

OFFICIAL OPINION NO. 1

January 5, 1950.

Mr. Robert L. Hougham,  
Executive Secretary,  
Indiana State Teachers'  
Retirement Fund,  
336 State House,  
Indianapolis, Indiana.

Dear Mr. Hougham:

Your letter of November 23, 1949, has been received, relative to the provisions of Section 1, Sub-section (d), Chapter 130, Acts 1949, and in which you desire an answer to the following questions:

"1. 'Since contracts are issued as of May 1, 1950, would a teacher who arrives at the age of 66 after that date and before September opening of school be eligible to teach?'

"2. 'Is it necessary to notify teachers who are 66 during the school year of 1949-1950 before May 1 that they will not be continued?'

Section 1, Clause (d), Chapter 130, Acts 1949, reads as follows:

"No teacher who has received credit under this act for the maximum years of service, as provided herein, shall be further assessed. Every teacher who is employed to teach in the public schools of this state and who avails himself of and accepts the provisions and privileges of this act or any act of which this act is amendatory, shall, by virtue of such acceptance, agree that (1) after July 1, 1950, when such teacher shall have attained the full age of sixty-six years, he shall not be employed to teach and shall not be eligible to continue to teach in any of the public schools of any school corporation of this state, and (2) that such teacher will be ineligible to enter into any contract with any school corporation to teach in any of the public

## OPINION 1

schools thereof. If any person who is employed to teach in the public schools of any school corporation shall attain the full age of sixty-six years prior to the expiration of any school year for which he has been employed to teach, such person shall be eligible to complete such school year notwithstanding the fact that he has attained the full age of sixty-six years prior to the expiration of such school year."

The above section of the statute clearly provides that the only limitation is that after July 1, 1950, no teacher shall be thereafter *employed* who has attained the age of sixty-six years but that it shall not interfere with the rights of such teacher who is under employment prior to July 1, 1950, to teach the coming school year, even though in the interim she attains the age of sixty-six years.

The above statement of the law, however, raises many complications in its application for the reasons hereinafter stated.

It is to be borne in mind that we have different classes of teachers—tenure teachers and non-tenure teachers, that among tenure teachers we have several different classes who have different rights which might be asserted and, therefore, after making several general observations regarding the various statutes, it is deemed expedient to discuss the status of tenure teachers under that classification and thereafter to discuss the status of non-tenure teachers.

The tenure teachers' statute is Section 28-4307, Burns 1948 Replacement, same being Section 1, Chapter 97, Acts 1927, as amended by Section 1, Chapter 116, Acts 1933. Under that statute such a teacher is referred to as a permanent teacher with an indefinite contract and among other things provides "upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract." Under the law, as originally enacted in 1927, the requirement as to retirement of such teacher upon reaching the age of sixty-six years was not included, nor was the language contained in the last two provisos of said statute as above quoted, as these were inserted in the act by the 1933 amendment. It is also to be observed that prior to 1933 the act applied to township teachers while under

the 1933 amendment township teachers could not thereafter acquire tenure.

The foregoing is pointed out to show that under the tenure teachers' statute those teachers who acquire the status of permanent teachers prior to the effective date of the 1933 amendment to the statute were not required to retire upon reaching the age of sixty-six. While teachers acquiring permanent status after the 1933 amendment would lose their right to insist on continued employment at the end of the school year during which they attained the age of sixty-six years.

The only other way a 1927 tenure teacher could lose such permanent status, other than by removal for cause under the statute or voluntary resignation, is pursuant to the provisions of the Teachers' Retirement Act beginning with the amendment of 1937, which provided generally that such tenure teacher on arriving at the age of sixty-six years, due to membership in such retirement fund, thereby agreed that she would not accept employment after attaining such age but could complete such school year. In legal force and effect the 1937 amendment is substantially the same as the 1949 amendment of said act hereinbefore set out. For a comprehensive analysis of the many changes in the teachers' retirement statute from the time of its enactment in 1915 and through its successive amendments in 1921, 1937, 1945 and 1947, attention is directed to an Official Opinion by this office, being 1947 Opinions of the Attorney General, page 95, Official Opinion No. 23, and to 1945 Opinions of the Attorney General, page 376, Official Opinion No. 93, which are somewhat lengthy and only the pertinent conclusions arrived at will be hereinafter stated, but before doing so it should be observed that teachers under the 1915 Retirement Act and those employed in the schools and whose teaching services began prior to June 30, 1921, under the 1921 amendment of the Retirement Act, were not required to have membership in the Retirement Fund. It should also be observed the 1937 Retirement Act did not become effective until July 1, 1939. Therefore some teachers might be exempt from the requirement to retire at the age of sixty-six under both the Tenure Teacher Act and the Teachers' Retirement Act.

The 1949 amendment to the Teachers' Retirement Act, above quoted, is practically identical with the 1947 amend-

## OPINION 1

ment of such act except that the date beyond which teachers who are members of the fund may not accept contracts, where they have attained sixty-six years of age, has been extended one year to July 1, 1950. Therefore, the 1947 Opinion of the Attorney General, above referred to, completely answers your first question as to permanent teachers except that the date is advanced one year. The finding in that opinion, which is herein adopted, is as follows:

“(1) A teacher who has tenure rights under the 1927 act, prior to its amendment in 1933, and who did not take membership in any of the Indiana State Teachers’ Retirement Funds, is not bound by any age limitation as to her tenure rights of contract, except for possible removal for cause under the provisions of said act. Of course, if such teacher has accepted membership in any Teachers’ Retirement Fund set up pursuant to the provisions of any statute beginning with the 1937 amendment, such teacher is by such acceptance bound by the retirement age prescribed in such act setting up the fund in which she elected membership, except that the time in which such teacher is required to retire has been extended by the 1947 act to July 1, 1949;” (now July 1, 1950—our insertion) :

“(2) That any teacher who attained tenure status under the tenure act after its amendment in 1933, does not thereby have the *right to demand* continuance of employment after arriving at the age of 66 years; such teachers, while they may not be able to require employment after attaining the age of 66 years by virtue of their tenure contract, may *continue to be employed by the school corporation* until July 1, 1949, \* \* \*” (now July 1, 1950—our insertion).

