the term of office of the members of the present committee end when the new Governor takes office, the answer is in the negative. However, they will continue to hold their office at the pleasure of the new Governor just as they held office at the pleasure of the present Governor. This is a different situation than where an officer appoints a deputy as the term of a deputy or assistant expires with the term of his principal. The members of the committee are officers of a State agency, not deputies or assistants of the Governor.

I call your specific attention to the provision of the Constitution saying: "* * * the General Assembly shall not create any office, the tenure of which shall be longer than four years."

Your other question, as to whether the present members should tender their resignations to the new Governor, is a matter of policy to be determined by the members themselves and upon which I should not presume to advise you.

OFFICIAL OPINION NO. 72
December 13, 1948

Hon. C. E. Ruston,  
State Examiner, State Board of Accounts,  
State House,  
Indianapolis, Indiana.

Dear Hon. Rushton:

I have before me your letter of December 7 as follows:

"I have received a letter from Mr. Ralph F. Moore, Auditor of Marion County, in which he states that on November 12, 1948, the Marion County Board of Commissioners adopted a Master Plan and Zoning Ordinance, pursuant to Chapter 174, Acts of 1947. This ordinance provided a penalty for its violation as authorized in section 83 of chapter 174, Acts of 1947. Mr. Moore states that a question has arisen as to the necessity of publishing this ordinance because of its penal nature and has asked me to obtain an official opinion from you on the following questions:

(1) Is publication a condition precedent to the validity of such ordinance?"
(2) If question number one is answered in the affirmative, what statute should be followed in the publication of this ordinance?

(3) If question number one is answered in the affirmative, would the expense of publication be met from the county commissioners' appropriation for publishing legal notices or should the Marion County plan commission seek a special appropriation with which to meet this expense."

I have previously advised you that in my opinion public officers are without power to publish legal notices except as authorized by statute. Opinions of Attorney General, 1947, page 295.

By statute, cities are required to publish penal ordinances before they become effective.

Section 48-1406, Burns 1933;
Central Ind. R. Co. v. Wishard (1916), 186 Ind. 262;

However, the requirement of publication does not extend beyond the terms of this statute. In Elkhart v. Wickwire (1189), 121 Ind. 331, it was held that the requirement of publication did not extend to an ordinance for the construction of a sewer and the Court said at page 340:

"The statute for the incorporation of cities makes no provision for the publication of ordinances except such as are penal in their character, and, therefore, the appellees have no cause to complain because the ordinance was not published. The appellees were residents of the city, at least we may so presume, and it was their duty to take notice of the acts and proceedings of its common council relating to public matters.  *

I have been unable to find any statutory requirement that penal ordinances adopted by county commissioners be published, and a careful examination of the planning law (Chapter 174 of the Acts of 1947, Sections 53-756 et seq., Burns' 1947 Supplement) fails to disclose any requirement in that Act.
requiring publication of the zoning ordinances, although it contains provision for notice and hearing prior to the adoption of the ordinance.

Section 28 of Chapter 174 of the Acts of 1947, Section 53-728, Burns' 1947 Supplement, authorizes the Plan Commission to:

"7. Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this act."

This statute vests the discretion in the Plan Commission to determine whether the ordinance should be published, and if so, the medium of publication. Since the publication would be by the Plan Commission, the expense would be charged against their appropriations.

I am, therefore, of the opinion (1) that publication of a county zoning ordinance is not required, but that the county Plan Commission may in its discretion (assuming a proper appropriation therefor) publish the same; (2) such publication would be published in such media and with such frequency as determined by the Plan Commission, and would not be governed by the laws concerning legal publications; and (3) the expense of publication must be paid from an appropriation duly made to the Plan Commission for that purpose.

OFFICIAL OPINION NO. 73

December 21, 1948.

Mr. Forrest V. Carmichael,
Executive Secretary,
Indiana State Teachers Retirement Fund,
Room 336, State House,
Indianapolis, Indiana.

Dear Mr. Carmichael:

You have requested an opinion relative to the statutes of a teacher who was formerly a member of the Teachers' Retirement Fund with sixteen years of service credit, who, upon his separation from the public schools, made a withdrawal of