mentioned in your third question, it is my opinion that such
a corporation would not be exempt from taxation as a scien-
tific institution under the language contained in Section 1 of
Article 10 of the Indiana Constitution and in Clause Fifth of
Section 64-201.

In connection with this opinion I call your attention to the
official opinion which I issued to you this date (July 19, 1944),
in answer to your letter, upon the question of the property of
the Elks Lodge and other fraternal organizations being sub-
ject to taxation. In this opinion I made an exhaustive review
of the authorities bearing upon the subject of exemption from
taxation, and to the numerous official opinions which have
heretofore been issued by the Attorneys General of the state
of Indiana, and what is said in that opinion and the authori-
ties therein reviewed should be considered in connection with
what is said in this opinion.

INDIANA STATE TEACHERS' RETIREMENT FUND:
TEACHERS' CONTRACTS—Local school corporations
may not enact rules regarding approval or cancellation of
teachers' contracts continued in effect by Chapter 130,
Acts 1941.

July, 25, 1944.

Opinion No. 67

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

Dear Sir:

Your letter of July 16, 1944 has been received as follows:

"The question has arisen as to the legality of the
practice of certain school corporations in the passage
of a rule setting a date prior to which teacher contracts
must be signed, after the legal dismissal date as pro-
vided by law.

"The Indiana State Teachers' Retirement Fund de-
sires your opinion as to whether or not this practice is
legal, and whether or not any teacher dismissed under such a ruling should have credit for service, in the retirement fund."

This question is controlled by Section 28-4321, Burns' R. S., 1943 Supplement, same being Section 1, Chapter 130, Acts 1941, which provides as follows:

"Every contract of employment hereafter made by and between a teacher and a school corporation, except contracts wherein a township school corporation is a party and except contracts with permanent teachers as defined in chapter 97 of the Acts of 1927 and acts amendatory thereof, shall be renewed and continue in force on the same terms and for the same wages, unless increased by the provisions of chapter 101 of the Acts of 1907 and acts amendatory thereof, known as the Teachers' Minimum Wage Law, for the school year next succeeding the date of termination fixed therein unless on or before the date fixed for the termination of said term of school, but in no case later than the first day of May, the teacher shall be notified by the school corporation in writing delivered in person or mailed to him or her at last and usual known address by registered mail that such contract will not be renewed for such succeeding year or unless such teacher shall deliver or mail by registered mail to such school corporation his or her written resignation as such teacher or unless such contract is superseded by another contract between the parties. Contracts wherein a township school corporation is a party shall be deemed to continue in force for the succeeding school year on the same terms and for the same wages plus any increases as provided by the provisions of chapter 101 of the Acts of 1907 and acts amendatory thereof, known as the Teachers' Minimum Wage Law, unless on or before the day during which the teacher has completed his customary reports regarding the promotion of pupils and has filed a copy of same at the office of the township trustee, but in no case later than five (5) days after the expiration of the school term the teacher shall be notified by the school corporation in writing delivered in person or mailed to him or her at last and
usual known address by registered mail that such con-
tract will not be renewed for such succeeding year or
unless such teacher shall deliver or mail by registered
mail to such trustee his or her written resignation as
such teacher or unless such contract is superseded by
another contract between the parties. Superintendents,
principals, and supervisors shall be deemed to be
teachers within the meaning of this act. After August
15 any teaching contract entered into between a school
corporation and a teacher shall be void if the teacher,
at the time of signing said contract, is found by a
previous contract to teach in the public schools, except
that another teaching contract may be signed by a
teacher to become effective on the furnishing to the
township trustee or a board of school trustees of a
release by the employers under the first contract, or
after proof has been shown that the notice as required
under this section has been given the first employers.
A teacher may on twenty-one (21) days' written notice,
delivered by the teacher to the school trustee or board
of school trustees, or by mutual agreement in less than
twenty-one (21) days be released from a teaching con-
tract. A township or city school board may if it desires
request a written statement from the teacher at the
time of the signing of the contract as to whether an-
other teaching contract has been signed by the teacher,
but failure to provide the statement shall not be a
cause at a later date for voiding the contract.”

