OFFICIAL OPINION NO. 21

August 8, 1969

Hon. Richard D. Wells
State Superintendent of Public Instruction
229 State House
Indianapolis, Indiana 46204

Dear Mr. Wells:

This is in response to your request for an Official Opinion concerning the following questions:

1. May a school board legally set a time by which properly issued teachers' contracts must be returned?

2. May a duly constituted school board in the State of Indiana lawfully enter into an agreement with teachers, their representatives, or their association representatives by the terms of which procedures are established for the resolution of future disputes concerning negotiations in reference to terms of employment and working conditions (such as in a master contract)?

3. Can said school board, pursuant to its statutory powers, lawfully delegate any of its functions to an independent mediator, to a mediation board, or to arbitration?

The General Assembly has, by the enactment of many statutes, fulfilled its obligation "to provide, by law, for a general and uniform system of Common Schools," and among the statutes passed by it are Acts of 1899, Ch. 192, as amended, and found in Burns' (1948 Repl.), Sec. 28-2410, providing, in part, as follows:

> "The school trustees shall take charge of the educational affairs of their respective townships, towns and cities. They shall *employ teachers,* establish and locate conveniently a sufficient number of schools for the *education of children* therein, and build, or otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient management of said schools."

Under the Acts of 1899, as amended, and as cited above, it has been held that school boards or school trustees are charged with the duty of managing the school system, and that they have the power to make *reasonable rules and regulations* to that end. The powers so conferred upon them, when used with fairness for the efficient management of schools, may not be successfully challenged by judicial review. School City of East Chicago v. Sigler (1941), 219 Ind. 9, 36 N. E. (2d) 760. This case states, in part, as follows:

> "A statute requires school trustees to 'take charge of the educational affairs of their respective townships, towns and cities.' * * * they are required to furnish teachers and equipment 'for the thorough organization and efficient management of [the] schools.' The power to make reasonable rules and regulations to that end can not be successfully challenged. Fertich v. Michener, 111 Ind. 472, 11 N. E. 605, 14 N. E. 68, 60 Am. Rep. 709; State ex rel. Horne v. Beil, 157 Ind. 25, 60 N. E. 672."

The Legislature has by statute designated specific powers that may be exercised by the governing body of a public school corporation. By the Acts of 1965, Ch. 307, as found in Burns' (1968 Supp.), Sec. 28-6409, it is provided that:

> "Each school corporation shall have the power *to conduct an educational program* for all children resident within such school corporation * * * and to conduct such other educational or other activities as shall be permitted or required to be performed by law by any school corporation. Such powers shall be construed as purposes as well as powers." (Emphasis added)

The Acts of 1965, Ch. 307, as found in Burns' (1968 Supp.), Section 28-6410, enumerates specific powers that may be exercised by the governing body of a public school corporation including the following:

> "(2) To take charge of, manage and conduct the *educational affairs* of the school corporation and to establish * * *"

"(7) *To employ, contract for and discharge* superintendents, supervisors, principals, *teachers,* librarians, * * *"

"(17) To prepare, make, enforce, amend and/or repeal rules, regulations and procedures *for the government and management of the schools, property, facilities and activities of the school corporation, its agents, employees* and pupils and for the operation of its governing body, which rules, regulations and procedures may be designated by any appropriate title such as 'policy handbook,' 'by-laws,' 'rules and regulations.' "

"(19) To exercise any other power and make any expenditure *in carrying out its general powers and purposes * * * which is reasonable* from a business or *educational standpoint* in carrying out school purposes of the school corporation, * * *" (emphasis added)

The cited statutes and court cases are in harmony with the proposition that public school officers charged with the responsibility of conducting an educational program and with the thorough organization and efficient management of our schools have certain incidental powers necessary to perform those responsibilities. A careful reading of these statutes and cases indicates that the *implied powers which accrue to members of school boards are those which are necessarily required to maintain schools and educate children.*

We come now to the question of whether a school board can set a reasonable deadline by which a teacher who has been issued a contract for the succeeding school year must sign said contract and convey his or her acceptance to the school board. There are two Indiana statutes which bear on this matter. Acts of 1899, Ch. 111, Sec. 1, as found in Burns' (1948 Repl.), Sec. 28-4302, provides as follows:

