SUPERINTENDENT OF PUBLIC INSTRUCTION: Tenure teachers, right of school board to require absence for study for one year out of three.

Hon. C. T. Malan,
State Supt. Public Instruction,
State House, Indiana.

Dear Sir:

I have before me your letter in which you say that a school board has a local ruling that all teachers must attend and take additional college work every three years. You submit the following question:

"Can tenure teachers be dismissed for failure to comply with the local ruling?"

The applicable provision of the statute on the subject is as follows:

"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." * * *

Burns Indiana Statutes Annotated, 1933, Sec. 28-4308.

So far as I have been able to discover your exact question has not been passed upon by the Supreme Court of Indiana. Your question, therefore, is an open one and must be approached without any very definite guidance from the existing opinions of the Indiana Supreme Court.

Failure to comply with such a rule, I think, clearly would not constitute neglect of duty or immorality or justifiable decrease in the number of teaching positions, leaving for consideration only the following grounds; namely, incompetency, insubordination and "other good and just cause." It seems to me also that the ground of incompetency may be disregarded because, I think, the incompetency referred to in the statute
has to do with the other elements of success rather than the educational qualifications.

The statutes of the State, supplemented by the rules of the State Board, have apparently provided for the educational requirements which are necessary to enable a person to receive a license to teach and, as affecting a tenure contract, I doubt whether a local authority, on the basis of educational incompetency, would be authorized to enforce a higher standard as respects tenure teachers.

This leaves for consideration as grounds for dismissal, which might be embraced within the rule referred to by you, the ground of insubordination and the ground of "other good and just cause." Insubordination is defined by the Act as meaning "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." Here again we encounter obvious difficulties. What is a "reasonable rule?"

In the case of Stiver, Trustee v. State ex rel. Kent, 211 Ind. 370, the township involved had two schools known as the Clinton Community School and the Millersburg School. The relatrix was employed by the school board to teach music in both schools. She was instructed to spend two days a week at the "north school" and three days a week at the "south school." Her failure and refusal to obey this instruction was assigned as insubordination and was sustained by the Supreme Court in its opinion. The court said in that case that:

"Reasonable rules for the government of the public schools clearly include rules for the organization and administration of the work of the various departments of the schools." * * *

Stiver, Tr. v. State ex rel. Kent, 211 Ind. 370, at p. 378.

In the case of School City of Peru v. State ex rel. Youngblood, one of the questions involved was whether a tenure teacher was subject to being transferred from one position to another in the school system. Other grounds of insubordination were referred to by the Board upon which the court held that it could not control the decision of the school board if its decision rested upon sound discretion. Even in this case, however, the assignment of a tenure teacher to a position other than the position previously held would have to do with the
government of the public schools of the corporation which is, after all, the scope of the rules referred to in the statute whose violation constitutes insubordination. Peru et al. v. State ex rel. Youngblood, 212 Ind. 255.

While the answer to your question is not entirely free from doubt I do not think the requirement that additional college work be done every three years can be classified as a rule prescribed "for the government of the public schools of such corporation," in the sense referred to in the statute. I think this view is further supported by the fact that if a tenure teacher could be required by the local authorities to take additional college work every third year such requirement would be a clear contradiction of the provision of Section 28-4307 of Burns' Indiana Statutes Annotated, 1933, wherein it is provided that "such contract shall be deemed to continue in effect for an indefinite period." In other words, the tenure teacher's contract would not be in effect during such time as the teacher was required to be off duty as a teacher which, of course, would be without the payment of salary for such period. It is true that leaves of absence for not exceeding one year, made upon the tenure teacher's request are granted without the breaking of the tenure, but the rule referred to by you would not appear as a leave of absence upon the request of the teacher but as an enforced leave of absence at the insistence of the employer and, as I have said, of course, without the payment of salary.

For the same reasons, I do not think the ground stated as "other good and just cause" would apply. In my opinion, a rule such as you describe would not be valid as against tenure teachers.

SUPERINTENDENT OF PUBLIC INSTRUCTION: Status of district control under existing law.

April 28, 1941.

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

My Dear Mr. Malan:

I have before me your letter in which you state that a dispute having arisen between a township trustee and a high