GOVERNOR’S OFFICE: Teachers’ contracts in State Aid territory; whether approval by Department of Education necessary to validate such contracts.

August 12, 1936.

Mrs. Margaret B. Headdy,
Undersecretary to the Governor,
Indianapolis, Indiana.

Dear Mrs. Headdy:

I have before me your request for an official opinion with respect to the legality of certain contracts entered into by the trustee of Ohio Township, Crawford County, Indiana, with certain teachers unnamed in your letter to teach school in said township. The contracts do not accompany the request but it is my understanding from other correspondence accompanying the request that these contracts were entered into in November, 1935, for the period of three years, service thereafter to begin with the beginning of the fall term of 1936. I am advised also by such correspondence that the trustee prior to the execution of the contracts had tendered his resignation as trustee to become effective on January 6, 1936, the term of which trustee except for his resignation would not have expired until January, 1939. One of the teachers so employed is a tenure teacher; the others are not tenure teachers. I am advised also that the trustee has applied for state aid and that the contracts so entered into have not been approved by the Board of Department of Education.

Section 28-2410 Burns Indiana Statutes Annotated, 1933, provides that “The school trustees shall take charge of the educational affairs of their respective townships, towns and cities. They shall employ teachers * * *.” With respect to the above quoted language the court said in the case of Reubelt vs. School Town of Noblesville, 106 Ind. 478 at page 482—“There is nothing in this grant of power to employ teachers * * *, which in any way limits the authority of the board of trustees to contracts that are to be performed during the existence of any particular organization of that body. * * * We are constrained, therefore, to hold that the contract in suit is valid and binding upon the corporation.”

In the above case the contract was entered into by the board prior to its reorganization after the election of a new mem-
ber which occurred before any service under the contract was to be rendered. The decision in the above case was followed as applied to a school teacher in the case of School Town of Milford v. Zeigler, 1 Ind. App. 138. The case was also followed as to a contract by the outgoing township trustee and a school teacher in the case of Sparta School Township, etc., v. Mendell, 138 Ind. 188 at pages 195-196. The contract in the case last above was dated August 2, 1890. The opinion of the Supreme Court was filed on May 29, 1894. In the meantime Chapter 36 of the Acts of 1893 entitled "An Act to prevent Township Trustees from employing teachers in certain cases" was enacted, which provides as follows:

"After the passage of this Act, it shall be unlawful for any township trustee to contract with any teacher to teach in any common school if the actual term of service of such teacher under such contract does not begin before the expiration of the term of office of such trustee. Every contract made in violation of the provisions of this Section shall, as to the township represented by such trustee, and the school fund thereunto belonging, be absolutely void, but such trustee shall be personally liable to such teacher for all services rendered under such contract and for all damages which he may sustain by reason thereof."

Burns Indiana Statutes Annotated, 1933, Section 28-4301.

After the enactment of the above statute the question arose again in the case of Moon vs. School City, etc., 50 Ind. App. 251, in which case it was held that the Act of 1893 above referred to does not apply to contracts by boards of school trustees of incorporated towns or cities. I think this is obvious and I refer to the case simply for the purpose of calling attention to the question of public policy which may be involved in situations similar to that concerning which you inquire. The court in that case on page 256 said:

"Courts cannot arbitrarily declare a contract void on the theory that it is against public policy. Where the power to make the contract is given by statute, the reasons for so declaring it void should clearly appear before the court is warranted in so deciding."
The case cited had to do with the employment of a city school superintendent and the court said with respect to that situation on page 256 that—

"Insofar as our legislature has indicated any policy, it is to leave the term of employment of city school superintendents to the sound discretion and judgment of the school trustees."

Later on in the opinion on page 257 the court used the following further language:

"Any fact or circumstance that would indicate an abuse of discretion on the part of the board, unfair dealing, fraud, or collusion for the purpose of doing something detrimental to the interests of the schools, might be used effectively in a proper case to terminate an employment; but the possibility of abuse, as stated in several of the cases already cited, does not give a sufficient reason for denying the authority to make such contract under a statute conferring the power so to do, without limitation, nor does it show that such contracts are against public policy."

Without passing upon the legal effect thereof I think that the situation as described in your letter surrounding the execution of the contracts under consideration is at least unusual. There may be some reason which would justify the entering into contracts in November for a service to begin almost one year later but that fact would undoubtedly be open to scrutiny in any action taken to contest the validity of the contracts, if it be determined that they are otherwise valid.

We desire now to consider briefly the provisions of the 1893 Act above referred to placing limitations upon the authority of a township trustee to enter into a contract with a teacher. That Act provides in part that every contract made by a township trustee with a teacher to teach in the schools of his township where the actual term of service under the contract does not begin before the expiration of the term of office of such trustee is absolutely void. In this particular case the term of service under the contracts described in your
letter would not begin until the actual incumbency of the contracting trustee would have expired, but the actual service would begin prior to the time when the term for which the contracting trustee was elected would expire. The question involved is quite apparent as to whether the language "the expiration of the term of office of such trustee" refers to the term for which the trustee was elected or is limited to the time during which he actually serves. If it refers to the latter, then, of course, these contracts excepting as to the tenure contract would be absolutely void by virtue of the Act of 1893. There are no cases in this state to which I can turn for an authority in the interpretation of this particular language. There are authorities in other states, however, which evidence some conflict of opinion of the various courts. I think, however, that the great weight of authority is to the effect that the language refers to the term for which the trustee was elected. Of course, the actual incumbence may be terminated in a much less time by resignation, as in this case, or by death, in which case if the contract was valid when executed I do not think that the subsequent termination of the term of incumbency by resignation or death would affect the contract; and I doubt whether a resignation to be effective at a future time changes the situation. To make my position a little clearer let us suppose, for example, that a township trustee enters into a contract with a teacher on the first of August. That, I think, would not be unusual. Suppose he dies, after executing the contract, on the 15th of August. That would terminate his incumbency and a new trustee would have to be appointed to assume his duties; but his death and consequent termination of his incumbency of the office would not invalidate the contracts already entered into. It is only because of the unusualness of the situation presented in the present case whereby the trustee with full knowledge that his office is to be surrendered enters into contracts under which the term of the service is to begin almost a year later—it is only on account of the unusualness of this situation that the question arises; but I think this unusual situation does not violate the Act of 1893 but is effective only to raise the question of public policy.

There is another question which I think may have some bearing and that is the provision of Section 28-4304 of Burns Indiana Statutes Annotated, 1933, which provides that:
"All contracts hereafter made by and between teachers and school corporations shall be in writing; shall state the date of the beginning of the school term, the number of months in the school term, the total amount of the salary to be paid during the school year, and the number of payments that shall be made during the school year."

It seems to me that there may be some ground for saying that the above statement contemplates only yearly contracts in the case of teachers. I call attention to the fact that the contract is required to state the date of the beginning of the school term. It seems that this might be somewhat difficult in the case of the second and third year and if the contracting trustee has ceased to be the trustee.

There is another statute, however, which has an application to these contracts, except the tenure contract, which I think is conclusive. It is my understanding from your letter that the township involved is one which is eligible to receive state aid under Section 28-903 of Burns Indiana Statutes Annotated, 1933. The above section provides expressly:

"That no trustee of any school township or board of trustees of any school town or school city shall enter into any transportation and/or teacher's contract without the approval of the board of department of education and any contract so entered into without said approval shall be null and void and without effect."

It is my understanding that the particular contracts have not been approved by the Board of Department of Education although an application has been made for state aid under the above Section. If this is correct then these contracts, except the tenure contract, would be void for want of approval of the State Board of Department of Education.