"We do not think that it was the intention of the legislature by the above provision (referring to the execution of a new contract) to lose to both the State and to the teacher the rights and advantages obtained by them under this statute, by reason of the fact that the proper school officers and teacher entered into a new contract for the further services of said teacher."

State, ex rel. Black v. Board of School Commissioners, 205 Ind. 582.

Commenting upon this case the Supreme Court said:

"On the authority of this case we hold that the execution of a new contract for the year 1929-1930 between the relatrix and Clinton School Township would not terminate the tenure of the relatrix. The legislative purpose in authorizing a new contract to be entered into by a tenure teacher and the employing school corporation was not to provide a means of terminating tenure, but to enable school corporations and their tenure teachers to adjust the provisions of indefinite contracts to current needs."


It is my opinion, therefore, that the signing of the three-year contract does not operate to cancel or terminate the rights which the tenure law has conferred upon the teacher.

Your second question is, therefore, answered in the affirmative.

FIRE MARSHAL, STATE: Foreign insurance companies, right of State to impose charge for State Fire Marshal's office.

February 24, 1937.

Hon. Clem Smith,
Chief Fire Marshal Department,
Indianapolis, Indiana.

Dear Sir:

Your letter of February 23rd calling for a construction of chapter 208, section 1, Acts of 1927, the same being section 20-818, Burns Indiana Statutes, 1933 Revision, has been duly considered.
This section provides that:

"All fire insurance companies duly licensed to transact business in the State of Indiana shall pay into the state treasury on or before March first and September first of each year, an amount equal to one-half of one (1) per cent of the gross premiums of each company, received on fire risks written in the State, after deducting therefrom return premiums and considerations received from reinsurances, as reported by them to the Auditor of the State of Indiana for the payment of premium taxes as now provided by law; said semi-annual payment by such companies shall be in addition to all taxes and license fees now required by existing law or laws to be paid by fire insurance companies doing business in Indiana, and which fund so paid in and created shall be known as the fire marshal fund."

Your first question asks if this language includes both domestic and foreign fire insurance companies doing business in Indiana.

It is my opinion that the language of the statute covers all fire insurance companies that are licensed to do business in the State of Indiana, both foreign and domestic.

The Legislature clearly has the right to impose restrictions upon foreign insurance companies doing business within this State.

"The constitutional right of the Legislature to prescribe the terms upon which foreign corporations may transact business within the State is abundantly established."

Insurance Company of North America v. Brim, 111 Ind. 281 and cases cited.

Foreign insurance companies have frequently challenged the right of the State to impose terms and conditions on which they may enter and pursue their business within the State.

"The legislature at all times has the constitutional power to exclude foreign fire insurance companies from the state, however, in its wisdom, the legislature has not pursued the policy of exclusion, but has prescribed certain terms and conditions upon which they may enter and pursue their business within the state. For
more than half a century the legislature has maintained a consistent and definite scheme or plan for that purpose. Under these statutes the entrance of foreign fire insurance companies into the state has been conditioned upon their compliance with certain regulatory and precautionary conditions."


This case held constitutional the statute requiring foreign insurance companies to report to the Auditor of State the gross amount of all receipts received in the State on account of insurance premiums each six months and requiring them to pay to the treasury of the State the sum of three dollars on each one hundred dollars of such receipts. The above authority holds that such a program is within the legislative power of the State.

Since this Act applies to all companies duly licensed to transact business within the State and since it contains the further provision that upon failure to comply with the provision quoted with reference to the payments to the State, their license to do business in Indiana may be revoked, it is my opinion that it is constitutionally right for your department to collect from both foreign and domestic companies, and your second question, therefore, should also be answered in the affirmative.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Foreign corporations, right to act as trustee under wills as to property located in Indiana.

February 25, 1937.

Department of Financial Institutions,
Indianapolis, Indiana.

Gentlemen:

Your letter of February 24, 1937, submits the question as to whether or not the Bank of Manhattan Company, a New York corporation, may act as trustee for property belonging to a citizen of New York State, which property consists of an office building located in the city of Fort Wayne, Indiana, on which there is a lease expiring in 1948, without having first
qualified and been authorized to do business under the pro-
visions of part 7, article 1 of the Financial Institutions Act.

Section 324 of the above entitled Act contains this pro-
vision:

"Any bank, trust company or building and loan asso-
ciation organized under the laws of any other state, hereinafter referred to as a corporation or foreign cor-
poration, shall, before transacting business in this State, procure a certificate of admission to this State
from the Department and the Secretary of State in
the manner hereinafter provided."

The question therefore presented is whether or not the
Bank of Manhattan Company, as trustee, in collecting the
rents and profits from the real estate located in Fort Wayne,
is engaged in "transacting business in this State," within the
meaning of the statute requiring them to first procure a cer-
tificate of admission. The Act does not attempt to define what
is meant by "transacting business." The authorities gen-
erally hold that such a question is one of fact and, therefore,
ordinarily a matter of judicial determination.

In Volume 12, Ruling Case Law, on page 69, we find this
statement:

"It seems to be the consensus of opinion that a cor-
poration, to come within the purview of most statutes
prescribing conditions on the right of foreign corpora-
tions to do business within the State, must transact
therein some substantial part of its ordinary business,
which must be continuous in the sense that it is dis-
tinguished from merely casual or occasional transac-
tions, and it must be of such a character as will give
rise to some form of legal obligations. Hence it may
be laid down as a general rule that the action of a
foreign corporation in entering into one contract or
transacting an isolated business act in the State does
not ordinarily constitute "the carrying on or doing of
business therein."

This rule is again announced by our Appellate Court of
Indiana in the following language:

"The courts as a rule have held that, where a for-
eign corporation enters into a single contract, or en-