"All contracts hereafter made by and between teachers and school corporations of the state of Indiana shall be in writing, *signed by the parties* to be charged thereby, and no action shall be brought upon any contract not made in conformity to the provisions of this act." (emphasis added)

The second statute which has bearing on this question is Acts of 1939, Ch. 77, Sec. 1, as amended and found in Burns' (1968 Supp.), Section 28-4321, which provides, in part, as follows:

> "Every contract of employment hereafter made by and between a teacher and a school corporation, except contracts with permanent teachers as defined in chapter 97 of the Acts of 1927 [§§ 28-4307—28-4312] and acts amendatory thereof, shall be renewed and continue in force on the same terms and for the same wages, unless increased by the provisions of chapter 101 of the Acts of 1907 and acts amendatory thereof, known as the Teachers' Minimum Wage Law [since repealed], for the school year next succeeding the date of termination fixed therein unless on or before the first day of May, the teacher shall be notified by the school corporation in writing delivered in person or mailed to him or her at last and usual known address by registered mail that such contract will not be renewed for such succeeding year or unless such teacher shall deliver or mail by registered mail to such school corporation his or her written resignation as such teacher *or unless such contract is superseded by another contract between the parties* * * *" (emphasis added)

As it appears that the two above cited statutes are in conflict, it is necessary to resort to rules of statutory construction. Generally speaking the courts have adhered to the rules that statutes in derogation of the common law are to be strictly construed. Sutherland, Statutory Construction, 3rd Ed., Vol. 3, Sec. 5903, p. 130. The last quoted statute tries to abrogate the common law rules which apply to contracts by removing the requirements of offer, acceptance, and mutuality. It is, therefore, proper to construe strictly this statute.

Further, it is necessary to look at the general objectives or policy behind legislation, and, on the basis of the equity or the spirit of the statute the courts have often rationalized a restricted meaning of the letter of the statute when the literal expression of the legislation may be inconsistent with the

general objectives or policy. Sutherland, Statutory Construction, 3rd Ed., Vol. 3, Sec. 6006, p. 149.

The Constitution of Indiana imposes upon the General Assembly the duty of providing a uniform system of schools. Fully cognizant of this duty, the General Assembly has passed many statutes in relation to the field of education. The general policy underlining all statutes relating to an educational program in the State of Indiana is to maintain a quality system of education for children. Every statute in relation to education indicates the intention of the General Assembly to create a quality school system.

The above-quoted statute dealing with teachers' contracts should be construed together with the stated policy of all other acts in the same area.

If the statute were to be so construed that a teacher need not sign a contract which has been issued for the succeeding school year, there would be no way by which a school board could know whether it had an adequate number of teachers available to begin the school term. Turmoil could not have been the intent of the General Assembly in passing this law.

The intent of the statute is primarily to protect teachers in situations in which a school board has not issued contracts. This is evidenced by the wording "unless such contract is superseded by another contract between the parties," and by the fact that provision is made by which a teacher may terminate a contract on 21 days' notice.

As this statute is in derogation of the common law rules governing contracts, it must be interpreted to apply only to those situations in which a school board has not issued contracts for the succeeding school year.

It is my opinion that under the powers granted school boards by the General Assembly to make rules and regulations governing school policy, they *may* set a reasonable time by which properly-issued school contracts shall be returned to the school office to signify acceptance.

We now come to a discussion of your next questions.

The Indiana Constitution, Article 8, Section 1, imposes upon the General Assembly the duty "to provide, by law, for a

general and uniform system of Common Schools * * *" By Article 3, Section 1, of the Indiana Constitution the powers conferred upon the General Assembly must be exercised by it and those powers may not be delegated to the administrative branch of the government or the school boards of the various school corporations. The General Assembly has by the enactment of many statutes fulfilled its obligation "to provide, by law, for a general and uniform system of Common Schools."

In reviewing the Indiana Statutes I find none which expressly or impliedly treat the manner in which public officers must or may deal with unions or associations of such employees. Neither do I find any Indiana court decisions which concern themselves with this subject matter.