The above opinion, in reaching such conclusion, hold that the Teachers’ Retirement Act does not repeal the sixty-six year provision of the teacher tenure amendment of 1933.

From the foregoing I wish to point out there may be some teachers whose tenure contracts expired prior to the present school year and who would therefore, if still teaching, be considered employed at the present time under a non-tenure contract and to whom the requirements of notice that their

non-tenure contract would not be renewed for the coming school year, would be applicable.

It is to be further observed that in fully answering your question so as to make it applicable in a practical matter of administration that the question must be considered as to when a tenure teacher is entitled to a definite contract for the coming school year. The Supreme Court has held that a tenure teacher is the holder of an indefinite contract which gives them the right to demand a definite contract for the particular school year. (School city of Lafayette v. Highley (1937), 213 Ind. 369, 377). The tenure statute provides that such salary schedule in the school corporation may be changed on or before May 1st of any year to be effective at the beginning of the following school year, that all such teachers affected by such changes shall be furnished copies of such changed schedules within thirty days after its adoption. This provision indicates that when the definite contract of a tenure teacher for a school year ends at the close of school, that the indefinite contract immediately becomes operative and entitles a tenure teacher, otherwise qualified, to a definite contract at approximately the same time non-tenure teachers are required to be notified as to their re-employment, as hereinafter pointed out. Since this is before July 1, 1950, I do not believe tenure teachers otherwise entitled to a definite contract before July 1, 1950, could be defeated in their rights by the school officials withholding a definite contract until after July 1, 1950.

As to non-tenure teachers, Section 28-4321 Burns 1948 Replacement, same being Section 1, Chapter 130, Acts of 1941 provides in part as follows:

“Every contract of employment hereafter made by and between a teacher and a school corporation, except contracts wherein a township school corporation is a party and except contracts with permanent teachers as defined in chapter 97 of the Acts of 1927 and acts amendatory thereof, shall be renewed and continue in force on the same terms and for the same wages, unless increased by the provisions of chapter 101 of the Acts of 1907 and acts amendatory thereof, known as the Teachers’ Minimum Wage Law, for the school year next succeeding the date of termination fixed therein unless on or before the date fixed for the termination

## OPINION 1

of said term of school, but in no case later than the first day of May, the teacher shall be notified by the school corporation in writing delivered in person or mailed to him or her at last and usual known address by registered mail that such contract will not be renewed for such succeeding year or unless such teacher shall deliver or mail by registered mail to such school corporation his or her written resignation as such teacher or unless such contract is superseded by another contract between the parties. Contracts wherein a township school corporation is a party shall be deemed to continue in force for the succeeding school year on the same terms and for the same wages plus any increases as provided by the provisions of chapter 101 of the Acts of 1907 and acts amendatory thereof, known as the Teachers' Minimum Wage Law, unless on or before the day during which the teacher has completed his customary reports regarding the promotion of pupils and has filed a copy of same at the office of the township trustee, but in no case later than five (5) days after the expiration of the school term the teacher shall be notified by the school corporation in writing delivered in person or mailed to him or her at last and usual known address by registered mail that such contract will not be renewed for such succeeding year or unless such teacher shall deliver or mail by registered mail to such trustee his or her written resignation as such teacher or unless such contract is superseded by another contract between the parties. Superintendents, principals, and supervisors shall be deemed to be teachers within the meaning of this act. \* \* \*\*

Under the foregoing statute it is correct that non-tenure teachers in the school system for the school year 1949-1950 must be given the notice at the time required by the above statute that their contract will not be renewed for the coming school year, even though they have attained the age of sixty-six years and on failure to give such notice they would be entitled to teach the school year 1950-1951. This is true because the Retirement Fund extension statute prohibits the execution of contracts for those teachers over sixty-six years of age *after* July 1, 1950.

## 1950 O. A. G.

Due to the various classes involved in answering the questions, I do not believe it expedient to answer them under the specific form in which the question is presented but believe the following will fully answer all phases of questions for which an opinion has been requested. Summarizing the foregoing and applying them to your questions, without unnecessary repetition, I am of the opinion:

Your first question for the purpose of brevity I presume uses the arbitrary date of May 1, 1950. This date varies depending upon whether it is a township school corporation or a city or town school corporation under the foregoing quoted statutes. On or before that required date non-tenure teachers must be notified that their contracts will not be renewed for the succeeding school year, even though they have reached sixty-six years of age or they will automatically be entitled to a contract for the succeeding school year.

In answer to your first question as to tenure teachers I am of the opinion those who still have tenure rights to a definite contract for the school year 1950-1951 are entitled to a definite contract for that year even though they become sixty-six years of age between the time of the expiration of their contract for this year and the date of July 1, 1950. Tenure teachers who become sixty-six years of age during the school year, and holding tenure under the 1927 law and not members of the retirement fund of 1937 or subsequent thereto, can continue to demand a right to teach. Tenure teachers who acquire tenure under the 1933 tenure law and who become sixty-six years of age during the present school year are entitled to notice if their services will not be required for the coming school year, however, they may be re-employed on a non-tenure contract if executed on or before July 1, 1950, for the school year 1950-1951.

The only teachers barred from being employed on contracts executed on or after July 1, 1950, are teachers who are members of the Teachers' Retirement Fund under laws beginning with the 1937 Retirement Act.