made by the Board of Trustees for the Indiana State Teachers' Retirement Fund, unless such loans secured by mortgages meet the specific requirements of Burns' 28-4508a (B), supra.

OFFICIAL OPINION NO. 23

June 17, 1960

Hon. William P. Birchler
State Representative
Armistice Hill
Cannelton, Indiana

Dear Representative Birchler:

Your letter of June 6, 1960, has been received and reads as follows:

"The township trustee and advisory board of Troy School Township, Perry County, has completed all procedural steps for the formation of a metropolitan school district in Troy School Township, under the provisions of Chapter 226, Acts 1949 of the Indiana General Assembly as amended by Chapter 151, Acts 1955; Chapter 349, Acts 1957; and Chapter 261, Acts 1959 (Burns 28-2453a).

"The final or confirming resolution has now been adopted, there being no opposition to the proposed change in administration, and the metropolitan district is scheduled to become effective on July 1, 1960.

"At the time this procedure was initiated, it was our understanding that this action did not have to be approved by the State Commission for the Reorganization of School Corporations established under the provisions of Chapter 202, Acts of 1959. Although section 10 of the aforementioned act provides that the State Commission shall approve any 'reorganization' after the effective date of this act, the definitions section of Chapter 202 (Sec. 3) does not include any definition embracing the creation of a metropolitan school district where there is no change in the territory involved."
“In order to clarify this situation, I would like to have your official opinion on the following question:

“1. Is the State Commission for the Reorganization of School Corporations required to approve the creation of a metropolitan school district in a single school township under the provisions of Sections 27-28 of Chapter 226, Acts 1949 (Burns 28-2453a, b) before such metropolitan school district can become legally effective?”

Acts of 1949, Ch. 226, as found in Burns’ (1959 Supp.), Section 28-2431 et seq., is the statute under which proceedings were taken by this township school corporation for the formation of a metropolitan school district. Section 27 of said Act, as added by Acts of 1955, Ch. 151, Sec. 1, as amended, being Burns’ (1959 Supp.), Section 28-2453a, in part, provides:

“II. In any school township, as defined in subsection I of this section, there may be created a metropolitan school district by complying with the provisions of this section. Such metropolitan school district shall have the same boundaries as the school township; and after such district has been created, the school township, out of which it was created, shall be abolished. None of the procedures or provisions governing the creation of a metropolitan school district under any other section of this act shall be applicable to the creation of such district under the provisions of this section; Provided, however, after such district is created under the provisions of this section, it shall, except as otherwise provided in this section, be governed by, and shall operate in accordance with the provisions of this act governing the operation of a metropolitan school district as established under the provisions of section 12 of this act.” (Our emphasis)

Under the foregoing section it is specifically stated that when such a metropolitan school district comes into existence the old township school corporation is abolished.

The foregoing statute refers to Section 12 of said Act, as found in Burns’ (1959 Supp.), Section 28-2442, which provides
the manner in which two or more school corporations can be merged into such a metropolitan school district.

Section 21 of the aforesaid statute, as amended, as found in Burns’ (1959 Supp.), Section 28-2451, also provides, in part, as follows:

“The government of the common schools of said district shall be vested in the board, and the board shall function with all the authority, powers, privileges, duties and obligations heretofore granted to or required of school cities (of the fifth class or of any higher class in which the metropolitan school district would fall on the basis of its population according to the last preceding United States decennial census, if it were organized as a school city) and their governing [governing] boards generally under the laws pertaining thereto with reference to the purchase of supplies, purchase and sale of buildings, grounds, and equipment, the erection of buildings, the employment and dismissal of school personnel, the insuring of property and employees, the levying and collecting of taxes, the making and executing of a budget, the borrowing of money, the paying of the salaries and expenses of the county superintendent and employees as approved by the board; shall be a body corporate and politic by the name and style of ‘The Metropolitan School District of ........................., Indiana’ with the right to prosecute and defend suits; and shall act in any manner necessary to the proper administration of the common schools of the county.

“Such school districts shall be vested with all rights, titles, and interests of their respective predecessor township and town school corporations hereby terminated; and in all the real, personal, and other property of any nature and from whatever source derived, and shall assume, pay, and be liable for all the indebtedness, obligations, and liabilities and duties of said predecessor corporations from whatever source derived and however arising and shall institute and defend suits arising out of aforesaid liabilities, obligations, duties and rights assumed as a metropolitan school district.

