the same to be moved, after the same is impounded by said officer, other than as expressly directed by said officer, shall be subject to be charged with a felony and upon conviction shall be subject to a fine of not less than $500 nor more than $1,000 to which may be added imprisonment in the Indiana state reformatory or state prison for a period of not less than one [1] nor more than five [5] years.” (Our emphasis)

Under the Indiana Constitution, Art. 1, Sec. 17, offenses other than murder or treason shall be bailable by sufficient sureties. Bail has been held to apply before trial since the presumption that the accused is innocent still prevails. Bail does not apply after the accused has been found guilty.

Ex parte Pettiford (1929), 97 Ind. App. 703, 167 N. E. 154.

The fines and costs referred to in the statute cited are assessed at or after the time of trial if the accused has been found guilty of the offense charged. Therefore, a “bail” bond could not operate to release the impounded truck, which could only be lawfully released after the trial when fines and costs are levied and then are paid or stayed.

It is therefore my opinion that a recognizance bond or “bail” bond filed and approved prior to trial cannot “stay” the fines and cost which have not yet been imposed. Therefore, such bond, while operating to release the person of the defendant from custody could not operate to release the truck.

OFFICIAL OPINION NO. 44
August 21, 1959

Honorable Robert S. Justice
State Senator
216 East Broadway
Logansport, Indiana

Dear Senator Justice:

Your letter of July 17, 1959, has been received in which you enclose a copy of the Resolution of Consolidation of the Carroll
County Cooperative School Corporation, effective June 1, 1959. You request an Official Opinion on the following questions:

"1. Is the material contained in the numbered paragraphs of the resolution legally valid and binding upon the Board which has been selected by the corporation and is now functioning?

"2. Can the provisions of the said resolution now be changed? If so, by what procedure?"

The above Consolidated School Corporation was consolidated pursuant to the provisions of Acts of 1947, Ch. 123, as amended, as found in Burns' (1948 Repl., 1959 Supp.), Section 28-5901 et seq.

From an examination of the Resolution of Consolidation, I am of the opinion paragraphs numbered 1, 2, 3, 4, 5 and 11 are valid, and that as a result thereof such Consolidated School Corporation came into effect June 1, 1959, provided the procedural requirements of the statutes have been followed. I am also of the opinion paragraphs 6, 7, 8, 9 and 10 are merely surplusage and void, not only as being in conflict with the provisions of said consolidation statutes, but also as being matter found in the resolution not permitted by any statutory authority. These conclusions are reached for the reasons hereinafter stated.

Paragraph numbered 1 of the Resolution states the name of the new school corporation; paragraph numbered 2 provides that each of the township trustees of the five respective consolidating township school corporations shall constitute the school board of the new Consolidated School Corporation, to serve ex officio by virtue of their office as township trustees; paragraph numbered 3 provides the new school corporation shall be under the direction of a Superintendent selected by the school board; paragraph numbered 4 states the names of the respective consolidating township school corporations; and paragraph numbered 5 provides the members of the new school board shall receive no compensation for their services other than that provided for their services as township trustees.

Each of the foregoing provisions as contained in paragraphs one through five are expressly required by the Acts of 1947,
Whenever the school trustees of any two [2] or more school corporations desire to consolidate their respective school corporations, they may meet together and adopt a joint resolution declaring their intention to consolidate their respective school corporations. Said resolution shall set out the following information concerning the proposed consolidation:

“(1) The name of the proposed new school corporation;

“(2) the number of members on the school board and the manner in which they shall be elected or appointed; if such members are to be elected, the resolution shall provide for the manner of their nomination, who shall constitute the board of election commissioners, who shall appoint inspectors, judges, clerks and sheriffs and any other provisions desirable in facilitating such election; where applicable and not in conflict with such resolution, such election shall be governed by the general election laws of the state, including the registration laws;

“(3) whether or not the schools of the consolidated school corporation shall be under the direction of the county superintendent of schools or under the direction of a superintendent selected by its school board;

“(4) limitations on residences, term of office and other qualifications required of the members of such school board: Provided, however, That no resolution shall provide for an appointive or elective term of more than four [4] years, but any member may succeed himself in office;

“(5) names of present school corporations which are to be merged together as a consolidated school corporation. In addition such resolution may specify the time when the consolidated school corporation shall come into existence. The number of members on the school board as provided in the resolution shall not be less than three [3] nor more than seven [7].”
It can be seen from a closer reading of paragraph (5) above that the only additional matter that may be specified in this Resolution is "the time when the consolidated school corporation shall come into existence." Therefore, those subjects attempted to be covered by paragraphs 6, 7, 8, 9 and 10 of the Resolution, not being properly a part of the Resolution provided by the above statute, are surplusage and of no force and effect.

