

In Watson's McDonald's Treatise, Indiana Justices Practice, Fifth Edition (1924), Section 1, Page 811, is found the following statement:

"The release of the defendant from jail does not relieve him from the payment of the fine and costs. (Citing the three above quoted statutes.) At any time that it is probable the defendant could be made to pay the fine and costs, the justice should issue an execution against his property. There is, of course, no exemption against such an execution, or any relief from valuation or appraisement laws."

McDonald's Treatise, Fundamentals of Indiana Jurisprudence, Lowe's Revision, Ninth Edition (1936), Section 1, Page 811, repeats the foregoing statement in support of such proposition. It is to be further noted that prior to making the foregoing statement each of said authorities announced the rule that the failure of the defendant to pay such fine and costs, or to replevy the same, requires that the defendant serve such fine and costs at the rate of one dollar (\$1.00) per day.

I am of the opinion that under the provisions of the above statute the fact that a prisoner may serve out the commitment of fine and costs at the rate of one dollar (\$1.00) per day does not relieve the prisoner's property from the lien of such fine and costs.

OFFICIAL OPINION NO. 11

February 26, 1945.

Hon. Robert B. Hougham, Executive Secretary,
Indiana State Teachers' Retirement Fund Board,
334 State House,
Indianapolis, 4, Indiana

Dear Sir:

Your letter of February 6, 1945, received requesting an opinion on the following:

"The question has arisen as to the status of employees of city libraries in which the board of school trustees

also acts as the library board. (By way of illustration, Fort Wayne, Indiana.) We would like to know whether or not if these library employees are in fact regularly employed by said library board would such fact constitute them employees regularly employed by the school corporation, and if so would such library employees be eligible to membership in the Indiana State Teachers' Retirement Fund, if otherwise qualified as teachers."

Some of the Indiana statutes creating boards of school trustees in certain class cities authorize such board of school trustees to establish, own and conduct free public libraries in connection with the common school systems of their respective school cities, and to have the exclusive management and control of such libraries. One of these statutes is Section 28-2068 (sixth clause) Burns' 1943 Supplement, same being Section 7, Chapter 79, Acts 1937. I presume this is the class of library boards employing persons working in such libraries, referred to in your question.

The sixth clause of Section 28-2068 Burns' 1943 Supplement, *supra*, provides as follows:

"Sixth, as a part of and in connection with the common school systems of their respective school cities, to establish, own and conduct free public libraries and branches thereof, to have exclusive custody, management and control of and be vested with the title to, any such libraries and branches, whether now or hereafter established or constructed. Such libraries shall remain open and free for the use and benefit of all the inhabitants of their respective cities."

The thirteenth clause of Section 28-2068 Burns' 1943 Supplement, *supra*, provides in part as follows:

"* * * Provided further, however, That in those civil cities whose school cities are included in the above classifications, which have, at the time of the taking effect of this act, separate boards of trustees or boards of control for its library system and continue so to have, that the powers of the trustees of such school cities as to such libraries, as in this section set forth, shall not apply to nor extend to such libraries, until and

unless, by proper legal action, the library systems become a part of such respective school cities."

It is clear from the above quoted parts of said statute the legislature intended making such libraries a part of the public school system of such cities. That under said statute, and under any other statutes applying to other cities and containing like provisions, such library employees would be regular employees of such school corporation.

The section of the statute authorizing membership in the State Teachers' Retirement Fund in Section 28-4511, Burns' 1943 Supplement, same being Section 1, Chapter 28, Acts 1939, which in part reads as follows:

"The members and beneficiaries of this fund shall include any legally qualified and regularly employed teacher, teacher-clerk, supervising principal, principal, supervisor, superintendent of schools, person in charge of teaching any special department of instruction or training, or any other teacher or instructor legally qualified and regularly employed as such in any of the public schools of this state *or any persons employed by a public school corporation who were qualified under this act previous to their election or appointment*; or in any public state normal school of the state, supported wholly by public money, and devoted to the preparation of teachers; or the legally qualified and regularly employed teachers, principals, superintendent and others named above in any other public state educational institution of this state supported wholly by public money and whose teachers devote their entire time to teaching; and the legally qualified and regularly employed teachers in state benevolent, charitable, and correctional institutions whose teachers devote their entire time to teaching; and any other teacher or instructor legally qualified and regularly employed as such in any experimental school in any state university employed to and who is actually teaching elementary or high school pupils; and employees in the office of the state superintendent of public instruction or in the office of the state teachers' retirement fund who were qualified under this act previous to their election or appointment. The secretary to the president and the assistant librarian

of the Indiana state normal school, shall be construed to be teacher-clerks within the meaning of this act. The members of the fund shall be as follows:

“* * *”

It is a well recognized rule of statutory construction that courts must first seek to discover the legislative intent, and all other rules of construction are in aid of this fundamental rule.

Dreves v. Oslo School Twp. of Elkhart (1940),
217 Ind. 388, 394, 395;
State, *ex rel.* Clemens v. Kern, *et al.* (1939),
215 Ind. 515, 522, 523.

Applying the above rule of construction to Section 28-4511 Burns' 1943 Supplement, *supra*, it is clear the Legislature generally intended to include the legally qualified and regularly employed teachers, teacher-clerks, supervising principals, principals, supervisors, and superintendents of schools. The term teacher-clerk is therein defined to mean the president and the assistant librarian of Indiana State Normal School. However, such statute contains the following pertinent language "or any persons employed by a public school corporation who were qualified under this act previous to their election or appointment." In my opinion this means any person now employed by a public school corporation, who was qualified under said act prior to his election or appointment to his present office or position, could become a member of such fund. I am further of the opinion the word "qualified" means that they were licensed teachers and in all other ways qualified as teachers, and qualified to become members of such fund, prior to such elections or appointments to their present positions.

From the foregoing provision of the statute it is apparent the Legislature intended thereby to authorize those teachers and supervisory officers to become members of such teachers' retirement fund while they were in the employment of the school corporation in a capacity other than that of teacher or supervisory officer in the school, providing such persons were licensed as teachers and were qualified for membership in such teachers' retirement fund prior to accepting or qualifying for their present positions with a school corporation.

It is to be noted that in an official opinion of this office dated November 13, 1944, to the Honorable Clement T. Malan, State Superintendent of Public Instruction, it was held a school secretary performing ministerial functions for the school corporation, was not entitled to be licensed by the State Board of Education. A copy of said official opinion is herewith enclosed for your convenience. Employees of school libraries would be in the same classification and would likewise be unable to be licensed by the State Board of Education as a teacher solely by reason of such library employment. The carrying on of their ministerial functions in such employment would not of itself entitle them to membership in the teachers' retirement fund, under the above statute, unless they were licensed and qualified teachers prior to their election or appointment to such positions with said library.

OFFICIAL OPINION NO. 12

March 1, 1945.

Hon. Rue J. Alexander,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of February 16, 1945, asking for an official opinion on the question,

“whether or not individuals or employees living in Government owned houses in the Wabash Ordnance Works Property at Newport, Indiana, which is Federal Government owned property, and who work for the Wabash River Ordnance Works are subject to personal property tax,”

and stating that such an opinion is important to you as Commissioner of the Bureau of Motor Vehicles in regard to the requirement that applicants for licenses show either tax receipts or exemption receipts.