

The case of *Engel v. Mathley, supra*, therefore implies that such tenure teacher could have abandoned or waived said tenure contract by positive action.

Attention is called to the fact that in 1945 the Legislature amended the 1937 Teachers' Retirement Law (Section 28-4506 Burns' 1943 Supplement, *supra*), by Chapter 328 of the Acts of 1945. The pertinent part of such Act as amended is contained in Section 2, Clause (d), thereof, which suspends the operation of the aforesaid sixty-six (66) year retirement requirement, to July 1, 1947, for any teacher electing to become a member of said Fund under said 1945 Act. This statute did not provide for the refusal of teachers' contracts to teachers over sixty-six (66) years of age, in the discretion of the school corporation.

I am of the opinion Chapter 71 of the Acts of 1943, *supra*, and Chapter 328, Acts of 1945, *supra*, when construed in *pari materia* with each other are both suspension statutes of the sixty-six (66) year retirement provision. That they are not in conflict with each other and that full force and effect may be given to the provisions of each of said statutes.

From the foregoing I am of the opinion a tenure teacher under the 1927 law who elected to come under the provisions of the 1939 retirement law and who reached his sixty-sixth year after May 1, 1945, is subject to the provisions of Chapter 71 of the Acts of 1945, *supra*, and may be refused a teacher's contract by the school corporation with which he held such tenure status. This is true due to the teacher's waiver of his tenure teacher contract when he elected to come under the provisions of the 1939 Teachers' Retirement Act.

OFFICIAL OPINION NO. 94

August 30, 1945.

Hon. Ralph B. Wiley, Chairman
Stream Pollution Control Board,
1098 West Michigan Street,
Indianapolis 7, Indiana.

Dear Sir:

I am in receipt of your letter of August 10th, requesting my official opinion upon the following question:

“Does the Stream Pollution Control Board, by virtue of Chapter 214 of the Acts of 1943, have authority to order the City of Evansville to cease polluting the Ohio River?”

Section 4 of Chapter 214, page 624, of the Acts of 1943, Section 68-517 ff., Burns' (1943 Repl.), provides in part as follows:

“The Stream Pollution Control Board shall have jurisdiction to control and prevent pollution in the waters of this State. * * *”

Section 8 of this Act makes it unlawful for any municipal corporation, among others, to introduce into “any of the streams or waters of this State” any matter that would cause or contribute to a polluted condition of such waters.

Section 9 provides that whenever the stream pollution control board determines that any municipal corporation is violating the provisions of Section 8 it may order the offender to cease such violation and abate such pollution.

Section 16 provides:

“* * * Wherever the words ‘water’ or ‘waters’ shall be used in this act, they shall be construed to mean and include lakes, rivers, * * * and any and all other water courses within the jurisdiction of this State.”;

and Section 17 provides:

“Being necessary for the public health, safety and welfare, this act shall be liberally construed to effectuate the purposes thereof.”

Thus Sections 16 and 17 evidence an intent by the Legislature to fully exercise the entire power of the state over all waters within its jurisdiction.

By the statute of Virginia, ordinarily referred to as the Virginia Compact, which consented to the creation of the state of Kentucky, it was provided:

“The use and navigation of the river Ohio, so far as the territory of the proposed State, or the territory

which shall remain within the limits of this Commonwealth lies therein, shall be free and common to the citizens of the United States; and the respective jurisdictions of this Commonwealth and of the proposed State, on the river as aforesaid, shall be concurrent only with the States which may possess the opposite shores of the said river." 1 Burns' Indiana Statutes (1933), p. 306.

In *Wedding v. Meyler* (1903), 192 U. S. 573, 585, the court, in discussing the Virginia Compact, quoted with approval a previous statement of that court as follows:

"* * * 'Jurisdiction, unqualified, being, as it is, the sovereign authority to make, decide on, and execute laws, a concurrence of jurisdiction, therefore, must entitle Indiana to as much power—legislative, judiciary, and executive, as that possessed by Kentucky, over so much of the Ohio River as flows between them.'";

and held that the jurisdiction of Indiana is co-extensive with that of Kentucky over the Ohio River.

See, to the same effect:

Constitution of Indiana, Article 14, Sec. 2;
Sherlock v. Alling (1873), 44 Ind. 184, 191;
Welsh v. State (1890), 126 Ind. 71, 74;
Memphis, etc. Packet Co. v. Pikey (1895), 142
 Ind. 304, 308;
Dugan v. State (1890), 125 Ind. 130, 132;
Carlisle v. State (1869), 32 Ind. 55, 56;
 Sec. 9-206, Burns' (1942 Replacement);
 Sec. 26-104, Burns' (1933).

The Ohio river is, therefore, one of the "water courses within the jurisdiction of this state" mentioned in Section 16 and must, therefore, be held to be one of the water courses included within the power of the stream pollution board in the issuance of orders to prevent pollution under Section 9 of this Act. When it is considered that Indiana is under a duty to prevent pollution by municipal corporations in this state "regardless of the precise location of the boundary line," *New York v. New Jersey* (1920), 256 U. S. 296, 301, 302; see also *Missouri*

v. Illinois (1901), 180 U. S. 208, 241; and that this state has by compact with the other states of the Ohio valley specifically assumed the obligation to prevent pollution from its shores, (Section 68-601 ff. Burns' (1943 Repl.)), it is apparent that the power of the stream pollution board to prevent pollution of the Ohio river falls not only within the letter but also within the spirit and purpose of the Act.

It is, therefore, my opinion that the powers of the stream pollution board extend to the pollution of the Ohio river equally and to the full extent as to the pollution of any other streams or waters which lie within the territorial boundaries of Indiana, and that your question must be answered in the affirmative.

OFFICIAL OPINION NO. 96

September 6, 1945.

Hon. C. E. Ruston,
 State Examiner
 State board of Accounts,
 Room 304 State House,
 Indianapolis 4, Indiana.

Dear Mr. Ruston:

I have your letter dated August 24, 1945, in which you ask an official opinion upon the following question:

“Is the city treasurer of a city which owns and operates a sewage disposal plant or a utility or utilities eligible to receive additional compensation from the funds of such sewage disposal plant or utility, provided the common council would authorize same by ordinance?”

In answering your question reference must first be made to Chapter 271 of the Acts of the Indiana General Assembly for the year 1945. Section 1 of that Act provides as follows:

“* * * The common council of each and every city shall, by ordinance duly enacted on or before the first day of April of the year in which elections for the