It is clear that sufficient provision has been made for effecting a consolidation under said statute regardless of the fact that said Resolution contains surplus conditions and provisions for the future operation of said school system.

Paragraph numbered 11, stating the effective date of such consolidation, is authorized by Section 6 of said Act, as amended, as found in Burns' (1959 Supp.), Section 28-5906, which, in part, provides:

"Such consolidated schools shall be under the control and management of the consolidated school board created pursuant to this act, and such new consolidated school corporation shall come into existence at the time specified in the resolutions provided in sections 2 or 3 of this act, or in the event no such time is specified, at the following times: (a) in the event no protest has been filed and such creation is accomplished by the adoption of a joint resolution following publication of notice as provided in section 2 of this act, thirty [30] days following the adoption of such joint resolution; (b) in the event such creation is accomplished after an election as provided in section 4 of this act, thirty [30] days following said election."

From the foregoing, sufficient provision has been made for effecting a consolidation under said statute with the result that a consolidation of schools became effective on the date stated in said Resolution, providing the procedure set forth in the consolidation statute was followed, irrespective of the fact that said Resolution contains a number of invalid conditions and provisions as to the future operation of said school system.

The foregoing consolidation statute was enacted by the Legislature pursuant to the express authority given it by
Article 8 of the Constitution of Indiana and, by said statute, powers and authority were given to the school board of said Consolidated School Corporation, hereinafter quoted, which may not be curtailed by the provisions of the Resolution of Consolidation. Therefore, the provisions in the Resolution contrary to the specific provisions of the statute under which the consolidation was made, will be considered void to the extent of any conflict.

It has been held that where an office is created by statute, public officers may exercise only such powers as are expressly authorized by statute.

Department of Insurance et al. v. Church Members Relief Assn. (1940), 217 Ind. 58, 60, 26 N. E. (2d) 51;

Wallace, State Entomologist et al. v. Dohner et al. (1929), 89 Ind. App. 416, 420, 165 N. E. 552;


From the foregoing it is equally true that where the statute enjoins upon public officers certain functions and duties to be performed by them as members of the school board of a consolidated school, such powers and duties may not be curtailed by any authority subordinate to that of the Legislature. Such authority to consolidate must be exercised on the terms and under the circumstances prescribed and without any additional restrictions.

78 C. J. S. Schools and School Districts § 27, p. 670.

Paragraph numbered 6 of said Resolution is as follows:

"6. That a grade school for children in grades one (1) to six (6) inclusive will be maintained and operated by the proposed new school corporation in each of said present school corporations."

Paragraph numbered 7 of said Resolution provides:

"7. That no senior high school building, for grades nine (9) to twelve (12) inclusive, shall be constructed by or within the proposed new school corporation until
a balance of at least Two Hundred Fifty Thousand Dollars ($250,000.00) has been accumulated by the proposed new school corporation in a cumulative building fund, it being contemplated that a cumulative building fund shall be established as soon as possible providing for the levy of an annual tax for such purpose not in excess of fifty (50) cents on each hundred dollars ($100.00) of assessed valuation of taxable property within the area of the proposed new school corporation."

Paragraph numbered 9 of said Resolution is as follows:

"9. That until such time as a new senior high school building, for grades nine (9) to twelve (12) inclusive, shall be completed within the proposed new school corporation, a junior high school, for grades seven (7) and eight (8), shall be maintained and operated in the present school building in said present Carrollton School Township of Carroll County to accommodate junior high school students of the present Carrollton School and Washington School Townships; provided, however, such school building may be used also for such other purposes and to accommodate such other students as the school board of the proposed new school corporation may determine."

Paragraph numbered 10 of said Resolution reads:

"10. Any new senior high school building constructed by or within the proposed new school corporation shall be constructed on such site as shall be selected therefor by the unanimous vote of the school board in office at the time of letting of contract for such construction."

Paragraphs numbered 6, 7, 9 and 10 of said Resolution are in conflict with the expressed authority and duties enjoined upon the school board of said new Consolidated School Corporation, by the provisions of said statute, hereinafter quoted. In this connection, specific attention is directed to the fact that paragraph numbered 10 of said Resolution requires the "unanimous vote" of the new school board before a new senior high
school building could be constructed, which unanimous vote is not required by the statute.