The Indiana courts, however, have stated that school corporations are instrumentalities and governmental agencies of the State, and their power is derived exclusively from the Legislature to perform a state and governmental function. Hummer v. School City of Hartford City (1953), 124 Ind. App. 30, 112 N. E. (2d) 891; State *ex rel.* Osborn v. Eddington (1935), 208 Ind. 65, 194 N. E. 642.

Under the Acts of 1899, Ch. 192, as amended and found in Burns' (1948 Repl.), Section 28-2410, it has been held that school boards or school trustees are charged with the duty of managing the school system, and that they have the power to make reasonable rules and regulations to that end. This power is conferred upon them to decide matters within their discretion with fairness for the efficient management of schools. School City of East Chicago v. Sigler (1949), 219 Ind. 9, 36 N. E. (2d) 760; State *ex rel.* Ridge v. Johnson, (Trustee) (1953), 232 Ind. 358, 111 N. E. (2d) 803.

Collective bargaining (sometimes referred to as Professional Negotiations) between school boards and the school administrators and the teachers represented by their associations, is relatively new as far as affording legal precedent for our guidance under Indiana Law. The latest discussion of the question was made by the Attorney General in his Official Opinion found in 1966 O. A. G., p. 144, No. 22, where he approved the Trustees of Indiana University adopting an agreement, therein referred to as "Conditions for Coopera-

tions," with Employees Union or Employees Associations involved in the expansion of the Indiana University Campus at Indianapolis. It is to be noted that said Official Opinion referred to and discussed two prior Official Opinions of the Attorney General of Indiana being 1944 O. A. G., p. 224, No. 55 and 1949 O. A. G., p. 184, No. 51.

The latter two Official Opinions, in substance, denied the right to enter into contract, but permitted negotiations and discussions which did not culminate in a written agreement. The 1966 Official Opinion not only approved such negotiations, but those negotiations culminating in an employer-employee written contract. However, the Opinion clearly found and required that the contract have a provision that any actions or decisions required to be made by the public officials would be made by such public officials without their having surrendered their official authority. It also provided that negotiations and agreements would *only* be considered for the purpose of assisting the public officials in their determinations.

It is unfortunate that without any intervening judicial determination by the Supreme or Appellate Courts of the State of Indiana, the advice given by the office of Attorney General on this important subject has appeared varied and possibly contradictory.

It is my opinion that public officials may receive and should welcome the views of their employees or their representatives, and that it is proper for public officials to establish informal procedures for their employees and their representatives to present their views.

However, every Attorney General of Indiana of whom these questions have been asked has recognized that there is still no law on the books in the State of Indiana specifically to authorize school boards to enter into an agreement to provide that a teachers' union or any teachers' organization is the *exclusive* bargaining agent concerning hours, wages, and other conditions of employment.

Nor do the records disclose any judicial decisions changing the interpretation of the law as stated by all Attorneys General prior to 1966. Also in point, there have been repeated, unsuccessful attempts in the Indiana General Assembly to

enact new laws which would authorize such collective bargaining by public officials. One of the most recent such attempts was H. B. 1339, in the 1969 Session of the Indiana General Assembly, which passed the House but failed to pass the Senate. In its amended form as it went to the Senate, it would have provided that:

> "Public employees in the State of Indiana shall have the right to bargain collectively * * *"

It is reasonable to conclude that there is some legal significance in the fact that such an attempt was deemed necessary in order to change the law. The state Legislature impliedly acknowledged that until it grants the power to state agencies to enter exclusive collective bargaining agreements, the Indiana General Assembly retains that power.

Finally, it seems to me that because of the absence of any Indiana exclusive collective bargaining law applicable to state agencies, and because of the Legislature's repeated decisions to retain that exclusive power unto itself, and because of the history of Attorneys General Opinions on the subject, and because of the absence of Supreme and Appellate Court decisions on the subject, the interested parties would be more satisfied if they took their views to the Indiana General Assembly, or if they feel damaged and entitled to a judicial remedy, if they resorted to the courts.