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OFFICIAL OPINION NO. 10

April 4, 1968

**CONTRACTS—EDUCATION—SCHOOLS—Supplemental
Contract Applicable to Teachers Employed Under Regular
Contract. School Corporation Having Power
to Contract for Evening School
or Summer
School Employment.**

Opinions Requested by Hon. Paul Hric, State Representative,
and Hon. King Telle, State Representative.

You have each asked my opinion as to the effect of Chapter 131 of the Acts of 1967, which Act provides for a Supplemental Service Contract for teachers. Your questions, though different, all relate to the nature of that Act and that contract, and so I have taken the liberty to join both requests in this opinion.

Your questions are:

- “1. Do the provisions of this Act apply when the services of a teacher are used for the supervision of night, adult recreational activities?
- “2. Do the provisions of this Act apply when the services of a teacher are used in hall supervisions, or supervision of a building, when such services are in addition to services called for under the regular teacher’s contract?
- “3. Do the provisions of this Act apply when the services of a teacher are used at an athletic game for the purpose of taking tickets, directing traffic, or in the general supervision of spectators?
- “4. Do the provisions of this Act apply when the services of a teacher are used in conduction and

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supervision of playground and recreational activities during the summer months when such activities are under the authority of the school system and the teacher is employed by the school system?

- “5. Do the provisions of this Act apply to teachers not licensed in subject areas for which they are assigned to supervise only and not teach; e.g., a licensed teacher of English who applies for and is employed for supervising a gymnasium class and/or athletic intramural programs?
- “6. Do the provisions of this Act apply to licensed personnel who are performing in innovative and pilot programs related to teaching and subsidized by the Federal Government?
- “7. Does this law apply to the contracting and paying of teachers by public school corporations regardless of whether or not credit for graduation is granted?
- “8. Are state reimbursed and non-reimbursed courses conducted by the public schools treated in the same manner by this law?”

The inquiries, though diverse, center around two specific questions:

1. To what extent does the Supplemental Contract apply to the activities of a teacher employed under a regular contract?
2. Which activities for which a school corporation might hire persons who are licensed teachers are subject to the Supplemental Contract provision?

It is my opinion that the 1967 provision for supplemental teachers' contracts has no direct bearing on either of the above questions.

Acts 1943, ch. 202, comprised of two sections the second of which is a general repealer of any prior conflicting laws, in its first section, the same being Burns IND. STAT. ANN. § 28-4330, provides:

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“SECTION 1. *Be it enacted by the General Assembly of the State of Indiana,* That the uniform teacher’s contract form as provided for in Chapter 97 of the Acts of 1927 and acts amendatory of and supplemental thereto shall hereafter be prescribed by the State Superintendent of Public Instruction in two (2) alternate forms, the one to be known as the Regular Teacher’s Contract and the other to be known as the Temporary Teacher’s Contract. The Temporary Teacher’s Contract form shall be used only in cases where a teacher is employed to serve because of absence of a regular teacher who shall have been granted a leave of absence by the School Corporation for the purpose of engaging in military service or in service directly auxiliary thereto, for professional study or advancement, for exchange teaching or for extended disability that shall be attested to by a licensed physician. Employment on the Temporary Teacher’s Contract if for a period of six school months or more in any one school year shall entitle such teacher upon request to all the credit that would otherwise be enjoyed by such teacher with reference to the State Teacher’s Retirement Fund, and the salary of such teacher shall be not less than that salary provided for by the Minimum Salary Law of the State or by a locally adopted salary schedule not less remunerative.

“The Temporary Teacher’s Contract shall contain all the provisions of the Regular Teacher’s Contract except those providing for continued tenure of position.

“The Regular Teacher’s Contract which shall be used uniformly throughout the State as prepared by the State Superintendent of Public Instruction without amendment shall contain as its valid terms the date of the opening of school, the number of months the school shall be in session, the rate, amount, and manner of payment of salary, and only such other provisions relating to the government of the school as shall be prescribed and included in such contract by the State Superintendent of Public Instruction. The Temporary Contract Form shall include a blank space

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in which shall be inserted the name of the teacher having been granted such leave of absence, and the name of any one teacher on leave of absence shall be used on not more than one such Temporary Teacher's Contract at the same time. The expiration date of the Temporary Teacher's Contract shall be the date of the return of the teacher on leave of absence but in no case later than the end of the school year.

"All teachers employed and engaged in the public schools of the State shall be employed on the terms of the Regular Contract or the Temporary Contract as described herein except those teachers who may be engaged as casual substitute teachers for periods of not more than six weeks of consecutive employment. Observance of the provisions of this act shall be one of the prerequisites for the classification of schools by the State Board of Education.

"It shall be the duty of the State Superintendent of Public Instruction to prescribe the forms as referred to herein and to furnish to all the school corporations of the State a copy of said forms and to require that each school corporation include in its semi-annual report on average daily attendance a statement that all provisions of this act have been complied with."

