Your letter of June 29, 1959 has been received and reads as follows:

"After August 1, 1958, a school corporation organized under Chapter 68 of the Acts of 1947 had a five-member Board as provided by Chapter 244 of the Acts of 1957. At that time the Board was comprised of a duly elected township trustee, a Republican, and one member, a Republican, elected by the City Council and three members, all Democrats, elected by the City Council. Thereafter, in November, 1958, a Democrat was elected to the office of township trustee who qualified and assumed office January 1, 1959. Therefore, at such time the Board then consisted of four Democrats and one Republican and the City Council officially ordered removed from said Board one Democratic member whose term of office had not expired and elected in his place a Republican member. For the purpose of the following questions it must be assumed that the removal of the Board member by the City Council was against his wishes although since such time he had taken no positive action to compel recognition of his rights to sit as a member of said Board. Based upon the foregoing assumed facts, an official opinion is hereby requested on the following questions:

"1. Did the City Council have authority to remove said Democratic member from said Board at said time and appoint a new Republican member in his place?

"2. If the City Council had the authority to remove such member from such Board at such time how and in what manner could it determine which of the three Democratic members of said Board were to be removed from office?"
The answers to your questions are controlled by the provisions of Acts of 1957, Ch. 244, Sec. 1, which amended Acts of 1947, Ch. 68, Sec. 6a, as found in Burns' (1959 Supp.), Section 28-1253f-1, which provides, in part, as follows:

"After the first day of August next succeeding said election provided for in section 3 of this act, such consolidated schools shall be under the control and management of a school board composed of five [5] school trustees, one [1] of whom shall be the duly elected trustee of the township and four [4] of whom shall be elected by the board of trustees of such town or the common council of such city of the fifth class in the manner prescribed in this act. No more than three [3] members of such board shall be of the same political faith: Provided, That the board of trustees of such town, or the common council of such city, shall elect two [2] members of such board who are residents of such town or city, and the board shall elect two [2] members of such board who are residents of the township outside the corporate limits of such city or town.

"The board of trustees of such town, or the common council of such city of the fifth class, shall at a regular meeting, or at a special meeting called for the purpose, in the month of July, prior to said first day of August, elect four [4] school trustees, two [2] of whom shall be residents of such township, but not residents of such city or town; and two [2] of whom shall be residents of such town or city of the fifth class. These four [4] members so elected by the board of trustees of the town, or the common council of such city, shall hold their offices for one [1], two [2], three [3] and four [4] years, respectively, from and after the first day of the next succeeding month. The terms of each said trustees shall be determined by lot, at the time of such election, by such common council or board of trustees, and annually thereafter the common council of such city, or the board of trustees of such town, at their regular meetings in the months of June, shall elect one [1] school trustee, who shall hold office for four [4] years from the first day of the next succeeding August. The fifth member of said school board shall
be the township trustee, who, together with such trustees elected by the said board of trustees of such town or the common council of such city, shall constitute the school board of such consolidated schools, and before entering upon the duties of their office, they shall take an oath faithfully to discharge the duties of the same. Said school board shall meet within five [5] days after the first day of August and organize, and shall reorganize at any time the personnel of said board is changed. They shall elect one [1] of their number president, one [1] secretary, and one [1] treasurer. The treasurer, before starting upon the duties of his office, shall execute a bond to the acceptance of the county auditor, of a bonding company, in which case fee for such bond shall be paid from the special fund of such consolidated school corporation, in a sum equal to the maximum amount of money that will come into his hands within one [1] year by virtue of his office. All vacancies that may occur in said board, other than said township trustee, shall be filled by the common council of the city or the board of trustees of the town, but such election to fill a vacancy shall only be for the unexpired term. Said board, shall, within five [5] days after the first day of August of each year, reorganize and the treasurer shall execute his bond for the ensuing year.”

The foregoing statute is subject to the well recognized rule of statutory construction that statutes must be construed as a whole in order to determine the legislative intent.

Snider v. State ex rel. Leap (1934), 206 Ind. 474, 478, 190 N. E. 178;

State ex rel. Milligan v. Ritter’s Estate (1943), 221 Ind. 456, 469, 470, 48 N. E. (2d) 993.

When said section of the statute is considered in its entirety it is clear that on August 1, 1958, this school corporation had a five-member board consisting of: a newly elected township trustee, a Republican, one member, a Republican, elected by the City Council, and three members, all Democrats, elected by the City Council. Pursuant to the terms of said statute, at
said time, each of such respective members elected by the City Council had a definite term of office, none of which would expire until the succeeding August 1, 1959, but one of whose terms would expire in one year; one in two years; one in three years; and one in four years from that date. There is no provision in said statute giving authority to the City Council to shorten the term of any such member once elected, and qualified. The only authority given said City Council in that respect is to fill vacancies occurring on such board. Under the above stated facts no vacancy occurred on such board, and no authority is given such City Council by said statute to so create a vacancy.

While it is true the statute provides "no more than three [3] members of such board shall be of the same political faith," that provision follows immediately after the provision in the statute relative to the election of such members to the office by the common council of the city. Its application could only refer to the time of election of such members by the City Council for the reasons that: no power of removal for that reason is given the City Council; the members had stated terms of office not yet expired when the new township trustee assumed office January 1, 1959; and, no vacancy existed on such board at that time and the power of the City Council was only to fill vacancies.

Where an office is created by statute, public officers may exercise only such powers as are expressly authorized by statute.

State ex rel. Workman et al. v. Goldthait (1909), 172 Ind. 210, 216, 217, 87 N. E. 133;
Dept. of Insurance v. Church Members' Relief Assn. (1940), 217 Ind. 58, 60, 26 N. E. (2d) 51;

Since the foregoing statute did not give authority to the City Council to order one of such Democratic members of said board removed from office before the expiration of his term, no such authority existed. Although the statute contemplated that the board be composed of no more than three members of the same political faith, it did not by its provisions so far
impress such fact upon the other provisions of the statute as to reduce the stated terms of office of duly elected members thereof, or result in giving the City Council authority to remove any such member whose term had not expired. The construction herein made of said statute gives full credence to all of its provisions and meets all the requirements of the above rules of statutory construction that the provisions of the statute must be reconciled wherever possible.

The board of trustees of a town, or the City Council, is charged with maintaining a political balance—a two to three ratio—at any time they have the authority to make an appointment. Even though they cannot remove a member during his term to maintain this balance, they must, nevertheless, make an appointment in the June period next following which will effectuate the proper ratio.

Therefore, your first question should be answered: that the City Council did not have authority to remove said Democratic member from said board at the time a newly elected Democratic township trustee assumed office as a member of said board; and, that the City Council at that time did not have the power to appoint a new Republican member in his place, as there was no statutory vacancy.

Your second question is answered by the answer to your first question. However, the question, in itself, illustrates that any other construction of the statute would be impractical, for there is no method pointed out, in the statutory provisions, by which the City Council could determine which of the three then remaining members of said board was to be removed from office.