Mr. Ben H. Watt,
Superintendent Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Watt:

Your letter of May 15, 1948, received requesting an official opinion on the following question:

"A teacher in a city school system was employed on a regular teacher's contract from September 3, 1944 to June 23, 1945. The following year the teacher was employed in a different city school corporation from the beginning date of the school term to November 30, 1945.

"On November 30, 1945, said teacher resigned her position and signed a regular teacher's contract with the city school corporation in which she had been employed during the 1944-45 school year.

"Can the teacher count the portion of the year from December 3, 1945 to June 22, 1946 as one of the five consecutive years in qualifying for teacher tenure?"

The answer to your question is controlled by the provisions of Section 28-4307 Burns' 1933, same being Section 1, Chapter 116, Acts of 1933, which 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 term 'teacher' as used in this section shall mean and include licensed public school teachers, supervisors and principals of all such public school corporations, and licensed assistant superintendents and superintendents of such school corporations. 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. Such an indefinite contract shall remain in force until such permanent teacher shall have reached the age of sixty-six (66) years unless succeeded by a new contract signed by both parties or unless it shall be cancelled as provided in section two (§ 28-4308) of this act: Provided, That teachers’ contracts shall provide for the annual determination of the date of beginning and length of school terms by the school corporation; and, provided further, That teachers’ contracts may contain provisions for the fixing of the amount of annual compensation from year to year by a salary schedule adopted by the school corporation and such schedule shall be deemed to be a part of such contract; * * *.”

Your question has in fact been answered by an official opinion to you under date of September 17, 1947, same being 1947 Ind. O. A. G. Official Opinion No. 57. That opinion construed the foregoing statute as to the right of teachers to claim credit toward tenure the first year of employment under a regular contract, which was only for a part of the year. The opinion quotes from and considers the cases of Sherrod v. Lawrenceburg School City (1937), 213 Ind. 392; Board of School Commissioners v. State, ex rel. Wolfolk (1935), 209 Ind. 498; Lost Creek School Township of Vigo County v. York (1939), 215 Ind. 636, 640 to 642; and reaches the following conclusion:

“On casual reading the foregoing tenure statute might lead one to believe the words ‘Any person who has served or who shall serve * * * five (5) or more successive years * * *’, would mean five (5) full school years. However, such a conclusion would not be correct when the following is considered:

“1. Non-tenure contracts do not extend beyond the end of the school year and are automatically renewed for a full school year if notice is not given within this time and in the manner prescribed by statute. (Section 28-4321 Burns’ R. S. 1933, 1945 Supplement,
same being Section 1, Chapter 77, Acts 1939, as amended by Section 1, Chapter 130, Acts 1941.)

"2. Such a construction fails to give equal weight to the words "* * * who shall serve under contract as a teacher * * *. A teacher who enters into a contract after the school year has begun still has 'served under contract as a teacher,' in that particular year. There is no statute requiring a regular teacher's contract to be for a particular length of time. (Our emphasis.)

"3. The foregoing cases construe the statute to mean one is employed within the meaning of the tenure statute when he is 'under regular contract,' one that is definite as to the beginning of the teaching service, the number of months thereof, total amount of salary, number of payments, and the manner of cancellation. (Board of School Commissioners v. State, ex rel. Wolfolk, supra.) Such a construction of 'five full school years' would therefore be untenable. The statute means 'service under a regular contract for five (5) successive years.'

"From the foregoing, I am of the opinion that any teacher given such consecutive contracts specified in each of your foregoing questions, on the regular form of teachers' contracts, in the same school city corporation or school town corporation, would become a tenure teacher in such school corporation. This is true for the reason if such contracts were 'regular teacher contracts' all of the pertinent terms and conditions regarding employment referred to in the foregoing cases would be set out. In such a case, I do not believe such a teacher would be considered a part time teacher for the first year she was under contract in any of the cases referred to in your questions."

I am, therefore, of the opinion that the contract for the second year which was for the period beginning November 30, 1945, to the end of the school year, should be counted as one of the five successive years necessary for qualification for tenure.