Acts 1967, ch. 131, also comprised of two sections the second of which is a general repealer, and in its first section amended the 1943 Act by adding thereto a new section, section 1A, the same being Burns IND. STAT. ANN. § 28-4330a, which provides:

"SECTION 1. Acts 1943, c. 202, is hereby amended by adding a new section thereto to be added and to be numbered Section 1A. Section 1A. The State Superintendent of Public Instruction shall prescribe the provisions of a contract form other than the uniform teachers' contract forms referred to in Section 1 (of this act) and such form shall be referred to as the Supplemental Service Teacher's Contract and shall be used in cases where a teacher provides professional service in evening school or summer school employ-

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ment, or occasional employment after 30 days of teaching in a given year in a given school corporation where fewer than 20 days of service per school month, or intermittent service, are contemplated by the parties thereto; Provided, however, that in the case of a teacher receiving a retirement benefit from the Indiana Teachers' Retirement Fund, the Supplemental Service Teacher's Contract shall be used after 59 days.

"If in any given school year a teacher shall serve more than 120 days on the Supplemental Service Teacher's Contract, then all of the provisions of the Continuing Contract Act (Acts 1939, c. 77) and of the Indefinite Contract Act (Act 1927, c. 97) as they apply to teachers on regular contracts shall apply.

"The salary of a teacher who serves on a Supplemental Service Contract shall be the same as the salary of a regular teacher on the regular pay schedule in effect in the school corporation wherein he shall serve. Part-time service on the Supplemental Service Contract shall be computed on the basis of 6 hours as a full day of service.

"It shall be the duty of the State Superintendent of Public Instruction to perform all of the acts and exercise all of the duties concerning the Supplemental Service Contract as are provided for him to perform with reference to the uniform contract."

A careful reading of the above Act reveals no legislative intent to specify either a teacher's duties or a teacher's hours of employment. The Act is basically a catalog of the forms of contracts under which a teacher may be hired, with a description of the retirement and tenure benefits associated with each form of contract.

The duties to be performed by a teacher under a regular employment contract are determined by the governing body of the school corporation. Acts 1965, ch. 307, known as the Indiana General School Powers Act, in its section 202, the same being Burns IND. STAT. ANN. § 28-6410, grants certain specific powers to the governing body of a school corporation, including the power

“(7) To employ, contract for and discharge . . . teachers . . . to fix and pay the salaries and compensation of such persons and such services; to classify such persons or services and to adopt schedules of salaries or compensation; to determine the number of such persons or the amount of services thus employed or contracted for; and to determine the nature and extent of their duties.

“The compensation, terms of employment and discharge of teachers shall, however, be subject to and governed by the laws relating to employment, contracting, compensation and discharge of teachers. . . .”

The authority to determine the nature and extent of a teacher's duties is, of course, not limitless, but must be exercised in a reasonable manner and the duties assigned must be consistent with the functions of the school and the role of the teacher. A comprehensive discussion of what duties would or would not be so consistent is outside the scope of this opinion, but the subject has been tangentially discussed in *State ex rel. Ind. High School Athletic Ass'n v. Lawrence Cir. Ct.*, 240 Ind. 114, 162 N.E. 2d 250 (1959), and *Kunkel v. Arnold*, 131 Ind. App. 219, 158 N.E. 2d 660 (1959). Needless to say, the compensation received by a teacher under a regular teacher's contract should reflect the duties to be performed by the teacher.

The language contained in chapter 131 of the Acts of 1967 does not permit the conclusion that the Act is intended to affect the duties to be performed by a teacher employed under a regular school-term contract. To use the language of the Act, a supplemental service contract is for teachers engaged “in evening school or summer school employment,” not for teachers who are engaged in their ordinary employment under a regular school-term contract.

This is not to say that a teacher who has a regular contract may not also have a supplemental contract. If a teacher whose regular contract does not include the summer months (see 1964 O.A.G. p. 226) teaches a summer school, or if a teacher with a regular contract “moonlights” as a night

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school teacher in the same or a different school corporation, then he must also enter a supplemental service contract.

Similarly, the specific language of the 1967 Act that a supplemental contract "shall be used in cases where a teacher provides professional service" indicates that the Act is not intended to determine when a school corporation is required to employ a teacher. Various statutes and rules of the Department of Public Instruction specify those functions for which the school corporation must employ a licensed and qualified teacher. If the hours and conditions of employment of a licensed teacher engaged to fill that position satisfy the conditions under which a supplemental service contract is to be entered, then such a contract must be used. Conversely, if the position is not one requiring a licensed and qualified teacher, a teacher who accepts that position is not providing his "professional services" and so a supplemental service contract is not required.

In short, it is my opinion that the supplemental service contract provision is intended to be used for licensed teachers who through part-time employment provide those professional services necessary either for the efficient operation of the school during the regular term, such as substitute teachers, or for the fulfillment of those auxiliary functions inherent in the educational purpose of the school, such as night school and summer school, and is not intended to alter any law concerning either the duties expected of a teacher or the positions that can be filled only by a licensed teacher.

While this opinion has not been directed to each of your specific questions, I trust that the principles expressed herein will provide the answer to those questions and any related questions you may have. I am, of course, ready to provide any further clarification that might be necessary.