

OFFICIAL OPINION NO. 62

July 12, 1945.

Hon. Clement T. Malan,
State Superintendent of Public Instruction,
State House,
Indianapolis 4, Indiana.

Dear Doctor Malan:

Your letter of June 15, 1945 received requesting an official opinion on the following question:

“A teacher teaches four successive years in a city school corporation. At the close of the fourth year of teaching she receives a three year contract which she completes, teaching seven successive years.

“Is this teacher a tenure teacher?”

This question is controlled by the provisions of Section 28-4307 Burns' 1933, same being Section 1, Chapter 97, Acts 1927 as amended by Section 1, Chapter 116, Acts 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 above statute was considered by the court in the case of *School City of Lafayette v. Highley* (1938), 213 Ind. 369. In that case a school principal sought to have a five (5) year contract, dated August 1, 1931, construed to be a special contract so that he would not be amenable to the statute and proceedings for cancellation of tenure teachers' contract. In holding such teacher was a tenure teacher, and subject to cancellation of this tenure status under the Tenure Teacher Statute, the court on page 375 of the opinion said:

“The allegations of the complaint, as well as the findings of fact, disclose the date and terms of the last

written contract entered into by the parties under which he began service August 1, 1931. Neither the complaint nor the finding discloses the terms of the preceding written contract. However, an examination of the evidence shows it to be a contract for a period of three years beginning August 1, 1928, and ending August 1, 1931, and is of a tenor similar to the contract pleaded in the complaint. At the termination of the 1928 contract, the appellee had served for more than six years. The statute provides, as pointed out above, that upon the expiration of 'any contract' between the school corporation and a permanent teacher, such contract shall remain in force until succeeded by a new one, which in this case became effective in August, 1931."

The court on page 376 of the opinion continues:

"An examination of the contract between the appellant and appellee under date of January 14, 1931, effective August 1, 1931, does not in any particular indicate that it was the intention of the parties to cancel the tenure contract between the parties as established by operation of law. This court must conclude from all the facts that the appellee was a permanent teacher with an indefinite contract. *School City of Peru v. State, ex rel. Youngblood* (1937), 212 Ind. 255, 7 N. E. (2d) 176; *State, ex rel. Black v. Board of Commissioners, supra.*"

From the language used in the quoted part of the foregoing decision it is clear the Supreme Court in that case determined said school principal was a tenure teacher during the sixth year of his employment, such employment during the last three (3) years thereof being pursuant to a three (3) year contract.

I am therefore of the opinion that under the foregoing authorities the teacher referred to in your question became a tenure teacher when she began her sixth year of teaching for this city school corporation, which would have been during the second year of her last three (3) year contract.