OFFICIAL OPINION NO. 49

November 20, 1957

Hon. Wilbur Young
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Young:

Your letter of November 6, 1957, has been received and reads as follows:

“This office has received numerous inquiries concerning the application of the ‘Teacher Tenure Act,’ (Burns’ Indiana Statutes, Section 28-4307 et seq.) to Township School Corporations created pursuant to Chapter 15 of the 1955 Acts (Burns’ 28-2468) and Chapter 226 of the 1949 Acts as amended (Burns’, 28-2453a). The tenure act specifically refers to teachers under contract in school city corporations and school town corporations, yet it has been applied to consolidated corporations.

“May I have your official opinion on the following question:

“Is it possible for a teacher who is employed in a Township School Corporation organized under either of the above acts to become a permanent teacher and thereby be entitled to an indefinite contract?”

The tenure statute, being Acts of 1927, Ch. 97, Sec. 1, as amended and as found in Burns’ (1948 Repl.), Section 28-4307, provides, in part, as follows:

“Any person who has served or who shall serve under contract as a teacher in any school city corporation or in any school town corporation in the state of Indiana for five [5] or more successive years, and who shall at any time hereafter enter into a teacher’s contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation. * * *”
The Acts of 1955, Ch. 15, as found in Burns' (1957 Supp.), Section 28-2468 et seq., authorizes the establishment of a school corporation in a school township meeting the specific requirements of said statute, to be operated by a Board of School Trustees. Provision is made for the establishment of such a school corporation by the township trustee issuing a notice to the advisory board of the township of the meeting for such purpose, and if the township trustee and a majority of the advisory board agree to such an establishment of a new school corporation and such Board of School Trustees, it shall set out certain specified information concerning the establishment of such new school corporation and such Board of School Trustees, which resolution, under Sec. 3 of said act, as found in Burns' (1957 Supp.), Section 28-2470, shall include the following:

“(3) Whether or not such school corporation and board of school trustees, shall have the rights, powers, duties and liabilities vested, in a township trustee and advisory board as officials of the township school corporation, or vested in boards of school trustees of cities of the fifth class, under the laws of the state of Indiana;” * * *

Section 9 of said act, as found in Burns' (1957 Supp.), Section 28-2476, provides for a tax levy, or, if necessary, bond issues against taxable property lying within the limits of said school corporation; and Sec. 10 of said act, as found in Burns' (1957 Supp.), Section 28-2477 provides that when such corporation has come into existence and its Board of School Trustees has been duly organized, that “such school township shall be deemed to have been abandoned” and all property belonging to the school township, together with rights and privileges, and indebtedness shall accrue to the new school corporation.

From the foregoing it is clear that whether or not such school corporation, under the Acts of 1955, Ch. 15, has the classification of a school corporation of a city of the fifth class or whether it has the classification of a township school corporation, is determined by the contents of the resolution establishing such school corporation.
The Acts of 1949, Ch. 226, Sec. 27, as finally amended by the Acts of 1957, Ch. 349, Sec. 1, as found in Burns' (1957 Supp.), Section 28-2453a, provides a special procedure for a school township meeting the requirements of said statute to create a metropolitan school district. While certain substantive changes are made in the provisions regarding such establishment of such metropolitan school district, as well as the manner of forming the school board, it is specifically stated:

"* * * 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."

Section 12 of said act referred to in the last quotation is Acts of 1949, Ch. 226, Sec. 12, as found in Burns' (1957 Supp.), Section 28-2442, which provides, in part, that on following the procedure outlined in the statute "* * * a metropolitan school district shall be created and come into existence in said territory subject to the provisions and under the conditions described in this act. * * *"

The Acts of 1949, Ch. 226, Sec. 21, as found in Burns' (1957 Supp.), Section 28-2451 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 and their 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. * * *"

(Our emphasis)

From the foregoing provisions of the Acts of 1949, Ch. 226, as amended, it is clear that any such metropolitan school corporation acquires the status and classification of a city school corporation.
In an Official Opinion to you, being 1956 O. A. G., page 52, No. 12, it was held that the five townships of Brown County which consolidated under Ch. 226 of the Acts of 1949 acquired the classification of a city school corporation and that tenure rights of teachers would thereafter apply. In reaching that conclusion the opinion says:

"Since the above consolidation statute provides that in the carrying on of its school functions in certain specified respects, including the employment and dismissal of school personnel, it is controlled by the law governing school cities and thereby takes on the classification of a school city for such purpose, and therefore, would be within the purview of the tenure statute. [Harris et al. v. State ex rel. Allen (1937), 212 Ind. 386, 8 N. E. (2d) 594.]

"In construing different consolidation statutes a similar result was reached in prior official opinions of this office found in 1943 O. A. G., page 540 and 1947 O. A. G., page 204, No. 41. While the last-referred to official opinion is superseded on one question there determined regarding the effect of consolidation on teachers already having tenure status, by the decision of the Supreme Court in the case of State ex rel. Tittle v. Covington Community Consolidated Schools of Fountain and Warren Counties et al. (1951), 229 Ind. 208, 96 N. E. (2d) 334, said opinion is not affected on the construction there made that teachers could acquire tenure after consolidation."

In the case of Harris et al. v. State ex rel. Allen (1937), 212 Ind. 386, 8 N. E. (2d) 594, referred to in the last quotation, the Court, on page 392 of the opinion points out the statute there under consideration provided "said school board shall perform the duties and have all the powers vested in the school board of towns and cities of the fifth class under the law of this state." The Court then determined that on such organization such new school corporation took on the classification of a city school and that the appellee in that case was entitled to be recognized as a permanent teacher of said consolidated school.
From the foregoing I am of the opinion that a consolidation under the Acts of 1955, Ch. 15, may or may not give tenure rights to a teacher serving in such consolidated school dependent upon whether or not the resolution classifies the school corporation as having the power and authority of a township school corporation or those of a city school corporation. In the first instance, tenure rights would not be afforded; in the latter instance, they would be enforceable.

I am also of the opinion that consolidations effected under either the Acts of 1949, Ch. 226, supra, or as amended by the Acts of 1957, Ch. 349, Sec. 1, supra, result in such consolidated schools having the classification of city school corporations and that tenure rights are afforded teachers teaching in such consolidated schools.

OFFICIAL OPINION NO. 50

November 21, 1957

Mr. T. M. Hindman
State Examiner
State Board of Accounts
304 State House
Indianapolis, Indiana

Dear Mr. Hindman:

In your letter to this office you stated certain facts concerning funds of the City of Kendallville and the municipally-owned electric light utility of that City, and requested my opinion in respect to the following questions:

“(1) If the cash received by transfer from the electric utility to the general fund is included in the 1958 budget adopted by the city for its general fund and such cash although obligated by an appropriation will not be expended until on or after March 1, 1958, can the city invest all or any part of this in government securities pursuant to Section 61-677, Burns’ Statutes?

“(2) If a portion of the cash proceeds received from the sale of the municipal electric utility is placed in the general fund and is appropriated in the 1958 budget for sewers and enlargement of the sewage disposal