Section 7 of said Act, as amended, as found in Burns’ (1959 Supp.), Section 28-5907 provides:

“When any such school town or towns, school city or cities, school township or townships, joint schools or consolidated schools shall have become thus consolidated by resolution, or election, as hereinbefore provided, and the new school board shall have been appointed, and have been duly and legally organized as hereinbefore provided, such school township or townships, school town or towns or such school city or cities, joint schools or consolidated schools shall be deemed to have been abandoned and all their school property, rights, and privileges as well as any indebtedness it may have, shall be deemed to have accrued to and be assumed by the new consolidated school corporation, and the title of such property shall pass to and become vested in the new consolidated school corporation, and all debts of the former school corporations shall be assumed and paid by such new consolidated school corporation, and all the privileges and rights conferred by law upon such school township, school towns, school cities, joint schools or consolidated schools shall be and are granted to such newly consolidated school corporation.

“Whenever the consolidated school board of a consolidated school corporation decides that property acquired under this section is no longer needed for school purposes and that it would be advantageous to sell the same, the board shall cause such property to be appraised at a fair cash value by three [3] reputable resident freeholders of the school corporation offering such property for sale, and said appraisements shall be made under oath and spread of record upon the records of said board. No sale shall be made for less than the appraised value, and for cash, after the board has caused notice to be given reciting therein the terms, time and place of sale by publishing the same once each week for a period of two [2] consecutive weeks in two
newspapers of general circulation representing the two major political parties published in such school corporation; provided, however, if there are not two such newspapers, then in any one such newspaper published in such school corporation; and, if there are no such newspapers, then in any newspaper of general circulation within such school corporation. Proceeds from any such sale shall be placed in a special school fund of such consolidated school corporation and shall be designated as the capital outlay fund which shall be available for capital outlay of said school corporation.”

Section 8 of said statute, as amended, as found in Burns' (1959 Supp.), Section 28-5908, provides:

“Except as otherwise provided with respect to the power to issue bonds in section 9 of this act, said school board shall perform the duties and shall have all the powers vested in the school board or board of trustees of a school city of the class in which the consolidated school corporation would fall on the basis of its population according to the last preceding United States census under the statutes of this state, if it were organized as a school city. In the event, however, such consolidated school corporation has a population determined in such manner of less than 2,000 such school board shall perform the duties and shall have all the powers vested in the school board of a school town. The cost of maintaining such consolidated schools shall be borne by the consolidated school corporation, as a single tax unit. Taxes to meet such cost shall be levied by said consolidated school board at a uniform and equal rate on all the taxable property located within the limits of said consolidated school corporation, and collected in the city or cities, town or towns, township or townships in the same manner as other taxes are levied and collected.”

Section 9 of said act, as amended, as found in Burns' (1959 Supp.), Section 28-5909, further provides:
“Whenever it shall become necessary to build a new building or buildings, or to make repairs or alterations on old ones, said school board shall have the power to build such new building or buildings, or to repair or alter such old ones as they may deem necessary and to purchase the necessary site therefor; and the cost thereof shall be taxed against all taxable property, both real and personal, lying within the corporate limits of such newly consolidated school corporations. Said school board shall have the power to issue bonds of such new school corporation against the taxable property lying within the corporate limits of the newly consolidated school corporation to meet the cost of any new building or buildings, or the repair or alteration of old ones. Such bonds authorized by this act shall be payable in such amounts and at such times as the school board may determine, and shall bear such rate of interest as may be determined, not exceeding four and one-half \(4\frac{1}{2}\) per cent. Said board shall have the power to levy and collect taxes to meet the payment of any bonds issued pursuant to this act; Provided, That said school board shall have all of the powers given and granted to school corporations for the appropriation of the real estate for school purposes, by chapter 87 of the Acts of 1907.”

Section 10 of said act, as found in Burns’ (1948 Repl.), Section 28-5910, is as follows:

“Said school board of such consolidated school corporation shall be governed by the laws of the state now in force for transportation of pupils to such consolidated schools: Provided, That if a consolidated school is maintained within the corporate limits of a city or town, then the said school board shall provide and maintain means of transportation for all pupils in elementary or high schools, or both, that live more than one-half mile outside the city or town limit: and, Provided further, That if by reason of condition of roads or streams, or distance, it would not be advantageous for certain children of school age to be transported to any consolidated school established and maintained under
A comparison of the attempted restrictions on the powers and duties of a school board of the consolidated school, as contained in paragraphs numbered 6, 7, 9 and 10 of the Resolution, supra, against the specified powers and duties enjoined upon the school board of said Consolidated School Corporation, by the provisions of the foregoing quoted sections of the statute, clearly show said provisions of said Resolution conflict with the provisions of said statute, and are therefore void to the extent of any such conflict.

