

State Board of Education. The above quoted part of said statute clearly gives such Commission the power to evaluate work experience and military service in terms of higher education and experience equivalency. Said section of said statute is therefore subject to the well known rule of statutory construction that where the provisions of a statute are clear and unambiguous it is not subject to construction by the court.

Section 4502, Sutherland's Statutory Construction, 3rd Edition;

Hord v. State (1907), 167 Ind. 622, 624;

Citizens T. and S. Bank v. Fletcher American Company (1934), 207 Ind. 328, 334.

I am therefore of the opinion that the Commission on Teacher Training and Licensing of the Indiana State Board of Education has authority to pass the above rule. However, since said rule seeks to establish a standard of teaching experience on a month to month basis, that the same thereby affects the minimum salary which may be paid such teachers under the minimum teachers' salary law, and it would be necessary that said rule be adopted by said Commission pursuant to the provisions of Chapter 120 of the Acts of 1945, which statute sets out the procedure to be followed by any agency of the State of Indiana in adopting rules having the full force and effect of law in this State.

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OFFICIAL OPINION NO. 85

August 20, 1945.

Hon. Forrest Carmichael, Executive Secretary,  
Indiana State Teachers' Retirement Fund Board,  
State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter has been received requesting an official opinion on the following question:

"House Bill No. 51 passed by last session of the General Assembly, Chapter 350, provides for the pay-

ment of teacher annuities monthly. Since the teacher and state contributions have been made upon the basis of actuarial computation under a statute providing for quarterly payment, the question has arisen as to the constitutionality of making this material change in the case of teachers already retired under the quarterly payment law, or teachers not retired, who have made their contributions thereunder. Is such statute constitutional?"

Section 1 of Chapter 350 of the Acts of 1945 provides as follows:

"That any person entitled to receive an annuity from the Indiana state teachers' retirement fund under the provisions of Chapter 182 of the Acts of the Sixty-Ninth General Assembly and acts amendatory thereof and supplemental thereto shall be entitled to receive such annuity in twelve monthly installments payable on the tenth day of each month."

Article 1, Section 10 of the Constitution of the United States provides in part as follows:

"No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

Article 2, Section 24 of the Constitution of Indiana provides as follows:

"No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed."

In addition to the facts stated in your letter I am further advised by your office that no teacher now a member of the Retirement Fund will suffer any detriment or damage as a result of this statute. That the only change as to them will be that they will receive their retirement benefits monthly

instead of quarterly. That the State of Indiana, through its administrative officers charged with the administration of said Fund, will be put to greater expense and work in making such payments monthly instead of quarterly.

In the case of *Walsh v. Soller* (1934), 207 Ind. 82, which was an action for the possession of real estate, the defendant questioned the constitutionality of a statute regarding the giving of notice to vacate the property under a lease. In refusing to pass upon the constitutionality of said statute the court on page 86 of the opinion said:

“While it is true the General Assembly of this state is inhibited by the sections of the constitutions cited from passing laws impairing the obligation of contracts, yet it is equally well settled that a party who seeks to have a statute declared void on the ground that it impairs the obligation of a contract must affirmatively show that such statute impairs his contractual rights to his prejudice. \* \* \*”

And on page 87 of the opinion the court continued:

“\* \* \* He had the benefit of a full year’s tenancy and everything he could claim under his contract. Consequently, no contractual right of his was impaired by the statute which he would have us declare unconstitutional.”

Under the foregoing authority it is clear that since the teachers who are now members of the Teachers’ Retirement Fund cannot sustain any loss or damage by reason of the enactment by the Legislature of Chapter 350 of the Acts of 1945, that the same is not unconstitutional. The fact the State of Indiana may be somewhat placed at a disadvantage by reason of the enactment of said statute, does not constitute an impairment of the obligation of said contract, and does not render said statute unconstitutional. In the case of *County Department of Public Welfare v. Potthoff* (1942), 220 Ind. 574, the court was called upon to construe the constitutionality of the statute releasing the liens held by the State on real estate owned by recipients of Old Age Assistance. In holding such statute constitutional the court on page 580 of the opinion said:

“\* \* \* While the contract clause of the Constitution protects parties dealing with the State, it does not, of course, affect the validity of statutes releasing obligations due the State. 16 C. J. S., Constitutional Law § 285, p. 714. *Miller v. Henry* (1912), 62 Ore. 4, 124 P. 197, 41 L. R. A. (N. S.) 97. *State, ex rel. Arpin v. George* (1913), 123 Minn. 59, 142 N. W. 945. There is, consequently, no question as to the impairment of the obligation of a contract with the State involved in this case. The same may be said as to vested rights. A State has no vested rights which are immune from its legislative control. \* \* \*

It is therefore clear the State of Indiana has no such vested interest in the contract between the teachers and the State Teachers' Retirement Fund Board that such contract cannot be changed by the Legislature as long as no detriment or damage results as far as the teachers who are members of such Fund are concerned.

I am therefore of the opinion that Chapter 350 of the Acts of 1945 is constitutional, valid and enforceable.

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OFFICIAL OPINION NO. 86

August 20, 1945.

Hon. Ralph F. Gates, Governor,  
State of Indiana,  
State House,  
Indianapolis, Indiana.

My dear Governor:

I have your letter of August 2nd in which you ask my official opinion concerning a purchase of land for the Logansport State Hospital. I quote from your letter as follows:

“At the Logansport State Hospital, it seems advisable to attempt to purchase about 400 acres of land. I do not know what authority I have to make purchases for the state institutions—whether the responsibility