that a harmonious system is produced. Since the 1961 Act, *supra*, is the later of the two statutes, it will be controlling as to any conflicting provisions.

Acts 1935, Ch. 219, Sec. 2, *supra*, sets out the duties of the commission, while Acts 1961, Ch. 269, Sec. 4(i), *supra*, provides that the Department of Administration develop standards and procedures for record-keeping. Therefore, it appears that the part of the commission's duties regarding the determination of what records will be retained or destroyed was superseded by the later 1961 Act, *supra*. However, as the 1935 Act, *supra*, indicates, the Legislature intended to provide for a review of public records in order to prevent the inadvertent destruction of public records of less obvious official uses or historical worth. The commission, made up of the Governor,
Secretary of State, State Examiner and Directors of the State Library and Historical Bureau, are especially well qualified to perform this function. Therefore, while the over-all responsibility for development of standards and procedures rests with the Administration Department, the Legislature must have intended that the specialized function of the commission on public records would be incorporated into those standards and procedures.

Your second question deals with the effect of the 1961 Act, supra, upon the powers and duties of the State Library in reference to public records. The Acts of 1925, Ch. 58, Sec. 6(a), supra, requires the State Library to care for, and have the custody of, the state's archives. The ordinary meaning of the word "archives," as found in Webster's New International Dictionary, Second Edition, at p. 141, is:

“A place in which public records or historical documents are kept.”

Acts of 1961, Ch. 269, Sec. 4(i), supra, provides that the Administration Department shall establish and operate such state record centers as may be needed to safely and economically store records which must be preserved for a time or permanently. Construing these two sections together, it would appear that the Legislature intended that so much of the state's archives as are devoted to public records should be managed by the Administration Department, while that part of the state's archives, devoted to historical documents, would remain with the State Library. With respect to Acts 1925, Ch. 58, Sec. 6(b), supra, it would appear that the Legislature intended the State Library to examine and classify documents and records of the various departments which are no longer of immediate or present use so that those public records which have other official uses or historical value may be classified and reproduced, if necessary, for inclusion in the historical files of the state. Acts 1925, Ch. 58, Sec. 30, supra, complements Sec. 6(b), supra, in that it permits any state, county or other official to turn over to the State Library, for permanent preservation, materials no longer of use in their departments. It would seem, then, that any standards or procedures promulgated by the Department of Administration would include the above provisions of the 1925 Act, supra.
The answer to your third question is contained in the above answer.

In conclusion, and by way of summary, in my opinion the answer to your questions are as follows:

1. The Commission on Public Records does continue in existence; however, the powers and duties of said commission have been reduced to reviewing all public records to prevent the inadvertent destruction of documents of less obvious official uses or historical worth;

2. The State Library has been affected by the Administration Act of 1961, in reference to public records, with the powers and duties of the State Library being limited to:

   (a) The management of the state archives devoted to historical documents, and

   (b) The examination and classification of the documents and records of the various departments which are no longer of immediate use for the inclusion in the historical files of the state; and

3. In answer to your final question, relative to the powers and duties of the Administration Department under the Acts of 1961, as they relate to the previous acts, it is my opinion that the provisions of the 1925 and 1935 Acts, supra, which do not conflict with the Acts of 1961, supra, should be worked into a harmonious system of standards and procedures which will give full force and effect to the intent of the General Assembly.

OFFICIAL OPINION NO. 24

March 26, 1962

Mr. B. B. McDonald
State Examiner
Indiana State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in reply to your letter requesting an Official Opinion on the following four questions involving the purchase of tax favored annuities for school teachers by school corporations:

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