It may be a wise provision to require all teachers in all state schools and institutions to have a license, but that is a question of policy.

In the interpretation of statutes, it is proper to consider the construction followed by the board or department charged with the duty of carrying out a law.

State v. Fidelity, etc., Co., 79 Ind. App. 377, 381.

From what you say, your board has understood that teachers in those state institutional schools were not required to have a license in order to be eligible to membership in the retirement fund.

The language "legally qualified and regularly employed" refers to the matter of legally as measured by the law under which those special state schools are created and controlled, and not to the statutes requiring the teachers of the public schools to be licensed, and as those in control of the schools for the deaf and the blind are not required to limit the selection of instructors to licensed teachers, that cannot be made a requirement for participation in the pension fund.

I am of the opinion, therefore, that the requirement that teachers in the State School for the Deaf and the State School for the Blind, who are otherwise eligible to membership in the retirement fund, are not rendered ineligible because they do not have a license to teach from the Indiana State Board of Education.

MOTOR VEHICLES, BUREAU OF: Plea of guilty—Trial court has power to permit withdrawal of plea for purpose of pleading not guilty in motor vehicle law violation.

May 25, 1936.

Hon. Robert C. Hill,
Chief Hearing Judge,
Bureau of Motor Vehicles,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue in response to the following inquiry:

"We have a case certified to this department from the City Court of Crawfordsville showing that on No-
November 27, 1935, a certain licensee was arrested for, and plead guilty to the charge of operating a motor vehicle while under the influence of intoxicating liquor.

"Following this, on the 20th day of February, 1936, said licensee came in to the City Court of Crawfordsville, and the Judge thereof permitted the defendant to withdraw his original plea of guilty to the charge of operating a motor vehicle while under the influence of intoxicating liquor, and enter a plea of guilty to public intoxication.

"Now the question—is the above mentioned procedure possible, taking into consideration the fact that the change of plea was not made within the same term of court?"

A motion to withdraw a plea of guilty, and to be permitted to interpose a plea of not guilty, addresses itself to the sound discretion of the trial court, and in the absence of a showing of a clear abuse of that discretion, the ruling of the trial court on such motion should not be subjected to interference.

Carr v. State, 194 Ind. 162, 142 N.E. 378;
Lamick v. State, 196 Ind. 71, 147 N.E. 139;
Farnsby v. State, 196 Ind. 722, 149 N.E. 436;
Haase v. State, 91 Ind. App. 516, 171 N.E. 811;
Mahone v. State, 197 Ind. 335, 149 N.E. 444;
Nahas v. State, 199 Ind. 117, 155 N.E. 259;
East v. State, 89 Ind. App. 701, 168 N.E. 28;
Conover v. State, 86 Ind. 99;
Myers v. State, 115 Ind. 554, 18 N.E. 42;
Ewbank Indiana Criminal Law (2nd Ed.), Section 375;
66 A. L. R., p. 628.

Permission to withdraw a plea of guilty is not to be denied in any case where it is the least evident that the ends of justice will be subserved by permitting not guilty to be pleaded in its place.

Krolage v. People, 224 Ill. 456, 460, 79 N.E. 570;

From a comprehensive survey of the authorities upon this subject it appears that the better rule is that it is within the
discretion of the court to permit the plea of guilty to be withdrawn after sentence is pronounced.

People v. Byzon, 267 Ill. 498, 108 N.E. 685;
People v. Walker, 250 Ill. 427, 95 N.E. 475;
Gardner v. People, 106 Ill. 76;
Myers v. State, 115 Ind. 554, 18 N.E. 42;
Sanders v. State, 85 Ind. 318, (where the rules of the common law were invoked to justify the relief granted);

It must be presumed that the trial court exercised sound legal discretion in permitting the withdrawal of the plea of guilty, and that he conscientiously believed that such procedure, in the light of all of the circumstances of the case which were before him, was most consistent with the attainment of justice.

I am therefore of the opinion that the trial court was empowered to exercise discretion in the matter of granting leave to withdraw the plea of guilty and to enter in lieu thereof another plea, notwithstanding the fact that such action was taken at a term of court subsequent to the term at which the original plea of guilty was entered. I therefore respond to your question in the affirmative.

GROSS INCOME TAX AND STORE LICENSE DIVISION:
Taxation—Vendors to Federal government not exempt from payment of gross income tax.  

May 29, 1936.

Mr. Fred C. McClurg,
Chief Counsel,
Gross Income Tax Division,
Department of Treasury,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue in response to the following inquiry:

“May the State of Indiana through the Department of Treasury impose and collect gross income tax from