

It follows that your first and second questions must both be answered in the negative.

Your third question involves a construction of Section 49-1014 of the December, 1940, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated 1933, which provides as follows:

"The salary of the county superintendent, as herein stipulated, may be increased by a majority of the township trustees to an amount which, in the judgment of a majority of the township trustees, may seem proper, and the county council shall appropriate and the board of county commissioners shall allow the necessary funds to pay such increase in the salary of the county superintendent."

I do not think that the above provision requires that the additional salary shall be fixed at the time when the election occurs. It should, however, be fixed prior to the time when the budget must be laid before the council for action.

ADJUTANT GENERAL: Whether payments should be made to The Peoples State Bank, in connection with final transfer of property from Armory Board Trustees to State.

May 22, 1941.

Colonel J. D. Friday,
The Acting Adjutant General,
State House,
Indianapolis, Indiana.

Dear Colonel Friday:

This will acknowledge your letter of May 14, 1941, asking for an official opinion. I here set out your request.

"During its recent session, the General Assembly appropriated \$6,600.00 to pay certain expenses, including attorney's fees, for causing the conveyance of National Guard Armory properties to the State of Indiana when all the bonds against these several properties and interest due thereon shall have been paid. Such conveyances of a large number of these properties will

be in order in 1941 and 1942. Several should be made immediately. This appropriation contemplated an expense of \$300.00 for the conveyance of each Armory. The appropriated fund was to be administered and the expense paid by this office. The Peoples State Bank was to provide this service, including the attorney's service, and was to receive this appropriation through the payment to it of \$300.00 for each conveyance.

"The Peoples State Bank is the Trustee, or mortgagee under a deed of trust, for the bondholders who purchased the bonds secured by the mortgages or deeds of trust. The titles to the Armory properties are held by a Board of Trustees.

"Examination of these deeds of trust will disclose the fact that the conveyance of these properties to the State is a function of the Trustees and must be under their supervision.

"I am attaching a copy of one of these deeds of trust, which is typical of them all. Section 20 provides that the Trustee must release the mortgage when the bonds are paid and Section 23 provides that the Trustee has been compensated for all services which it may be called upon to perform in the execution of this trust to the termination thereof.

"In the light of these provisions, I am doubtful as to whether or not the Adjutant General has any right to attempt to exercise any supervision of the Trustees in the performance of a function which is imposed upon them by the deed of trust and which involves a very serious responsibility to the State, that is, the taking of all the necessary and proper steps to vest the titles to the armories in the State at the proper time.

"It also appears to me that the only thing for the Peoples State Bank, as Trustee, to do is to release the mortgage when the bonds are all paid and certificate thereof is filed with the Trustee. It also appears to me that under Section 23, the Peoples State Bank has already been paid for this service."

I think your letter almost answers your own question. As you point out, Section 23 of the Mortgage Deed of Trust be-

tween the Trustees and The Peoples State Bank, provides in part as follows:

“The Trustee shall be entitled to be reimbursed for all prior outlays of whatsoever nature necessary to be incurred in connection with this trust, including reasonable attorney’s fees. The Trustee has been compensated for all services which it may be called upon to perform in the execution of this trust to the termination thereof; provided no default * * * .”

This is the only section of the Trust Indenture which is concerned with the compensation and fees of the Trustee Bank. It is clear that whatever the nature of the expenses prior to the creation of the trust by this indenture, the Trustee Bank, by the very terms of the instrument, must be held to have received any compensation for services as Trustee which it is entitled to receive for performing this trust.

As important as the express language of the Trust Indenture itself, is the fact that there are no duties or services in closing up and terminating this trust that can be deemed substantial. As a matter of fact, the Bank’s only duty is to hold the armory property under a mortgage pending the retirement of bonds sold to build the armory or armories in question, and in Section 19 of the Trust Indenture it is provided in the last sentence thereof as follows:

“All bonds so retired shall be surrendered to The Peoples State Bank and cancelled by it, and the redemption and cancellation of the same shall be certified to by the Peoples State Bank to the said Trustee.”

Section 20 immediately following provides that when all outstanding bonds shall have been fully paid, then the Bank shall so certify that fact to the Trustees. It appears, therefore, that upon certification to the Bank by the Trustees that bonds have been retired, the Bank must cancel the same and that, finally, when all bonds have been retired, the Bank’s only duty is to release the mortgage. The duty of making the conveyance to the State rests in the Trustees of the Armory in question and not upon the Bank. Therefore, any legal or title expenses connected with such conveyance, must be borne by the Trustees and, consequently, the Bank not having this duty to perform, could make no charge for it.

In view, therefore, of the express language of Section 23 of the Trust Indenture and the further fact that it appears to me that there is no substantial duty or service which the Bank, Trustee, is here required to perform, I am of the opinion that the Adjutant General should make no payments of any monies to The Peoples State Bank of Indianapolis for such alleged expenses as outlined in your letter. It follows, therefore, that the \$6,600.00 appropriated by the General Assembly, if appropriated and earmarked for this purpose, should be allowed to revert to the General Fund.

PUBLIC INSTRUCTION: Rights of tenure teachers in case of consolidation of units in which tenure is held.

May 24, 1941.

Hon. Clement T. Malan,
State Supt. of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Malan:

I have before me your letter requesting an official opinion in answer to the following question:

“When two corporations consolidate for school purposes and erect a joint school building to care for the educational needs of both corporations, do teachers who have gained tenure rights in each corporation before consolidation retain such tenure rights?”

I think the answer to your question is influenced by the method of consolidation which is involved. Under some of the Acts providing for consolidation of school corporations, such consolidation is contractual and the identity of the two contracting corporations is not destroyed. In such a case, I think, the tenure rights of teachers as respects each separate corporation involved would continue, subject to being lost under the provision whereby the cancellation may take place on account of the “justifiable decrease in teaching positions.” In other words, in such case, I think it is obvious that the management of the joint school would not be obliged to employ