Paragraph numbered 8 of the Resolution reads as follows:

"8. That until such time as a new senior high school building, for grades nine (9) to twelve (12) inclusive, shall be completed with the proposed new school corporation, any senior high school student desiring to attend a senior high school outside the proposed new school corporation, upon application of the parent, guardian, or custodian of such child, shall be granted an order of transfer to such senior high school outside the new proposed school corporation; provided, however, that the Superintendent of the proposed new school corporation finds that such student will be offered a broader and better curriculum of courses of study in the high school he desires to attend than in the proposed new school corporation; provided, further, that any student in the eleventh or twelfth grade (junior or senior in senior high school) attending a senior high school outside the proposed new school corporation at the time a new senior high school building shall be completed within the proposed new school corporation, if he desire to continue to attend such other senior high school, upon application of his parent, guardian or custodian, shall be granted an order of transfer by the proposed new school corporation to such other senior high school until he graduates from or leaves such school; and provided, further, that the school board of the proposed new school corporation may refuse to
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grant an order of transfer for any student to any school corporation which charges or attempts to charge the proposed new school corporation a greater amount for the transfer of such student than is permitted by law or other than is charged by such creditor school corporation for transfers generally.”

The provisions of paragraph numbered 8 of said Resolution are in conflict with the provisions of the transfer statute of this state found in Burns’ (1948 Repl.), Section 28-3701 et seq., the principal statute involved being Acts of 1921, Ch. 253, Sec. 1, as amended, as found in Burns’ (1948 Repl.), Section 28-3701, which reads as follows:

“Whenever any child, resident in any school corporation of this state, can be better accommodated in the public schools of another school corporation of this state, or a high school of a school corporation of an adjoining state, the school trustee or board of school trustees, or board of school commissioners of the school corporation in which such child resides, may if the conditions warrant, and upon application of the parent, guardian or custodian of such child, made at any time, grant an order of transfer, which shall entitle such child to attend the schools of the corporation within this state, or the high school of a corporation in an adjoining state, to which such transfer is made, under the conditions hereinafter prescribed; Provided, That for each child so transferred, such school trustee, board of school trustees, or board of school commissioners of the school corporation in which the child resides shall pay to the school corporation to which the child is transferred, the full tuition fee charged by the corporation to which the transfer is given, if such fee does not exceed the amount now prescribed by law for the transfer of pupils from one school corporation to another within the state, or does not exceed the amount prescribed by law or laws governing transfers in the adjoining state; and, Provided, further, That in determining whether a child can be better accommodated in the schools of another school corporation in this state than that in which such child resides, or the high school of such school corporation in an adjoining state than
that in which such child resides, such matters as the proximity of the schools of the township and city to the residence of such child desiring the transfer, the kind and character of the roads to each, the means of transportation, if any, to each, the crowded conditions of the schools in either of the two corporations, shall be pertinent; and, Provided, further, That if there is no commissioned high school in any such school corporation, where the child resides, the school trustee, board of school trustees or board of school commissioners shall grant an order of transfer.”

From the foregoing and in answer to your first question, I am of the opinion that paragraphs numbered 1, 2, 3, 4, 5 and 11, of said Resolution of Consolidation, are valid and that a consolidated school came into existence on June 1, 1959, providing the procedure set forth in the consolidation statute was followed, even though said Resolution contains invalid restrictive provisions. I am also of the opinion that paragraphs numbered 6, 7, 8, 9 and 10 of said Resolution of Consolidation, are void, as being in conflict with the expressed provisions of the statute under which such consolidation was effected.

In answer to your second question, the only amendments to a Resolution of Consolidation, authorized by said statute, are: 1. An amendment as to the composition of the school board and the manner of their selection, etc. (as contained in Acts of 1957, Ch. 277, as found in Burns' [1959 Supp.], Section 28-5941 et seq.); and 2. The making of an amendment to a Resolution of Consolidation so as to provide the school may be under the supervision of a superintendent to be selected by the school board, rather than under the county superintendent (as provided for by Section 2a, of the above statute, as added by Acts of 1957, Ch. 260, Sec. 3, as found in Burns' [1959 Repl.], Section 28-5902a). These are the only amendments authorized by the statute. Any amendment to the instant Resolution in any other respect, could not be made. However, the invalid provisions of the Resolution, being void, would not be binding upon the school board of said Consolidated School Corporation.