fuel tax law provided for the changing of the mode of payment of said tax from the sales plan to the purchase plan."

The Indiana motor vehicle tax law as amended at the 1933 session of the legislature does not provide for the waiving of the 10% penalty on payment of tax on inventory of gasoline on hand April 7th, the date when the new amendments took effect. However, it is the belief of the writer that in the administration of this law, the practical side must be considered, and in view of the fact that the new amendments place an unexpected burden upon such dealers as have hitherto operated under the sales plan and who, now, by reason of the provisions of the new amendments, are compelled to operate on the purchase plan, with the resultant liability for a large amount of tax upon their stock on hand, it would be entirely proper for you to determine the amount of indebtedness for tax at the time of such change to the purchase plan, and make such arrangements and agreements for its settlement as in your discretion you may deem advisable.

While the law does not specifically provide for the waiver of 10% penalty, I believe that the making of a specific agreement in such cases would, in itself, constitute a waiver of such penalty, with the understanding, however, that upon failure to keep such agreement to the letter, the 10% penalty and all other penalties would apply as though such agreement had not been made.


April 11, 1933.

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

Honorable Sir:
I have before me your letter of April 5, 1933, presenting three specific questions with reference to the Teacher Tenure Law as amended by chapter 116 of the Acts of 1933 which became a law without the signature of the governor.
First

Your first question is as follows:

"Are teachers who are now teaching in a joint city and township or joint town and township school as may be provided for by the several joint school laws, eligible to enter into a tenure contract under the tenure law enacted in the 1933 general assembly?"

It is our opinion that this must be answered in the negative. The law provides:

"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 for * * * ."

Sec. 1, Chap. 116, Acts 1933.

Teachers in any school corporation now embraced in the phrase "school city corporation" or in the phrase "school town corporation" are the only ones coming within the provisions of the act. Heretofore in an opinion of the attorney general under date of March 18, 1933, the legal definitions of these two classes of school corporations were set forth. Referring to the definitions then given and to the instant statute, we are of the opinion that joint school corporations are not of the subject matter of this enactment.

Second

Your second inquiry presents this:

"Is a tenure contract, entered into under the tenure law of 1927 in a joint school corporation as referred to in question one, invalidated by the tenure law of 1933?"

The answer is no. Section 10 of Article 1 of the Constitution of the United States provides:

"No state shall * * * pass any * * * law impairing the obligation of contracts; * * * ."

In considering this question relative to the impairment of permanent contracts, the California Appellate Court in the decision of Martin v. Fisher, 291 Pac. 276, 278, said:
"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 which must be dependent, for its terms and conditions, upon the authority granted the district by law and the limitations upon its power to contract."

The decision of the Supreme Court of Wisconsin in State v. Bled, 188 Wis. 442, 206 N. W. 213, is authority for the statement that a teacher holds such position by contract and not at the will of the sovereign power. And more directly on the instant point, this same court held in State v. Milwaukee Board of School Directors, 190 Wis. 570, 209 N. W. 683, that the teacher's position continues to be contractual after the probationary period has been served successfully and he has become entitled under the statute to hold the position permanently during good behavior and efficient service.

In the case before us, the state of Indiana through its agencies held out an offer of an "indefinite," "permanent" or "tenure" contract to teachers who would fulfill certain specified requirements and perform specific acts of a designated character. It is our opinion that where the teacher has complied with these conditions precedent, a contract was created the impairment of the obligation of which is forbidden by the tenth section of article one of the Federal Constitution.

**Third**

Your third inquiry is:

"In order for a contract to be an indefinite contract, must the five successive years have been immediately prior to and consecutive with the year of entering into such contract?"

The answer is in the affirmative. The provision of the law does not specifically state that the contract for further service shall follow immediately upon the five years of successive service; but such seems to be the clear intent of the legislature.
It is our opinion that the phrase "at any time hereafter" as used in the pertinent portion of the act (section 1) merely refers to the time within which the statute is to be effective, and does not extend the time within which "a teacher's contract for further service" may be executed. The phrase "at any time hereafter" means in this usage "at any time after the act becomes effective."

The interpretation given in the official opinion of the attorney general under date of March 20, 1929, in considering a similar question is applicable to the present act. We affirm that the five successive years must have been immediately prior to and consecutive with the year of entering into the "contract for further service."

GOVERNOR: Whether any action may be taken in special cases to postpone town elections during 1933 in cities that become towns pursuant to Chapter 233 of the Acts of 1933.

April 12, 1933.

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

Dear Sir:

Your recent communication addressed to this office asks for an opinion upon a question as to whether any action may be taken in special cases to postpone the town elections during the year 1933 in such cities as have become towns under the provisions of Chapter 233 of the Acts of 1933, which became a law under its emergency clause upon approval by the Governor on March 9, 1933.

Replying thereto, I call your attention to section 2 of the act referred to, which reads as follows in part:

"All present civil cities with a population of less than three thousand as shown by the last preceding United States census shall, on and after 12 o'clock noon of the first Monday in January, 1934, become civil towns, and shall operate thereafter under the provisions of the laws pertaining to the government of civil towns: Provided, That at the elections held in the year 1933 for nomination and election of town officers,