

It is clear that if the Legislature in the enactment of Sec. 28-2807, Burns', *supra*, had desired to include joint elementary-high schools within the meaning of its provisions, it could very easily have so stated.

I am, therefore, of the opinion that the words "high school or high schools" as used in Sec. 28-2807, Burns' 1948 Replacement, does not apply to joint elementary-high schools conducted in the same building, serving the same territory or community, using the same school bus facilities and using a common faculty.

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OFFICIAL OPINION NO. 42

June 9, 1952.

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

Dear Sir:

Your letter of May 17, 1952, has been received and reads as follows:

"Will you please give me an official opinion on the following questions:

"A City School Corporation and the Township in which the city is located have consolidated in accordance with Chapter 68 of the 1947 Acts as amended.

"Question I—Does teaching service in the old Corporations (Township or City) count toward acquiring tenure in the new corporation as created by Chapter 68 of the 1947 Acts as amended?

"Question II—To be specific; does teacher A, who taught three (3) years in the City Schools, acquire tenure by signing her third contract with the new Corporation as created by Chapter 68 of the 1947 Acts as amended?

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“Questions one and two pertain to continuous teaching experience and the signing of the sixth (6th) contract.”

Section 1 of Chapter 68 of the Acts of 1947, same being Section 28-1253a, reads as follows:

“The school trustees of any incorporated town or of any city of the fifth class located wholly within any township, and the school trustee of such township, are hereby authorized and empowered to consolidate the elementary schools or the high schools, or both, of said corporations, or to furnish consolidated school facilities for children of school age of both school corporations in the manner and upon the conditions hereinafter prescribed in this act.”

Section 7 of said Act, same being section 28-1253g, is as follows:

“When said township shall have become consolidated either by resolution or election, as hereinbefore provided, and the new board of school trustees shall have been appointed, and shall have been duly and legally organized as hereinbefore provided, the school township shall be deemed to have been abandoned and all its 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 the consolidated school corporation, and such debts shall be assumed and paid by such new consolidated school corporation, and all the privileges and rights conferred by law upon the school township shall be and are granted to this new consolidated school corporation.”

Section 8 of said Act, same being section 28-1253h, provides as follows:

“When such school town or school city of the fifth class shall have become consolidated by resolution or by election, as hereinbefore provided, and the new

board of school trustees shall have been appointed, and shall have been duly and legally organized as hereinbefore provided, the school town or school city of the fifth class shall be deemed to have been abandoned and all its 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 the consolidated school corporation and such debts shall be assumed and paid by such new consolidated school corporation, and all the privileges and rights conferred by law upon the school town or school city shall be and are granted to such new consolidated school corporation."

While the above statute has not been construed by the Supreme Court in relation to the subject matter of your question, a similar statute, Chapter 123 of the Acts of 1947, as amended, same being section 28-5901 *et seq.*, Burns' 1951 Supplement, was construed by the Supreme Court on the question of whether or not on consolidation of school corporations under said statute the rights of a teacher, who had years before acquired tenure status as a teacher in the township consolidated schools, and who had since been continuously employed up to the time of a new consolidation, were protected. Beginning on page 215 of the opinion in the case of *State ex rel. Tittle v. Covington, Etc., Schools*, 229 Ind. 208, 96 N. E. (2d) 334, it was said:

"There is nothing in the title of Ch. 123, Acts 1947, page 409, indicating any intention on the part of the General Assembly to legislate concerning the teacher tenure law. It is wholly a law providing a way for the consolidation of schools, presumably for their more efficient operation. A careful consideration of the entire act with special attention to Section 7 thereof fails to indicate, even remotely, that the legislature had any intention that the legislation should effect the tenure law. On the contrary Section 7 clearly protects both parties to existing teacher contracts including, of course, tenure contracts, for with respect to the abandoned schools it provides that,

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“\* \* \* 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 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 townships, school towns or school cities *shall be and are granted to such new consolidated school corporation.*’ (Our italics.)

“From this section it is quite apparent the legislature made a direct effort to protect both the teacher and the public in teacher tenure rights, by transferring them to the new consolidated school corporation. See Opinions of the Attorney General of Indiana (1936), pp. 172, 173.

“But if we should assume that the legislature by this act, expressly or by implication, intended to cancel all existing tenure contracts held by the abandoned school corporations with teachers, would such cancellation be valid? Evidently not, for such action would violate Article 1, Sec. 10 of the United States Constitution, and Article 1, Sec. 24 of the Constitution of Indiana, each of which prohibits the passing of any ‘law impairing the obligation of contracts.’ Bruck v. State, *supra*, and cases cited.”

An examination of the various sections of each of the above statutes reveals a marked similarity as to their provisions concerning the property, rights and privileges accruing to the new consolidated school and the liabilities and indebtedness assumed thereby upon such consolidation.

While in the above case the question involved a teacher who had already acquired tenure status prior to the consolidation, and in the instant case only certain years of teaching service toward the acquirement of tenure status is involved,

this distinction does not seem to be material, in view of the court's language that the statute apparently made a direct effort to protect the teachers in their tenure rights and that there is nothing in the statute indicating anything on the part of the General Assembly to legislate concerning the Teacher Tenure Law.

From these conclusions, it is apparent our Supreme Court construed said statute as leaving teachers in the same position relative to any rights or service under the tenure statute that they had at the time of consolidation.

I. In answer to your first question, I am therefore of the opinion teaching service in the old town or city corporations counts toward acquiring tenure in the new consolidated school corporation, as created by chapter 268 of the Acts of 1947. Teaching service (less than tenure status) in a township school would not count toward acquiring tenure as the teacher enjoyed no such rights in the township school prior to consolidation. Consolidation would give no one a greater credit for prior service than this person had at the time of consolidation.

II. In answer to your second question, I am of the opinion that a teacher who taught three years in a city school, which school consolidated with other corporations under Chapter 68 of the Acts of 1947, if continuously employed and signed her third contract with the new school corporation, would acquire tenure. This would be a sixth contract after five successive years of teaching under regular contract in compliance with the Tenure Statute.