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a minimum number of students in the first year, second year, or third year classes in a law school as the basis for distributing free copies of the reports to the whole law school. This is because the number of copies of the reports necessary in the law library of a given law school is more closely related to the total number of persons using the law library than to the number of persons in any given class of instruction or in the first year, second year, or third year class of the law school.

You will note that the language of the statute refers to "law classes" in the plural and it is my belief that in this statute the Legislature used the phrase "law classes" in the generic sense and intended to include and describe all persons studying law at a given law school.

I am, therefore, of the opinion that each law school in Indiana, which has been established for more than five years, and has a total of fifty students regularly enrolled and in average attendance studying law at said school, is entitled to receive two free copies of Indiana Supreme and Indiana Appellate Court Reports.

OFFICIAL OPINION NO. 5

February 9, 1956

Mr. B. W. Johnson, Executive Secretary
Indiana State Teachers' Retirement Fund
Room 336, State House
Indianapolis 4, Indiana

Dear Mr. Johnson:

Your letter of January 24, 1956, has been received and reads as follows:

"The question has arisen as to the intent of the Legislature with reference to the employer-employee relationship as it applies to teachers in Chapter 329 of the Acts of the General Assembly of 1955. A decision on this point is necessary for purposes of reporting to the Federal Social Security Administration.

"1. Was it the intent of the General Assembly, within the meaning of this Act, to consider the em-

ployer-employee relationship of teachers for purposes of this Act as being a relationship between the state and the teacher?

"2. Was it the intent of the General Assembly in the passage of this Act to include within the coverage period for benefits of this Act retroactively to the earliest date comprehended in the Federal-State agreement with the Social Security Administration all service in calendar year 1955 in Indiana Public Schools provided the teacher was employed on December 31, 1955?

"3. Did this Act contemplate and intend that change of public school teaching location from one community to another within the state during the coverage period of calendar year 1955 should deprive teachers of the employer-employee relationship during any of the said calendar year 1955?

"We will appreciate your official opinion on the three questions outlined above."

In answering your questions, it is considered necessary to first consider the status of the public school system of the State of Indiana. Complete authority over said school system is given the Indiana General Assembly by the Indiana Constitution, Art. 8, Sec. 1, which reads as follows:

"Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."

In the case of State *ex rel.* Harris, Prosecuting Attorney *et al.* v. Mutschler *et al.* (1953), 232 Ind. 580, 589, 115 N. E. (2d) 206, the Court said:

"Section 1 of Article 8 of the Constitution of Indiana makes it the duty of the General Assembly 'to provide, by law, for a general and uniform system of Common Schools * * *'

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“The people of Indiana have translated into a fundamental constitutional postulate the belief that the general diffusion of knowledge and learning throughout a community is essential to the preservation of free government. And in harmony with this constitutional postulate the Constitution recognizes that the business of education is a governmental function and makes public education a function of state government as distinguished from local government. §1, Art. VIII, Indiana Constitution. “It was evidently the intention of the framers of the Constitution to place the common school system under the direct control and supervision of the state, and make it a quasi-department of the state government”; (*Greencastle Twp. v. Black* [1854], 5 Ind. 557, 563) “a centralized and not a localized form of school government.” *State ex rel. Warren et al. v. Ogan* (1902), 159 Ind. 119, 121, 63 N. E. 227.’ *State ex rel. Osborn v. Eddington* (1935), 208 Ind. 160, 164, 195 N. E. 92.”

The foregoing case further determines that the Legislature has the continuing right of control and can change such school system at its pleasure and that the individual school corporations have no vested rights in such system.

In the case of *Gruber, Trustee of Redding School Township et al. v. State ex rel. Welliver* (1925), 196 Ind. 436, 449, 148 N. E. 481, the Court said:

“* * * The general assembly of this state, by constitutional direction, is required ‘to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.’ Art. 8, §1, Constitution. That body thus mandated to devise a system of common schools, co-extensive with the state in compliance therewith, has organized the common schools as a state institution. In *State ex rel. v. Haworth* (1890), 122 Ind. 462, 465, 7 L. R. A. 240, it is said: ‘The schools in which are educated and trained the children who are to become the rulers of the commonwealth are matters of State, and not of local jurisdiction. In such matters, the state is a unit, and the legislature the source of power. The

authority over schools and school affairs is not necessarily a distributive one to be exercised by local instrumentalities; but, on the contrary, it is a central power residing in the Legislature of the State.' ”

It has been held the state school system is a state institution, and subdivisions thereof are instrumentalities of government exercising only authority given by the state.

Ratcliff v. Dick Johnson School Township (1933),
204 Ind. 525, 185 N. E. 143;

Ehle, Trustee v. State of Indiana *ex rel.* Wissler *et al.*,
Trustees (1922), 191 Ind. 502, 133 N. E. 748;

Jordan v. City of Logansport *et al.* (1912), 178 Ind.
629, 99 N. E. 1061.

Under this section of the Constitution, all public schools, including high schools, are a part of the state system of public schools.

Greathouse v. Board of School Commissioners of City
of Indianapolis (1926), 198 Ind. 95, 151 N. E. 411.

