There is no statutory prohibition against a trustee entering into a contract with a teacher for a two-year period if the term of service under the contract begins before expiration of the trustee's term of office. Neither is there any statute or rule of law that would prevent the trustee and the teacher from substituting, by mutual agreement, a two-year contract for a one-year contract that has been partially executed. However, the substitution could not be made without the consent of both parties, and the teacher could refuse to sign the two-year contract and insist upon performance of the contract already in existence.

PUBLIC INSTRUCTION, DEPT. OF: Revocation of teachers' licenses—grounds for and relief or appeal from.

December 19, 1933.

Hon. George C. Cole,
Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

Your letter of December 14, 1933, requests my opinion on each of the following questions:

"First. Does an appeal lie from the action of the State Board of Education in revoking a teacher’s license after notice and hearing, as provided in Section 6948, Burns' Indiana Statutes, 1926 Revision?"

"Second. May the State Board of Education revoke the license of any teacher for causes other than immorality, misconduct in office, incompetency, or willful neglect of duty?"

"Third. In the event the State Board of Education revokes a teacher’s license for causes other than those designated in the statute, would they be subject to the mandate of a court to reinstate such licenses?"

"Fourth. Would the act of operating a teachers' employment agency by a married woman in the township in which her husband is the duly elected, qualified and acting township trustee and in which township said married woman and wife of said trustee was a teacher in the public schools be such conduct as would legally warrant the revocation of her license?"
The section of the statute referred to in your first question reads as follows:

"The state board of education may, on the written recommendation of the state superintendent, revoke, for immorality, misconduct in office, incompetency, or willful neglect of duty, any license issued under this act, after giving the defendant a copy of the charges against him and an opportunity, upon not less than ten days' notice, of being publicly heard, in person or by counsel, and of presenting witnesses." (Our italics.)

Section 6948, Burns' Annotated Indiana Statutes, Revision of 1926.

It will be noted that no provision is made in the Act for an appeal from the action of the State Board of Education on revocation of a teacher's license. It is a well settled rule that there is no right of appeal in matters calling for administrative, ministerial or discretionary action of an administrative board or officer, without express statutory authority.

In re Northwestern Tel. Co., 201 Ind. 667, 683; State Board of Health v. Ort, 84 Ind. App. 260.

The answer to your first question is in the negative.

Except for the authority conveyed by this section, the State Board of Education would not have the power to revoke a teacher's license for any cause; and the authority so conveyed must of necessity be limited to those grounds set out in the statute. Your second question is answered in the negative.

In answer to your third question, it is my opinion that the State Board of Education could be mandated by a court of competent jurisdiction, in a proper case, to reinstate the license of a teacher which has been revoked for a cause or causes other than those designated in the statute; or, at least, that its order of revocation could be set aside and enforcement of the order enjoined.

It is difficult to answer your fourth question definitely without a more detailed statement of facts. The mere fact that a woman teacher in a township school, whose husband is township trustee, also operates a teachers' employment agency would not, of itself, constitute one of the statutory grounds for revocation of the teacher's license. It is possible that some particular act or acts might be committed by the teacher in
the conduct of the employment agency that would amount to "immorality" within the meaning of the statute. In my opinion, however, the language "misconduct in office" refers to misconduct in connection with the performance of teaching duties.

"Immorality" is defined as a "state or quality of being immoral;" and a thing is "immoral" which is "inconsistent with rectitude, purity or good morals" or is "contrary to conscience or the moral law."

Webster's New International Dictionary.

Whether or not the teacher could reasonably be charged with immorality in the hypothetical case presented in your fourth question, would depend upon additional facts not set out in your letter.

AUDITOR OF STATE: Whether gasoline used in CWA trucks is subject to refund of gasoline tax.

December 20, 1933.

Hon. Floyd E. Williamson,
Auditor of State,
Indianapolis, Indiana.

Dear Mr. Williamson:

I have at hand your letter of date, December 20th, in part as follows:

"Since the Civil Works program has been started in this State a number of people have been employed to operate their trucks on the public highway in the repair and construction of roads and streets. Therefore, the question has arisen as to whether or not gasoline used in this equipment is subject to refund of the gasoline tax."

It is my understanding that the Federal Government is only interested to the extent of furnishing the finance in these projects and that persons using trucks are merely employed by the various agencies of the Government at a certain price per hour and that in reality the money paid by the Federal Government is paid for services rendered and that the Federal Government itself is not the purchaser of the gasoline.