* * *
"Every such board shall have the power annually to levy such amount of taxes as in the judgment of such board, made matter of record in its minutes, should be levied to produce income sufficient to conduct and carry on the common schools committed to such board, and it is hereby made the duty of such board annually to levy a rate and levy that will produce a sum sufficient to meet all payments of principal and interest as they will mature in the year for which such levy is made on the bonds, notes, or other obligations of such board. The power of such board in so making tax levies shall be exercised within existing statutory limits and said levies shall be subject to the same review as school city levies."

Under the foregoing section of the statute any such organized metropolitan school district is required to function under the classification of school cities of the fifth class or higher, dependent upon population. This has previously been held to be true by this office in an Official Opinion, being 1957 O. A. G., page 235, No. 49.

Section 17 of said Act, as found in Burns' (1959 Supp.), Section 28-2447, further provides:

"The transfer of powers, duties, property, property rights, other assets, liabilities, contracts, both as to rights and obligations, and all else connected with the transfer of authority from existing school corporations to the metropolitan school district shall take place at the time of the first meeting of the metropolitan board of education within one [1] month after the creation thereof and are hereby declared vested in the metropolitan school district as of that time."

Under the last-referred to section of the statute it is specifically provided for a transfer of all the old township school corporation to the new metropolitan school district.

From the foregoing it is clear that, on any such township school corporation changing to a metropolitan school district under the foregoing statute, the old township school corporation is deemed abandoned; the old school corporation is transferred to the new metropolitan school district; the new school
corporation has a classification of a school city of the fifth class, or higher, rather than that of a township school corporation, and such new school corporation is required to make budgets and tax levies under existing laws relating to school cities. In other words, for all practical purposes it is a complete reorganization of such school corporation, even though the boundaries remain the same.

The School Corporation Reorganization Act of 1959, being Acts of 1959, Ch. 202, is found in Burns’ (1959 Supp.), Section 28-6101 et seq.

Section 10 of the last-referred to statute, as found in Burns’ (1959 Supp.), Section 28-6121, provides as follows:

“From and after the effective date of this act, no consolidation or reorganization of school corporations, by means of or procedures under existing laws of this state in effect on the effective date of this act, shall become effective until and unless such consolidation or reorganization is approved by the state commission.

* * *”

Section 3 of the last-referred to statute, as found in Burns’ (1959 Supp.), Section 28-6102, provides, in part, as follows:

“Definitions.—As used in this act, unless context clearly requires otherwise, the following terms shall have the meanings here set forth:

* * *

“(2) ‘Reorganization of school corporations’ shall mean and include the formation of new school corporations, the alteration of the boundaries of established school corporations, and the dissolution of established school corporations, through or by means of (a) the uniting of two [2] or more established school corporations; (b) the subdivision of one [1] or more school corporations; (c) the transfer to any established school corporation of a part of the territory of one [1] or more school corporations, and/or the attachment thereto of all or any part of the territory of one [1] or more school corporations, and/or the transfer of said established school corporation; and (d) any combination of the methods aforementioned.” (Our emphasis)
It has been held that the primary object of statutory construction is to ascertain and effectuate the intent of the Legislature as shown by the old act, the law existing before its passage, the changes made and the apparent motive for making them.

State ex rel. Rogers v. Davis (1951), 230 Ind. 479, 482, 104 N. E. (2d) 382.

In applying the foregoing rule of construction to the above-quoted provisions of the School Corporation Reorganization Act of 1959, the definition section provides that the terms therein set out shall have the meanings set forth, unless the context clearly requires otherwise. In this connection it is to be considered Section 10 of the Act says no consolidation or reorganization of school corporations, under existing laws, shall become effective unless approved by the State Commission. It is questionable that such clear and positive language is susceptible to qualification by virtue of the definition section of the statute. Even if qualification of such language is considered proper by application of the definition of the words “Reorganization of School Corporations,” the definition itself would in my opinion reach the same conclusion for the reason it is first stated such phrase “shall mean and include the formation of new school corporations.” It is questionable that anything further in this definition needs to be considered. However, should we consider the remaining part of such definition as qualifying the foregoing, we would still arrive at the same result, for under Clause (c) thereof, reference is made to “the transfer to any established school corporation * * * or the transfer of said established school corporation.” These provisions are emphasized in the above quotation. A township school reorganization into a metropolitan school district, under Acts of 1949, Ch. 26, supra, constitutes the “formation” of a new school corporation, and the “transfer” of an “established school corporation,” and thereby clearly comes within the purview and stated meaning of such definition of a “reorganization of school corporations.”

From the foregoing, I am of the opinion the formation of the metropolitan school district referred to in your letter must have the approval of the State Commission for the Reorganization of School Corporations before such reorganization becomes effective.