

1969 O. A. G.

OFFICIAL OPINION NO. 27

September 16, 1969

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

Dear Mr. Wells:

This is in reply to your letter requesting an Official Opinion on the following two questions:

1. Are the appointments of the current members of the Board of Trustees of the Indiana State Teachers' Retirement Fund valid in view of their appointments at times other than specified by law?

2. Are the terms of office of such trustees for full four-year terms or do they serve at the pleasure and discretion of the Governor?

Acts of 1915, Ch. 182, Sec. 3, as amended and found in Burns' (1948 Repl.), Section 28-4503, provides for the structure and appointment of the Board of Trustees, (hereinafter referred to as the "Board") and reads, in part, as follows:

"Said board shall be composed of five (5) members who shall be appointed by the governor of the state and not less than two (2) of whom shall be teachers as defined by this act.

"Appointments of trustees by the governor *shall be made between the first and fifteenth days of July.* \* \* \* Vacancies in the board of trustees caused by the death or resignation of members shall be filled by appointment by the governor for the unexpired terms. All members shall serve until their successors are appointed and have qualified \* \* \*" (My emphasis)

The 1915 Act, as amended, states that the "appointments of trustees by the Governor shall be made between the first and fifteenth days of July." Yet as noted in your letter none of the appointments or reappointments of the present members was made by the Governor between the first and fifteenth days of

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July. Thus the issue raised by your first question is whether the word "shall" as used in the statute is employed in a mandatory or directory sense. In order to answer this question it is necessary to rely on principles of statutory construction.

In Indiana Law Encyclopedia, Vol. 26, Statutes § 135, it is said: "Whether a statute is mandatory or directory depends upon the legislative intent as revealed by an examination of the whole act."

It is axiomatic that an act of the Legislature should be so construed as to make the provisions thereof operative and functional to accomplish the purposes of the act. In interpreting a statute each provision and phrase should be considered and given a practical meaning and applicability unless to do so would be impossible. *Tinder v. Music Operating, Inc.* (1957), 237 Ind. 33, 142 N. E. (2d) 610.

A vacancy caused by death or by resignation may occur at anytime other than between the first and fifteenth days of July of the year on which appointments would normally be made. If the Governor is restricted to making appointments to the Board between the first and fifteenth days of July of a year when vacancies exist, it could result in the Board becoming inoperative until proper appointments or reappointments could be made.

Certainly the Legislature did not intend that its 1915 Act should be so interpreted as to make it inoperative or that the language of the Act be so construed as to lead to an injustice or an absurdity.

Applying the foregoing rules of statutory construction to Acts of 1915, Ch. 182, Sec. 3, as amended and as found in Burns' (1948 Repl.), Section 28-4503, and giving functional meaning to all provisions thereof, I am of the opinion that the Legislature in saying the "appointments of trustees by the Governor shall be made between the first and fifteenth days of July" meant the same in a directory sense.

It is my further opinion that the Governor should make appointments or reappointments of trustees to the Board for new terms as they occur between the first and fifteenth days of July of the applicable years; but that should he fail to do

so between the July dates, and the circumstances require otherwise, he may make appointments or reappointments to fill vacancies for the unexpired statutory terms.

The term of office of one appointed or reappointed during July 1 and July 15 of a given year begins, pursuant to Burns' 28-4503, *supra*, on the first day of August following the appointment and runs for a four-year period of time.

Any appointment or reappointment made after the July 1 to July 15 period of time, and after August 1, would begin immediately upon appointment. This appointment or reappointment would run for the unexpired portion of the term which would have begun on August 1 of the year the appointment or reappointment should have been made. Any appointment or reappointment made between July 15 and August 1 would necessarily begin on August 1.

Your second question asks whether appointments made other than between the first and fifteenth days of July are for specific statutory terms or whether all appointments may begin and terminate at the discretion or pleasure of the Governor.

Section 2 of Article 15 of the Indiana Constitution provides, in part:

“When the duration of any office is not provided for by this Constitution, it may be declared by law \* \* \*”

Under the quoted section of the Constitution, our Indiana Supreme Court held that an office is held during the pleasure of the authority making the appointment only in those instances where the term of office is not provided for by the Constitution or fixed by the Legislature. *State ex rel. Manlove v. Curtis* (1913), 180 Ind. 191, 102 N. E. 827; *Roth v. State* (1901), 158 Ind. 242, 63 N. E. 460.

The 1915 Act specifically provides that “the terms of office of trustees so appointed or designated shall \* \* \* be for four (4) years” and “all members shall serve until their successors are appointed and qualified.”

It is my opinion, therefore, that the terms of office of the Board of Trustees of the Indiana State Teachers' Retirement Fund are for a full four years or for the unexpired portion

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thereof. In instances when duly appointed members hold over and serve beyond their terms, the appointments or reappointments must be for the unexpired terms.