mittee consisting of the Governor and the Budget Committee, which approval must be secured prior to payment of salaries.

OFFICIAL OPINION NO. 7

April 21, 1959

Mr. William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Wilson:

Your letter of April 2, 1959 has been received and reads as follows:

"Questions have arisen concerning interpretation of Senate Bill #160 (Chapter 217) Acts of 1959 pertaining to school bus transportation and I am in need of an Official Opinion on the following questions:

"Question 1. Can a contract be made with the school bus operator for a fleet of buses consisting of two or more vehicles?

"Question 2. If the answer to the above question is yes, under what condition can this contract be let?

"Question 3. Can we hire a fleet of buses under one contract to transport mentally and physically handicapped children?

"Question 4. If the answer to number 3 is yes, under what condition may we employ a fleet contractor for the transportation of mentally and physically handicapped children?"

The principal statute concerning school-bus contracts is Acts of 1945, Ch. 210, as amended, as found in Burns’ (1948 Repl., 1957 Supp.), Section 28-3930 et seq. Said statute requires individual contracts with individual school-bus drivers who may or may not own all or part of the school-bus
equipment. The only exception contained in said act is found in Sec. 6 thereof, being Burns' (1948 Repl.), Section 28-3935, which provides that it is not necessary to comply with the provisions of the act when contracting with any common carrier for the transportation of school children.

Thereafter, in 1957, the Legislature, by Acts of 1957, Ch. 150, Sec. 1, as found in Burns' (1957 Supp.), Section 28-3938, supra, authorized school cities of the first and second class to contract with a school-bus operator whereby the contract could cover more than one school bus. When so enacted, said statute constituted an exception to the foregoing general statute regarding letting of school-bus contracts.

The 1959 General Assembly, by Acts of 1959, Ch. 217, referred to in your question, amended the foregoing 1957 statute, to read as follows:

"SECTION 1. Section 1 of the above entitled act is amended to read as follows: SECTION 1. In all school cities of the first and second class, school bus transportation contracts may be made with a school bus operator wherein the contract may cover the use of two or more school buses under the same contract for a given area, as determined by the contracting school authorities: Provided, That such school bus operator is operating under the jurisdiction of the Public Service Commission of Indiana: Provided further, That the foregoing provisions of this act shall not apply to buses used exclusively for the transportation of mentally and physically handicapped children. Any driver of any such bus shall be employed by such school bus operator who shall be solely responsible for such driver's employment and actions, however, any such driver shall otherwise meet the qualifications for drivers of school buses prescribed by the laws of this state."

The last referred to act also amended the title and contained an emergency clause to be in full force and effect from and after its passage. The 1959 Amendment left Section 1 of the act as it was in 1957, except to amend the two provisos, above quoted. The effect of the addition of said provisos was to make said exception to the general statute apply only to school-bus operators operating under the jurisdiction of the Public Serv-
From the foregoing I am of the opinion the answers to your first two questions are: 1. That a contract can be made with a school-bus operator for a fleet of buses consisting of two or more vehicles; and, 2. your second question is answered by stating that such right of contract is restricted to a school-bus operator operating under the jurisdiction of the Public Service Commission of Indiana.

Your third and fourth questions concern transportation of mentally and physically handicapped children. Several statutes deal with these subjects, including Acts of 1947, Ch. 276, as amended, as found in Burns' (1948 Repl., 1957 Supp.), Section 28-3521 et seq. Under these statutes special classes and programs are set up in a school corporation which might contemplate the attendance of school children from other school corporations as well as the transportation of their own handicapped children. Special equipment is authorized as well as special instructors for the care and education of these children, with the state paying some of the additional cost above the level ordinarily incurred for the education of a normal child. Such programs and classes, including additional expenses and special equipment, must be submitted to and approved by the State Board of Education, prior to the incurring of such additional expenses. These questions are considered in Official Opinions of this office found in 1955 O. A. G., page 164, No. 41 and 1948 O. A. G., page 46, No. 10.

From the foregoing, I am of the opinion your third question should be answered in the affirmative if special equipment or specially trained drivers are required for the transportation of such children, otherwise they should be governed by the regular statute regarding school-bus contracts.

The foregoing answers your question number 4 except that any such contract for a fleet of buses under one contract to transport mentally or physically handicapped children would not only be required to meet the conditions set forth in the answer to your third question but such contract must have the approval of the State Board of Education.