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
school principal, some of the people of the school township met and organized a school district under the Acts of 1865. You state that they have recently held a meeting and have elected a president and secretary. You submit the following questions:

“What legal powers are vested in a meeting of this kind?

“Can a township organize itself in this manner and ignore the decisions of a township school trustee? Or, has the district control been superseded by subsequent legislation?”

The origin of the school district, so far as it is necessary for the consideration of your questions, goes back to the Acts of March 6, 1865, providing for a general system of common schools. Section 14 of this Act, briefly stated, provided for an enumeration of the school children, as well as parents and guardians, to be held in July and August of each year in every township. At the time of the taking of the first enumeration it was provided that the trustee who was required to take the enumeration should ask each parent or guardian to what school they desired to be attached, and the enumerator was thereupon required to record “the number of the school to which such person is attached for school purposes.” At each subsequent enumeration the persons who had moved into the township in the meantime were each asked the same question. All persons attached to any given school thereupon became the school district numbered in accordance with the number of the school to which they were thus attached. This was Section 14 of the Acts of 1865. It was amended in 1873 and again amended in 1895. (See Acts of 1873, p. 68; Acts of 1895, p. 127). It will thus be seen that a school district as thus created had no fixed boundaries but was composed of persons residing in the township who had been enumerated and attached to a certain school.


The several enumerations were to be made annually. This particular section of the Acts of 1865, as amended, to-wit, Section 14, remained as a part of the school laws of the State until 1932, when it was expressly repealed by Section 3 of Chapter 55 of the Acts of 1932.

Acts of 1932, p. 204.
Your questions are not quite as clear as I should like to have them in order to give a definite answer. I think it is quite clear that no new school districts could be organized after the repeal of Section 14 of the 1865 Act as amended in 1873 and 1895; and with the passing of the law providing for the enumeration of school children annually without any provision for the school attachment of newcomers into the township, it is doubtful whether previously existing school districts should be held to continue to exist. As already stated, the school district never existed as a territorial unit with definite boundaries, but was comprised of the patrons attached to any given school through the method provided in the Enumeration Law. It would, therefore, be necessary to rule out all newcomers into any given township which would not seem to be proper or to provide by construction for some method by which they could be attached to some school district which would involve a very clear case of legislation by construction.

I think, therefore, that the abolition of the method for the creation of school districts and the changes to be brought about from year to year would have the effect of abolishing such districts as an instrumentality of school government. If I am correct in this, then the organization which you describe would have only the powers of any other voluntary organization for the purpose of promoting some plan or program.

The answer to your second question, in my opinion, should be in the negative.

The answer to your third question, in my opinion, should be in the affirmative. It should be remembered in this connection, however, that the township school trustee is not the final authority in many matters in connection with school administration. The answers herein are limited solely to the effect of subsequent legislation upon district organizations as provided in the 1865 Act.