School corporations organized under, or by virtue of, the laws of the State are but agents of the State for the sole purpose of administering the state system of public education, and they have only such limited powers as are deemed necessary for such purpose.

Freel v. School City of Crawfordsville (1895), 142
Ind. 27, 41 N. E. 312.

The system of common schools is a state institution, and it is for the Legislature to determine how and by what instrumentalities the system shall be administered and carried into effect.

State *ex rel.* Warren *et al.* v. Ogan *et al.* (1902), 159
Ind. 119, 63 N. E. 227;

School Town of Windfall City *et al.* v. Somerville
et al. (1914), 181 Ind. 463, 104 N. E. 859.

It has been held that the ultimate tests of the relationship of principal and agent is the right of control (Jones *et al.* v.

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Cary [1941], 219 Ind. 268, 276, 37 N. E. [2d] 944). Under the foregoing authorities it is clear the right of control exists in the Legislature. Although in many respects the general operation of the local schools is delegated to the local school corporations, it is pertinent to know many respects in which the Legislature has seen fit to exercise such authority in such matters:

(a) Teachers are required to be employed under the Uniform Teachers' Contract prescribed by the Superintendent of Public Instruction (Acts 1943, Ch. 202, Sec. 1, as found in Burns' Indiana Statutes [1948 Repl.], Section 28-4330);

(b) Under the Teachers' Retirement Statute it is made the duty of all administrative officers of school corporations, in employing or re-employing any teacher, to notify such teacher of his duties and obligation under said retirement statute, as a condition of employment, and make such duties and obligations a part of the contract of employment; that teachers' contracts shall be construed to permit deductions for such retirement fund; and that the provisions apply to all teachers as therein defined "who are employed to teach in the public schools of the state" [Acts 1955, Ch. 275, Sec. 2, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-4511, clauses (g), (d) and (b)]; the required members of said Retirement Fund include any "regularly employed teacher * * * legally qualified and regularly employed as such in any of the public schools of this state * * *" [Clause (a), last referred to statute];

(c) Under said Teachers' Retirement Statute, the state is required to match the teachers' payments and provision was made for appropriations sufficient to guarantee the solvency of the fund [Acts 1915, Ch. 182, Sec. 9, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-4508, clause (g)].

From the foregoing it is seen that the State of Indiana has a direct interest in and is a party to every contract of employment of a teacher. Under said Retirement Act, previous to

integration with Social Security, the State treated such teachers and members of said Fund, for the purposes of said Act, as State employees. This conclusion is necessary from a constitutional standpoint by virtue of the fact the State contributed the employers' portion of payments into said Fund to make the same effective.

Other illustrations of matters in which the Legislature has generally controlled the school system, some of which have a direct relation to teachers, is shown by the following:

Under the distribution of State support to schools, the larger amount of which is for payment of teachers' salaries, in an attempt to pay as near 100% of such salaries as possible, the State this year will distribute \$73,871,200, exclusive of transportation costs, to the schools (Acts 1949, Ch. 247, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-1021 *et seq.*); (Acts 1955, Ch. 303, Sec. 2e); years ago the qualifying and licensing of teachers was on a local level through the County Superintendent of Schools. The qualifications are now prescribed by statute and by the State Board of Education, which Board now licenses all teachers (Acts 1945, Ch. 330, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-405 *et seq.*); the minimum salaries of teachers are prescribed by statute, together with provisions for minimum sick leave and other leaves of absence (Acts 1945, Ch. 231, Secs. 1 and 2, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Sections 28-4332 and 28-4333); the Legislature has provided that if no notice of re-employment is given a teacher that such employment shall continue for the succeeding year (Acts 1939, Ch. 77, Sec. 1, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-4321); under Teachers' Retirement Statutes disability benefits are provided for teachers (Acts 1915, Ch. 182, Sec. 14, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-4511, clause (k)); it has provided for the mandatory transfer of pupils (Acts 1921, Ch. 253, Sec. 1, as found in Burns' Indiana Statutes (1948 Repl.), Section 28-3701); and has provided for compulsory education (Acts 1953, Ch. 249, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-505 (k) *et seq.*).

From the foregoing, it is seen that the Legislature, under its

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constitutional authority, delegated to the local school corporations certain functions and duties in the operation of the local school system. Thereafter, it has from time to time, as found necessary, reclaimed some of such authority by passing general statutes, most of which restricted or somewhat limited the authority previously given the local school corporations. By the same token, the 1955 statute authorizing the integration of the Teachers' Retirement Fund with Social Security, being a later Act, must be examined to determine the legislative intent, thereby indicating as to the status of employment of teachers under such laws. It must be borne in mind that the status of a person under one group of laws might be different than his status under other statutes.

Acts of 1955, Ch. 329, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1911 *et seq.* is an Act for the extension of coverage for public employees under the provisions of the Federal Social Security Act. Section 2 of said Act, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1912, contains a declaration of legislative policy and, among other things, provides:

“* * * that supplemental retirement benefits be provided for all employees to whom such coverage is extended under the terms of this act so as to provide benefits substantially similar to those provided by existing public retirement systems.”

