

OFFICIAL OPINION NO. 57

September 17, 1947.

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

Dear Mr. Watt:

Your letter of August 7, 1947 has been received in which you request an official opinion on the following:

"What is the tenure status of a teacher employed under regular teacher's contract with services beginning:

"1. December 1, 1941 and serving for six months of the 1941-1942 year, and in full for each of the five successive years, 1942-1943, 1943-1944, 1944-1945, 1945-1946, 1946-1947?

"2. Beginning October 1, 1941 and serving for eight months of the 1941-1942 year, and in full for each of the five successive years, 1942-1943, 1943-1944, 1944-1945, 1945-1946, 1946-1947?

"3. Beginning February 1, 1942 and serving for five months of the 1941-1942 year, and in full for each of the five successive years, 1942-1943, 1943-1944, 1944-1945, 1945-1946, 1946-1947?

"4. Beginning May 1, 1942 and serving for one-and-a half months of the 1941-1942 year, and in full for each of the five successive years, 1942-1943, 1943-1944, 1944-1945, 1945-1946, 1946-1947?"

I assume your questions are limited to teachers' contracts in school city corporations and school town corporations as we now have no statute by which a teacher can acquire tenure rights in township schools since 1933. I, also, assume these contracts in each case are regular teacher contracts with the same school corporation.

Section 28-4307 Burns' 1933, same being Section 1, Chapter 116, Acts 1933, 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; * * *.”

One of the leading cases on this question is a case of Board of School Commissioners v. State ex rel. Wolfolk (1935), 209 Ind. 498. In that case the teacher sued in mandamus for reinstatement as a tenure teacher. The facts showed she had taught in the school corporation for five (5) successive years and thereafter entered into a teacher’s contract for further service with the same school corporation. However, the first year was under appointment by the Board of School Commissioners as a part-time teacher of sewing at a com-

pensation of \$2.00 for each period during which she taught. Such appointment was evidenced by notice in writing to her as follows: "You are appointed to the position of part-time teacher of sewing at School No. 42 for the school year of 1927-1928, at a salary at the rate of \$2.00 per period taught. Please show this to your principal." Under this statement of facts the court at page 505 of the opinion said:

"The alleged contract of the relatrix for the school year 1927-1928 does not comply with the terms of the statute. It was not in writing, signed by the parties to be charged thereby; it did not state the date of the beginning of the school term, the number of months in the school term, the total amount of the salary, and the number of payments to be made during the school year. In addition to all of this, the contract upon which the relatrix relies was uncertain as to the time she was to teach in that school year and the amount she was to receive for the year. She did not know when she would be called upon to teach, or whether she would be called in any event. At most, she was an extra, part-time, or supply teacher. She was not in a position to demand of the school board that she be permitted to teach on any certain day, week, or month of the year; nor was she bound to report for teaching when called upon by the school board. Under these conditions, it cannot be said that she taught under a contract prescribed by statute, or that she is a permanent teacher, since it was necessary, in order to become such, to show that she served under a contract prescribed by statute. Without this showing she was unable to show that she had been a teacher in the school corporation for five or more successive years, and that she was thereafter employed for further services."

The same principle is announced in the case of *Lost Creek School Township of Vigo County v. York* (1939), 215 Ind. 636, 640 to 642.

It is interesting to note that in the case of *Sherrod v. Lawrenceburg School City* (1937), 213 Ind. 392, the court in holding that an art teacher who was employed under reg-

ular contract to teach art in the schools for twelve (12) days in each month, became a tenure teacher on receiving her sixth contract, said on pages 394 and 395 of the opinion:

"It is contended by the appellees that the appellant is not a tenure teacher, and that her employment and her salary are not protected by the Teachers' Tenure Law, for the reason that she was what is termed a 'part-time teacher,' that is, that she did not teach classes every school day, but only twelve days in each month. There can be no merit in this contention. She was not an occasional teacher, who taught intermittently as a substitute or otherwise. She was a regular teacher. The law does not require that teachers shall teach every day, or every hour of every day. Such subjects as art or music may require fewer hours of teaching. This is in the discretion of the school authorities. But appellant was undoubtedly regularly employed, teaching the same subject a given number of days per month, over a period of years, and must be considered a regular teacher. The statute, section 28-4304 Burns' Ann. St. 1933, section 5990 Baldwin's Ind. St. 1934, provides that all teachers' contracts shall be in writing, shall state the date of the beginning of the school term, the number of months in the term, the total amount of the salary to be paid during the school year, the number of payments that shall be made during a school year, and provides that, 'in this act, a month shall mean not more than twenty (20) school days.' A contract otherwise conforming to the statute, and in which the month shall consist of less than twenty school days, is not prohibited, and no reason is seen why such a contract is not valid and sufficient to establish tenure rights. It will be noted that, if school is conducted for the ordinary five days of each week, there are more than twenty school days in some months. It is conceivable that a curriculum might be so designed, with subjects so distributed, that no teacher's services would be required more than twelve days a month. Nothing is seen in the statute which prevents such teachers from attaining tenure status.

The evidence shows that the appellant was also teaching in other schools, and it is argued that, if one teaching for less than the full time of the school can acquire tenure status, then tenure rights may be acquired in two school corporations. But there is nothing in the statute that forbids it.

“The contract involved in Board of School Commissioners of City of Indianapolis et al. v. State ex rel. *Wolfolk* (1936), 209 Ind. 498, 199 N. E. 569, is entirely different. The teacher there was merely a substitute, with no definite contract to teach at any time.”

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.

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.

However, I deem it necessary to point out that if such teacher as shown by her contract was hired as a part-time substitute or casual teacher, it would probably change the character of her employment to such an extent that she could not thereby acquire tenure.

OFFICIAL OPINION NO. 58

September 24, 1947.

Mr. Clarence E. Ruston,
State Examiner,
State Board of Accounts,
304 State House,
Indianapolis, Indiana.

Dear Mr. Ruston:

This is in answer to your request of September 24, 1947 for an official opinion on the following facts and questions:

"In submitting the budget request to the county council the form used shows the basis used by the county department of public welfare in estimating the amount requested. As an example, in the request for personal services appears the following: '102 B, Salary of Visitors—3 @ from \$150 to \$——, \$5,400'. In the particular case, the county council in the ordinance for appropriations shows: