September 29, 1959

Honorable William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter concerning approval of school construction has been received and reads as follows:

"Section 16 of Chapter 202 of the Acts of the Indiana General Assembly for the year 1959 reads as follows:

"'From and after the effective date of this Act, no new construction of a school building, gymnasium or other school facility by a school corporation having an enrollment of pupils to be housed therein equivalent to less than four classroom units for grades nine through twelve as defined by the laws of this state pertaining to the distribution of state funds for the support of local school corporations shall be approved by the Commission on General Education of the State Board of Education, nor shall any lease from a school building holding corporation for any such new construction be valid; provided however, that the provisions of this section shall not apply to any of the above-described construction in those instances where bond issues shall have been sold and/or lease rental contracts or construction contracts shall have been entered into prior to the effective date of his Act.'"

"I respectfully request your official opinion as to exactly what school facilities fall within the restrictions of Section 16. In particular, I respectfully request your official opinion as to the following:

"1. Does Section 16 have any application to school buildings or facilities which are proposed to be used after construction for elementary or junior high school purposes?"
“2. Does Section 16 have any application to non-academic facilities in which no or few students will be housed, such as administrative buildings, heating facilities, sewage disposal plants, etc.?

“3. Do additions or extensions to existing school buildings or facilities fall within the provisions of Section 16 and, if so, to what extent? If such additions or extensions are governed by Section 16, is it on the basis of the number of students housed in the entire school building of which the addition or extension is a part, or is it on the basis of the number of students to be housed only in the addition or extension?

“4. If two or more buildings are to be erected at the same time on the same site and will constitute a single school plant, should such buildings be considered as one building or as separate for the purpose of Section 16?

“5. In what manner should enrollment be determined under Section 16? Should it be on the basis of average daily attendance and, if so, for what period? If average daily attendance is not to be used, as of what date should enrollment be determined?

“6. In determining enrollment under Section 16, how are transfer students, either into or from the school corporation, to be treated?

“7. Where a school building is being erected for and will be operated as a joint school for two or more school corporations, must each school corporation participating in the joint school meet the enrollment tests separately or may the enrollment of all school corporations participating in the joint school be combined for the purposes of Section 16?”

This office has received many letters, personal visits and telephone calls from Legislators, attorneys, school administrators and citizens interested in school administration, as to the meaning of this section of the statutes. They reveal marked disagreement as to the intent of the Legislature as well as the statutory construction used to arrive at such conclusions.
It is clear that the act restricts the authority to finally approve construction of "schoolhouses" which is vested in the Commission on General Education of the Indiana State Board of Education by Acts of 1949, Ch. 170, Sec. 6, as found in Burns' (1959 Supp.), Section 28-415.

The question is, what schoolhouse construction may no longer be approved?

The subject of all rules of statutory construction is the ascertainment of the legislative intent. In the search for such intent it is proper to consider the common law and other statutes relative to the same subject matter, together with contemporaneous legislative history and the evils at which the legislation was aimed.


In other statutes passed at the same session of the Legislature grades 1 through 8 are treated differently than are grades 9 through 12 with respect to both state aid for school construction and state aid for tuition support.

For example, Acts of 1959, Ch. 214, Sec. 2, as found in Burns' (1959 Supp.), Section 28-178a(b), relating to advancements to school corporations for school construction provides as follows:

"(b) No advance shall be made to a school corporation whose average resident enrollment in grades 1 through 8 is less than 30 per grade in such proposed school building to be built. In all instances no advance shall be made to a school corporation whose average resident enrollment in grades 9 through 12 is less than 270 in such proposed school building to be built."

Likewise, Acts of 1959, Ch. 328, Sec. 2, as found in Burns' (1959 Supp.), Section 28-1030, relating to distribution from the State School Tuition Fund provides, in part, as follows:

"The number of units for which a public school corporation may qualify for state support as provided in this act shall be one [1] unit for each thirty-two [32] pupils in average daily attendance in grades one [1]
through eight [8] and one [1] unit for each twenty-eight [28] pupils in average daily attendance in grades nine [9] through twelve [12] in any one [1] school corporation, and also for administrative and supervisory units as provided for herein elsewhere. Classroom units shall be computed to the nearest tenth of a unit."

This difference in treatment has existed for many years (See Acts of 1949, Ch. 247, Sec. 6, as found in Burns’ [1959 Supp.], Section 28-1026) and would therefore appear to have a substantial and continuing basis in fact. This being the case, I do not think the Legislature intended the "* * * equivalent of less than four (4) classroom units for grades nine (9) through twelve (12) as defined by the laws of this state pertaining to the distribution of state funds for the support of local school corporations * * *," to be a standard for prohibiting new school construction in grades 1 through 12 inclusive.

School buildings are constructed for school corporations, and students are housed in the school buildings. It appears to me that the phrase "equivalent to less than four class room units" as used in Sec. 16 of the Act has reference to and modifies the word "enrollment," and the phrase "for grades 9 through 12" refers to the grades to be "housed," i.e. actually housed or served by the proposed construction.

I am therefore of the opinion that Section 16 of the Act was intended to apply only to school construction for grades 9 through 12 and that the minimum standard set for approval was the equivalent of four class room units for said grades as established by Acts of 1959, Ch. 328, Sec. 2 as found in Burns’ 28-1030, supra.

My answers to your questions are as follows:

1. Section 16 of Ch. 202 of the Acts of 1959 applies only to school construction for grades 9 through 12.

2. The prohibition of Sec. 16 of said Act applies to all gymnasiums or school facilities which are a part of or directly pertain to school buildings housing an enrollment of less than four class room units in grades 9 through 12.
3-4. Your third and fourth questions involve mixed questions of law and fact and I would prefer to answer each case individually after having an opportunity to review all the facts which you may choose to present.

5. In answer to your fifth question, the only basis for determining enrollment of pupils to be housed in the school building "equivalent to less than four classroom units, grades nine through twelve as defined by the laws of this state pertaining to the distribution of state funds for the support of local school corporations" is a consideration of your distribution statutes, the pertinent one here involved being Acts of 1959, Ch. 328, Sec. 2, as found in Burns' (1959 Supp.), Section 28-1030, supra, effective July 1, 1959.

In respect to grades nine to twelve this statute fixes a unit as 28 pupils, in average daily attendance, computed to the nearest tenth of a unit. Therefore the minimum necessary enrollment is approximately 112 pupils in such grades, nine to twelve. It is apparent that the standard of enrollment is to be applied in respect to the function of the building when the same is complete and ready for use. Therefore it will be necessary for the Commission on General Education in each instance to determine, as a reasonable estimate from the facts presented, the number of pupils to be housed in the new building. The average daily attendance figures available at the time of the presentation to the Commission on General Education would be pertinent as well as reasonable estimates given by the school authorities based upon current population expansion in the school corporation.

6. In answer to your sixth question, transfer students should be counted only with respect to the school building in which they are to be housed.

7. Where a joint school building is being constructed for two or more school corporations all students who will be enrolled in the school building may be counted.