

less than twenty-one (21) days be released from a teaching contract.”

(Burns' Indiana Statutes Annotated (1941 Supp.), Sec. 28-4321; Acts 1931, Chapter 77, Sec. 1, p. 457; Acts of 1941, Chapter 30, Sec. 1, p. 369.)

The statute, by recognizing the right of the school corporation mutually to agree with the school teacher as to the release of the contract, permits such a rescission.

A new contract which differed in terms as to compensation, type of work, or different periods of service, might raise questions of appropriations and budgetary problems, upon which this opinion does not attempt to pass.

While the statute contemplates a contract for an entire year (Sec. 28-4304, Burns' Indiana Statutes Annotated, 1933, and Sec. 28-4321, Burns' Indiana Statutes Annotated (1941 Supp.)), the exceptions permitted by the statutes authorize a cancellation by mutual agreement, and your question is answered in the affirmative.

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**CIVILIAN DEFENSE DIRECTOR, INDIANA: Whether unused election materials may be bailed and sold to help relieve the paper shortage.**

January 9, 1942.

Mr. Clarence A. Jackson,  
Indiana Civilian Defense Director,  
609 Board of Trade Building,  
Indianapolis, Indiana.

Dear Mr. Jackson:

I have your recent inquiry in which you state that the various county clerks and county boards of election commissioners have in their possession many pounds of used and unused ballots prepared for use in past elections and other election materials which are of no value. You ask whether or not these ballots and other election materials can be bailed and sold as scrap paper to help relieve the paper shortage during the present war emergency.

There are two statutes in Indiana dealing with the destruction of ballots. The first is Sec. 29-1120 of Burns' Indiana

Statutes Annotated 1933, which has to do with the destruction of unused ballots. It reads as follows:

"The various boards of election commissioners shall preserve the ballots that are left over in their hands after supplying the precincts as hereinbefore provided, until six o'clock P. M. of the day of election, and shall then count and destroy, by totally consuming by fire, all of such ballots but one, which shall be securely pasted in the election record immediately preceding the place where the vote is to be recorded. They shall also cause to be entered below such ballot, the number of ballots printed by them, the number delivered to each messenger and the number destroyed by them."

It will be noted that this has to do with the destruction of unused ballots which were kept on hand during election day by the board of election commissioners and were not delivered to the various polling places in the precincts. It will be further noted that it is the duty of the board of election commissioners to count and destroy all of these ballots except one immediately after six o'clock P. M., on election day. The reason for this is apparently to avoid the possibility of such ballots being illegally used in the tabulation of the vote. In the event the board of election commissioners failed to perform its duty to destroy these unused and undistributed ballots by "totally consuming by fire" and such ballots still remain in the possession of the county clerk or board of election commissioners at this time, then I am of the opinion that they may be now destroyed by bailing them and selling them for waste paper, as there is no longer any danger of these unused ballots being used in an unlawful manner.

The second statute dealing with this subject is Sec. 29-1304 of Burns' Indiana Statutes Annotated 1933 and this has to do with the disposition of used and unused ballots which were delivered to the various polling places in the precincts. It is not necessary to quote this statute verbatim but it is sufficient to say that it provides in substance that as soon as the ballots cast in any primary or general election shall have been counted by the various election boards, they, together with all uncast ballots, shall be placed in an envelope, sealed and delivered to the county clerk, who shall preserve them for at least six months from the date of receiving them, during which time they shall be subject only to the demands of the judge of any

circuit or superior court of the state in connection with any litigation arising from the primary or general election at which they were cast, and at the end of six months "he shall destroy them". Under this section it will be noted that the method of destruction is not designated. Therefore, it is my opinion that after the clerk has held these ballots for a period of six months, he may destroy them by bailing them and selling them as waste paper.

Another section of the statute makes it the duty of the county clerk to preserve the ballots used in any general election, concerning which any contest has arisen, so long as said contest remains undecided. Therefore, it is my opinion that the clerk would have no right to destroy any ballots in his possession in the event an undecided contest exists relative to an election in his county. With this exception, however, it is my opinion that all ballots and all other unused election supplies which may be disposed of for scrap paper may be thus destroyed by the county clerk or the county board of election commissioners.

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**STATE BOARD OF ACCOUNTS: Fire Fighting Apparatus for counties—whether same can be purchased by county commissioners if an appropriation is made by the county council.**

January 15, 1942.

Mr. Otto N. Jensen,  
State Examiner,  
State Board of Accounts,  
Indianapolis, Indiana.

Dear Mr. Jensen:

I have before me your request for an opinion in answer to the following questions:

"1. Would it be legal for the county council to appropriate funds, and for the board of county commissioners to purchase fire fighting apparatus to protect all property in the county?

"2. If your answer to the first question is in the affirmative, would it be legal for the county to contract with a city in such county to house, maintain and operate such fire fighting apparatus?"