

“Sheriffs and poll-book holders for such primary shall be appointed in the manner and under the conditions as sheriffs and poll-book holders at regular elections.”

Burns Indiana Statutes, Annotated, 1933, Section 29-507.

It follows that the county sheriff has no duty to perform in the appointment of election sheriffs. There is no statute that I have been able to find that places a duty upon the county sheriff to notify these officials of their appointment; the duty of notification doubtless rests with the board of election commissioners and in the absence of anything to the contrary is embraced in the authority and duty devolving upon such board of election commissioners to make the appointment.

Both questions are answered in the negative.

TEACHERS' RETIREMENT FUND, INDIANA STATE: Liability of trustees on official bonds for payment of amount deducted from teachers' salaries.

October 19, 1937.

Robert B. Hougham, Executive Secretary,
Indiana State Teachers' Retirement Fund Board,
334 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in part as follows:

“In checking our records for the past years we find that we have paying officials throughout the state, more specifically trustees of townships, who have failed to remit to this fund deductions made from the teachers' salaries for the benefit of the Indiana Teachers' Retirement Fund.”

You submit the following question:

“The question has arisen, can this board under chapter 102 of the Acts of 1929 obtain judgment against the official's bond for the collection of these amounts, and will such judgment include interest from the time these amounts were due this department?”

Section 14 of the Teachers' Retirement Fund Act, as amended in 1921, provides in part as follows:

"It shall be the duty of paying officials, at the time of payment of salaries to teachers for the second, fourth, and sixth school months of each school year, to deduct from the salaries of each of the teachers whose names have been so reported, an amount equal, as nearly as possible, to one-third of the total amount due from said teacher for the entire school year as assessments under this Act, and said paying official shall, between the first and fifteenth days of January and June of each year, pay over to the board of trustees of the Indiana State Teachers' Retirement Fund all money so coming into his hands.

Burns Indiana Statutes Annotated, 1933, Section 28-4511.

Said section also provides that:

"It shall be the duty of the administrative officers of school corporations or institutions in the state affected by this Act, before employing or re-employing in any teaching position any person to whom this Act may apply, to notify such person of his duties and obligations under this Act, as a condition of employment, and shall have those duties and obligations made a part of the contract of those teachers who come under the provisions of this Act."

Burns Indiana Statutes Annotated, 1933, Section 28-4511.

The same section also makes it the duty of such executive officers on or before October 1 of each year,

" * * * to report all teachers who come under the provisions of this Act in the employ of the respective corporations, with the pension account number for each, to the board of trustees of the Indiana State Teachers' Retirement Fund, and report, at definite periods throughout the year, teachers employed after the annual report, so that rates of assessment and other information may be verified."

Section 28-4515, which is section 1 of the 1929 Act referred to in your letter, provides:

“Any township trustee and any treasurer of a school city or town, who is authorized by law to deduct from the salaries due the teachers of such school corporation, the assessments for the state teachers’ retirement fund, shall issue to each of such teachers, on behalf of the board of trustees of the Indiana State Teachers’ Retirement Fund, a receipt for each assessment so deducted from the salary due such teacher, and such receipt shall be evidence of the fact that such teacher has credit from the state teachers’ retirement fund for payment of the amount of such assessment named in such receipt.”

Burns Indiana Statutes Annotated, 1933, Section 28-4515.

Section 2 of the same Act, Burns Indiana Statutes Annotated, 1933, section 28-4516, provides as to the liability of township trustees and treasurers of school cities and towns for the payment of the amount so deducted in the language following, namely:

“Township trustees and treasurers of school cities and towns shall be liable upon their official bonds for failure to deduct, report and pay over such assessments to the board of trustees of the Indiana State Teachers’ Retirement Fund, to be recovered by said board by action at law in the name of the state on the relation of said board to be prosecuted by the attorney-general.”

In 1937 the General Assembly made a different provision for the collection of the amounts due from school corporations to the teachers’ retirement fund. This latter act became effective on and after July 1, 1937, it being provided that the first deduction made for teachers’ assessments by the State Superintendent of Public Instruction should be made from the semi-annual distribution made in January, 1938. This Act of 1937, however, would not affect existing liabilities under the 1929 Act. The repeal of any statute does not have the effect of releasing or extinguishing any liability incurred under the statute repealed, unless the repealing act expressly so pro-

vides. The statute repealed is treated as still remaining in force for the purpose of sustaining any proper action for the enforcement of such liability.

Burns Indiana Statutes Annotated, 1933, Section 1-307.

In my opinion, the liability of paying officials who have failed to remit to the teachers' retirement fund the amount of deductions made from teachers' salaries is clear and that such liability may be enforced by an action upon the official bond of such officer.

Your further inquiry is as to whether interest is allowable in such a case. I think it is. The statute authorizes interest at the rate of six per cent on forbearance of money when the parties do not agree on the rate.

Burns Indiana Statutes Annotated, 1933, Section 19-2001.

Interest is allowable on money wrongfully or unreasonably withheld.

Hazzard v. Duke, 64 Ind. 220, 223;

The Wayne Pike Co. v. Hammon, et al., 129 Ind. 368, 379.

HEALTH, STATE BOARD OF: Right of cities of second class to issue bonds for payment of sewage disposal plant.

October 21, 1937.

W. H. Frazier,
Assistant Director,
Indiana State Board of Health,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Frazier:

Receipt is acknowledged of your request for an official opinion dated October 15, 1937. This request is as follows:

"Section 9, Chapter 152, Acts of 1935, provides that if a municipal corporation has received a final order from the Department of Commerce and Industries, the cost (a) shall be paid out of funds on hand available for such purposes or (b)