"In Howe Scale Co. v. Wyckoff, etc., supra, Chief Justice Fuller, speaking for the court said: 'But it is well settled that a personal name cannot be exclusively appropriated by any one as against others having a right to use it; and as the name "Remington" is an ordinary family surname, it was manifestly incapable of exclusive appropriation, * * *'; and, in concluding the opinion, said: 'We hold that, in the absence of a contract, fraud or estoppel, any man may use his own name, in all legitimate ways, and as a whole or a part of a corporate name.'

"Without extending our view further on this branch of the case, it must be regarded as settled by the authorities that Emil Deister, not parting with the use of his name by contract or otherwise, when he disposed of his stock in appellant corporation was not precluded thereafter from the use thereof in connection with another business; that is, the mere use of the name 'Deister' in the new corporation did not of itself confer any right upon appellant to injunctive relief."

In view of the foregoing, we are of the opinion that the secretary of state will not be abusing the discretion placed in him by the statute in permitting the filing of Articles of Incorporation of "Berghoff Brothers Brewery, Inc."

PUBLIC INSTRUCTION, DEPT. OF: Limitation of term "school city"; legislature cannot invalidate tenure contracts entered into by teachers.

March 18, 1933.

Honorable Grover Van Duyn,
Assistant Superintendent,
Department of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion for your guidance in view of the provisions of chapter 116 of the Acts of 1933, which is Senate Enrolled Act No. 34, entitled: "An act to amend an act entitled 'An act defining teachers and permanent teachers, providing for their employment and release, and defining, and providing for the making and
cancelling of, indefinite contracts,' approved March 8, 1927, and all acts amendatory thereof and supplemental thereto."

Your letter presents two questions, which are:

"1. Is the term 'school city' referred to in section one, limited to such school corporations as are territorial co-extensive with civil cities as classified under the law for classification of civil cities?

"2. Does the tenure law, enacted by the General Assembly of 1933, which is applicable to teachers in cities only, invalidate tenure contracts entered into by teachers in school systems other than cities, under the tenure law approved March 8, 1927."

In response to your first question, please permit me to respectfully direct your attention to the fact that section one of the act refers to "school town corporations" as well as to "school city corporations." The first five lines of that section are hereafter set out to clarify the provisions of the act:

"Section 1. Be it enacted by the General Assembly of the State of Indiana, that section 1 of the above entitled act be amended to read as follows: Sec. 1. That any person who has served or who shall serve under contract as a teacher in any school city corporation or in any school town corporation in the State of Indiana...

"School town corporations" and "school city corporations" are created and defined under the provisions of 2 Burns Annotated Indiana Statutes, 1926 Revision, Section 6787, which is as follows:

"4. Each civil township and each incorporated town or city in the several counties of the state is hereby declared a distinct municipal corporation for school purposes, by the name and style of the civil township, town or city corporation respectively, and by such name may contract and be contracted with, sue and be sued, in any court of competent jurisdiction;...

The opinion is, that the two are coterminous. In Utica Township v. Miller, 62 Ind. 230 at 231, it is said:

"Confusion of ideas may have arisen from the fact that two corporations, the township and the school township, exists within the same territory."
The two corporations, however, the township and the school township, the city and school city, or town and school town, are as distinct and separate legal entities as if they existed in different territory."

In Ingles v. State, ex rel., 61 Ind. 212, 215, the court says:

"The civil township and the school township are two different corporations existing in the same territory."

In Wright v. Stockman, 59 Ind. 65, 68, the Supreme Court used this language:

"With this controversy, however, it is manifest that neither the civil township of Clay nor the civil township of Milford, which are separate and distinct corporations, territorily the same as, but clothed by law with powers, rights and franchises entirely different from those of, the said school corporations, have or can have any possible connection."

In accord, see Campbell v. Indianapolis, 155 Ind. 186, 208. The above citations clearly indicate that, in the mind of the court, the boundaries of the two classes of municipalities discussed are the same. In the absence of any provision of the statute, all of the territory of a city or town must be included in a municipal independent school district.

56 C. J. p. 258, Sec. 94;

That such is the proper construction of the law, is indicated by other sections of the statute (such as the section dealing with annexation by city or town of territory of a school township), by the enactment of which the legislature has indicated an intention to make the territorial boundaries of the school city and the civil city coincident.

We reply to your first question then, in the affirmative. The term "school city" refers to those school corporations whose territorial boundaries are coincident with the territorial boundaries of civil cities as classified under the law. By the same token, the term "school town" is limited to such school corporations as are territorially co-extensive with civil towns as defined and classified by the statutes.
The response to the second question must be in the negative. The legislature cannot invalidate tenure contracts entered into by teachers in school systems, for any such attempt would be in conflict with the provisions of section 10, Article 1, of the Constitution of the United States.

"No state shall * * * pass any bill of attainder, * * * or law impairing the obligation of contracts. * * *"

The case of Fletcher v. Peck, 6 Cranch, 87, 136, 3 L. Ed. 162, is authority for two important points: first, that an executed contract is within the provision, and second, that it protects from violation the contracts of states equally with those entered into between private individuals.

The difficulty lies in this: It has been well settled that the states have the power to discontinue officers, change the salary and compensation of officers, etc.

Dartmouth College v. Woodward, 4 Wheat 518-629;
Butter v. Pennsylvania, 10 How. 402;
Coffin v. State of Indiana, 7 Ind. 157, and similar cases.

In view of this rule, are teachers "officers" within the cognizance of this provision? Do they have "contracts" within the meaning of section 10, Article 1 of the Federal Constitution?

These questions are best answered in the decision of Martin v. Fisher (Calif. App.), 291 Pac. 276, 278, where it is stated:

"The position of a teacher in the public schools of California is not an office. It is an employment by contract made between the teacher and the district.... The becoming a permanent teacher, and the continuation of this employment, is a right given by statute, which right can be terminated or forfeited in the manner provided by law. * * * The relation between the district and the teacher is that of employer and employee and is created by contract."

A teacher then, who has been appointed to the position and accepted it, from the time of such acceptance stands in a contract relation as distinguished from the tenure or holding
of a public officer. The teacher holds such a position by contract and not at the will of the sovereign power.

56 C. J. 382, Sec. 303;  
State v. Bleid, 188 Wis. 442, 206 N. W. 213.

This being true, no action of the legislature can invalidate this contract. The state has held out an offer of permanent employment to the teacher upon the compliance with certain conditions. When the teacher has accepted by strict performance of those conditions, an executed contract has been entered into between the teacher and the State of Indiana. This then, is a contract, the impairment of the obligation of which, is specifically forbidden to the state.

1 Cooley's Constitutional Limitations, 560;  
1 Cooley's Constitutional Limitations, 580;  
16 Wallace 203.

Chapter 116 of the Acts of 1933, then, does not affect the tenure contracts under the Tenure Law approved March 8, 1927, perfected prior to the taking effect of the instant act.

GOVERNOR: Regularity of bid submitted by Pierson-Lewis Hardware Company for hardware for Dental Building.

March 22, 1933.

Hon. Wayne Coy,  
Under Secretary to the Governor,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an opinion as to the regularity of the bid submitted by Pierson-Lewis Hardware Company to the board of trustees of Indiana University for the hardware for the dental building. This bid was $1,755.00 "with a six per cent cash discount if paid within ten days of date of delivery of job or $1,649.70." The question arises by reason of the portion of the bid included within the quotation marks.

It is true that bids should conform with the terms of the request and notice, neither of which accompanies your letter, but in the absence of some specific provision in the request or notice prescribing the form and conditions of the bids, I do not think the quoted provision in the foregoing bid would make it illegal.