INDIANA STATE BOARD OF EDUCATION: Teacher's Contract—Cancellation clause—a cancellation clause in a contract providing for cancellation on marriage of a woman teacher is invalid as a contract provision. It may be the subject of a valid rule by the school corporation.

August 23, 1944.

Opinion No. 79

Hon. Virginia Kinnaird,
Member Indiana State Board of Education,
2410 S. Harrison,
Fort Wayne 6, Indiana.

Dear Miss Kinnaird:

Your letter of August 10, 1944 has been received requesting an opinion on the following question:

"Is the following clause inserted in the Uniform Teachers Contract binding on both parties to the contract: Marriage of any woman teacher after entering into a contract to teach in said schools, shall, of itself, operate as a cancellation of this contract from and after date of such marriage without notice from first party; and second party hereby expressly agrees to this regulation and to be bound thereby."

I wish to advise in the case of McQuaid v. State ex rel. Sigler (1936), 211 Ind. 395, 606, the court held:

"It thus appears that the great weight of authority supports the view that, where the action is taken pursuant to a policy adopted in good faith, marriage is a good and just cause for the cancellation of a tenure teacher's contract when the contract is made with specific reference to, or with full knowledge of, the rule or policy. Sound reason supports this view, and it must be concluded that this court has been resting in error. The case of the School City of Elwood v. State ex rel. Griffin, supra, in so far as it is in conflict with the views here expressed, is overruled. The subsequent cases dealing with the question were decided upon authority of that case."
The case of McQuaid v. State ex rel. Sigler, supra, in holding that a rule or contract provisions prohibiting married teachers from teaching was reasonable, construed Sec. 28-4308, Burns' 1933, Sec. 2, Ch. 116, Acts of 1933, which, in part, reads as follows:

"* * * Cancelation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean a willful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons; * * *.""

However, since the above case was decided, the legislature enacted Sec. 1, Ch. 202, Acts of 1943, same being Sec. 28-4330, Burns' 1943 Supp., which provides that the State Superintendent of Public Instruction shall prescribe uniform teacher's contracts, which shall be either a regular teacher's contract, or a temporary teacher's contract, as defined in said statute, and further provides, in part, as follows:

"The regular teacher's contract which shall be used uniformly throughout the state as prepared by the state superintendent of public instruction without amendment shall contain as its valid terms the date of the opening of school, the number of months the school shall be in session, the rate, amount, and manner of payment of salary, and only such other provisions relating to the government of the school as shall be prescribed and included in such contract by the state superintendent of public instruction. The temporary contract form shall include a blank space in which shall be inserted the name of the teacher having been granted such leave of absence, and the name of any one teacher on leave of absence shall be used on not more than one (1) such temporary teacher's contract at the same time. The expiration date of the temporary teacher's contract shall be the date of the return of the teacher on leave of absence but in no case later than the end of the school year."
"All teachers employed and engaged in the public schools of the state shall be employed on the terms of the regular contract or the temporary contract as described herein except those teachers who may be engaged as casual substitute teachers for periods of not more than six (6) weeks of consecutive employment. Observance of the provisions of this act shall be one of the prerequisites for the classification of schools by the state board of education.

"It shall be the duty of the state superintendent of public instruction to prescribe the forms as referred to herein and to furnish to all the school corporations of the state a copy of said forms and to require that each school corporation include in its semiannual report on average daily attendance a statement that all provisions of this act have been complied with."

In the case of McQuaid v. State ex rel. Sigler, supra, on page 596 of the opinion, the court gives the substance of the board rule, and the provision inserted in the contract, prohibiting married women from teaching. On page 597 of the opinion the court shows the action of the board in dismissing said teacher was taken pursuant to notice and hearing. The contract provision referred to in your letter contemplates cancelation of said contract, without notice, on such teacher’s marriage. Sec. 28-4308, Burns’ (1933), supra, provides in part, as follows:

"Any indefinite contract with a permanent teacher as defined in section one (Sec. 28-4307) of this act may be canceled only in the following manner: Not less than thirty (30) days nor more than forty (40) days before the consideration of any such school corporation of the cancellation of any such contract, such teacher shall be notified in writing of the exact date, time when and place where such consideration is to take place; and such teacher shall be furnished a written statement of the reasons for such consideration within five (5) days after any written request for such statement; and such teacher shall, upon written request for a hearing, filed within fifteen (15) days after the receipt by said teacher of notice of date, time and place of
such consideration, be given such a hearing before the school board of such school corporation; such hearing shall be held not less than five (5) days after such request is filed and such teacher shall be given not less than five (5) days’ notice of the time and place of such hearing. Such teacher, at the hearing shall have a right to a full statement of the reasons for the proposed cancellation of such contract, and shall have a right to be heard, to present the testimony of witnesses and other evidence bearing upon the reasons for the proposed cancellation of such contract. No such contract shall be canceled until the date set for consideration of the cancellation of such contract; nor until after a hearing is held, if such hearing is requested by said teacher; nor until, in the case of teachers, supervisors, and principals, the city or town superintendent shall have given the school corporation his recommendations thereon, and it shall be the duty of such superintendent to present such recommendations upon five (5) days' written notice to him by such school corporation. Nothing contained in this section shall prevent the suspension from duty of any teacher pending a decision on the cancellation of such teacher’s contract. Cancellation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean a wilful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons; Provided, That when the cause of cancellation of an indefinite contract is immorality or insubordination, as defined in this act, such cancellation shall go into effect at once; And, provided further, That when the cause of cancellation of an indefinite contract is not immorality or insubordination, as defined in this act, such cancellation shall go into effect at the end of the school term following such cancellation. * * *.”
Since Sec. 28-4330, Burns’ 1943 Supp., supra, requires all teachers’ contracts to be uniform, and in the form prescribed by the State Superintendent of Public Instruction, without amendment, it is my opinion that the above clause prohibiting married women from teaching would be invalid as a contract provision. However, if such school corporation had a rule prohibiting married women from teaching, such rule could be enforced under the above authorities. Such rule would not be valid to cancel such contract without notice and hearing, as same are required by Sec. 28-4308, Burns’ 1933 supra. The time of taking effect of any cancellation or suspension of such teachers’ services under any such rule also would be controlled by the provisions of Sec. 28-4308, Burns’ 1933, supra.

DIVISION OF PUBLIC SAFETY: Licenses not required of operators of federally-owned vehicles—application of safety responsibility law to such operators.

August 24, 1944.

Opinion No. 80

Hon. Don F. Stiver, Director
Division of Public Safety,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of August 9, 1944, requests an official opinion on the following questions:

“1. Is the driver of a Federal-owned and Federal-licensed motor vehicle, operating on streets and highways of the State of Indiana, required under Indiana Law to have an Indiana operator’s or chauffeur’s license?

“2. Does the driver of a Federal-owned and Federal-licensed motor vehicle, involved in an accident causing property damage or personal injury, come under the provisions of the Safety Responsibility Law, Chapter 175, Acts of 1943?”