Section 3 of the last referred to statute, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1913, among other things, provides:

“‘The Indiana state teachers' retirement fund' shall mean the retirement system created by Acts of 1915, chap. 182 [§§ 28-4501—28-4511] of the general assembly of Indiana as such act has been from time to time amended and ‘The Indiana State Teachers' Retirement Act' shall mean said act as so amended. For the purposes of this act the term ‘teacher’ is hereby defined as said term is defined in the said chap. 182, as amended, and the term ‘employee’ as used in this act shall be deemed to include such term ‘teacher.’”

Acts of 1915, Ch. 182, above referred to, is hereinbefore

referred to as Acts of 1955, Ch. 275, Sec. 2, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-4511, clause (a), *supra*, where the word "teacher" and members in said Fund includes any "regularly employed teacher * * * legally qualified and regularly employed as such in any of the public schools of this state."

Said Act then makes provision for the members of the Indiana State Teachers' Retirement Fund voting as a separate unit, state-wide, for inclusion or exclusion in the benefits of Social Security legislation. The vote was in the affirmative and thereafter a contract made with the Federal agency on December 31, 1955, making retroactive the Social Security benefits to January 1, 1955. This was in accordance with a previous Official Opinion of this office, being 1955 O. A. G., page 146, No. 38. In this connection, the last above referred to statute under Section 8, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1919, in part provides:

"(a) In the case of state employees and teachers the employer contributions shall be wholly paid by the state and shall begin as of the effective date of the applicable modification of the federal-state agreement pursuant to section 5 [§ 60-1916], or the beginning date of their current employment, whichever is later. There is hereby appropriated for the next biennial period out of any moneys in the state treasury not otherwise appropriated, such sum as shall be required to discharge all of the obligations of the state on account of social security under the federal-state agreement on account of any modifications pursuant to section 5 [§ 60-1916] of this act and for each biennial period thereafter there shall be appropriated a sum sufficient for such purpose.

"(b) In the case of local employees covered by any such modification of the federal-state agreement contributions shall be paid by the employing political subdivision from the time the coverage group of which they are members is included in such agreement * * *."

Under the above formula it is clear the State of Indiana, through its Legislature, has necessarily designated itself, for

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the purposes of said statute, as the employer of teachers by providing the State should pay the employers' portion of the amount due for teachers for Social Security. It has clearly indicated this further by referring to "state employees and teachers" and making provision for identical action toward them on a State level, and by under clause (b) of the last quoted section of the statute, making an entirely different provision for employees of local political subdivisions of the State, these local political subdivisions voting as a unit for inclusion in such program and the employers' expense in connection therewith being paid by the local political subdivision.

The foregoing principle is further emphasized by said statute under Section 13 thereof, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1924, clause (b), which concerns "annuity savings accounts," and in part provides as follows:

"* * * Such deposit shall be made from any funds heretofore accumulated in the hands of any such board and any deficit therein shall be made up by the state as to all state employees and teachers and by each participating political subdivision with respect to its employees."

From the foregoing, I am of the opinion your question should be answered as follows:

1. It was the intent of the General Assembly, within the meaning of Acts of 1955, Ch. 329, to consider the State and the teacher as being in an employer-employee relationship for the purposes of said statute.

2. Your second question is, in fact, answered by the answer to Question No. 1, as found in 1955 O. A. G., page 146, No. 38, *supra*, that it was the intent of the General Assembly in the passage of this Act to include within the coverage period for the benefits of this Act retroactively to the earliest date comprehended in the Federal-State agreement with the Social Security Administration all service in calendar year 1955 in Indiana public schools, provided the teacher was employed on December 31, 1955.

3. From the language used by the Legislature in its "declaration of policy" as contained in the Act under consideration,

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supra; from the other quoted and referred to provisions of said statute dealing with the teacher as a State employee for the purposes of said legislation, providing for the inclusion of teachers in such Fund as a unit on a state-wide basis and from a consideration of like previous Teacher Retirement Statutes, *supra*, which dealt with such teachers on a like basis irrespective of their changing positions within the State during a school or calendar year, I am of the opinion this Act contemplates and intends that a change of public school teaching location from one community to another within the State during the period of calendar year 1955, should not deprive teachers of the employer-employee relationship during any of said calendar year 1955 and should not interfere with any such teachers, so making such change of positions, having the benefit of the retroactive benefits of the Federal-State agreement, to and including January 1, 1955.

OFFICIAL OPINION NO. 6

. February 20, 1956

Mr. J. Otto Lee, Clerk
State Election Board
102 North Senate Avenue
Indianapolis, Indiana

Dear Mr. Lee:

This is in reply to your letter of February 2, 1956, which reads as follows:

"The County Election Board of Monroe County, Indiana, has written us stating that the prosecuting attorney for the Tenth Judicial Circuit, Monroe County was elected in November, 1952, for the term commencing January 1, 1954; that in 1952, Article 7, Section 11 of the Indiana Constitution was amended to extend this term to December 31, 1958; that in December, 1954, this prosecutor-elect was called into active military service and resigned the office, and thereupon the Governor of Indiana issued a commission to the present prosecuting attorney, which commission states that it expires on December 31, 1958. The Monroe County