It is clear from the provisions of the above statute that the
school corporation has until the time designated in the statute
in which to elect whether or not the contract of a non-tenure
teacher shall be renewed. If not renewed the school corpora-
tion must give the notice required by the provisions of said
statute within the time therein provided, otherwise such con-
tract is renewed by operation of law on the same terms and
conditions as the old contract, unless increased by the pro-
visions of Chapter 101 of the Acts of 1907 and acts amend-
tory thereof. This was the conclusion reached in an official
opinion of this office dated June 22, 1943 addressed to the
Hon. Clement T. Malan, State Superintendent of Public In-
struction, found in 1943 O. A. G. 373.
It is equally clear the above statute provides a manner in which said contract may be terminated by the teacher in the event the school corporation has failed to notify the teacher, within the time provided by said statute, of its election not to continue the contract. This was the subject of an official opinion of this office dated August 31, 1943, addressed to said Hon. Clement T. Malan and reported in 1943 O. A. G. 536. This latter opinion points out in detail the manner in which the teachers may cancel such contract and interprets said statute by showing the kind of notice and time within which such notice must be given by the teacher. Copies of these opinions have heretofore been furnished your office.

Under the above statute the Legislature intended to protect a teacher in his renewal of a contract in the event the school corporation did not serve the required notice that the same would not be renewed. Thereafter the teacher could cancel the new contract by giving the notice required by the statute, or it could be cancelled by mutual agreement of the parties. No other authority is given the school corporation to cancel such contract.

In 42 Am. Jur. “Public Administrative Law,” page 358, Section 53, the following statement is made:

"* * * Since the power to make regulations is administrative in nature, legislation may not be enacted under the guise of its exercise by issuing a ‘regulation’ which is out of harmony with, or which alters, extends, or limits, the statute being administered, or which is inconsistent with the expression of the lawmakers’ intent in other statutes. * * *"

The above annotation cites the case of Blue v. Beach (1900), 155 Ind. 121, where the Supreme Court of Indiana, in the ruling upon the power of a State Board of health to adopt rules and by-laws to prevent the spread of contagious disease, and in upholding the rules therein promulgated by said department, said on page 131 of the opinion:

"It is true that such rules and by-laws must be reasonable, and boards of health can not enlarge or vary, by the operation of such rules, the powers conferred upon them by the legislature, and any rule or by-law which is in conflict with the State’s organic law, or antagonistic to the general law of the State, or opposed
to the fundamental principles of justice, or inconsistent with the powers conferred upon such boards, would be invalid. Parker & Worth. on Pub. Health, §86.”

In the case of Department of Insurance v. Church Members Relief Assn. (1939), 217 Ind. 58, which was an action against the Department of Insurance to enjoin its interference with the form of policies being written by the plaintiff, which injunction was refused, the court said at page 60 of the opinion:

“* * * When the right to do a thing depends upon legislative authority, and the Legislature has failed to authorize it, or has forbidden it, no amount of acquiescence, or consent, or approval of the doing of it by a ministerial officer, can create a right to do the thing which is unauthorized or forbidden. The administrative officers of the state, as well as the appellee, were bound by the statute. * * *.”

Under the above authorities it is my opinion that local school corporations would have no power to make a rule, after the legal dismissal date as provided by the above statutes, to require the teacher to do any other act than is set forth in the above statute, on penalty of having his new contract cancelled. Nor could such rule have the effect of constituting a cancellation of the contract by the teacher by any other means than those provided for in such statute. The rule of such school corporation as referred to in your letter would be void.

CORPORATE NAME: Corporation accepting terms of 1929 Corporation Act need not include “corporation” or “incorporated” or abbreviations thereof in its name.

July 26, 1944.

Opinion No. 68

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

Dear Mr. Alexander:

I have your letter of July 24th in which you request a review of two previous opinions of the Attorney General under dates