OPINION 54

OFFICIAL OPINION NO. 54
December 5, 1968

TEACHERS—CONTRACTS—Necessity of supplementary service contract for night school or summer school teaching duties.

Opinion Requested by Hon. Harry B. Sparagel, State Representative.

I am in receipt of your inquiry relating to my Official Opinion No. 10, p. 64, supra, issued April 4, 1968, concerning Acts 1967, ch. 131, Burns IND. STAT. ANN. § 28-4330a. That act provides that a supplemental service contract shall be used for teachers providing "professional service" in night school, summer school or as substitute teachers.

In that Opinion, I stated:

"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."

I indicated that a teacher is providing "professional services" when he is filling a position which requires a licensed and qualified teacher, and that an individual employed by a school
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corporation to fill a position which does not require a licensed and qualified teacher is not providing a "professional service," even though he may be a licensed teacher.

You have asked that I further and more specifically define "professional service" as it relates to night and summer school. (Your request does not concern substitute teachers, and they will not be considered in this Opinion.)

The purpose of the statute providing for the supplementary service contract is to place a teacher providing professional services in night school, summer school (or as a substitute teacher) on the salary schedule which the teacher would enjoy for performing the same services during the regular school days of the regular school term. Prior to its enactment, school corporations were free to, and did, employ teachers at lower rates of pay to perform professional services at night, and in summer school (and as substitutes).

Your letter discloses that your question arises from existing situations in which a licensed teacher is hired to teach at night school or in summer school courses the same, or very similar to, those he teaches during the regular school days of a regular school term, but is not given a supplemental service contract because either the state does not reimburse the school corporation for such a course or no school credit is given for the course. The practical result is that the school corporation continues to pay the teacher less per hour than he would earn for performing the same or very similar services during daytime hours of the regular school term.

In my 1968 Official Opinion No. 10, I stated (at p. 70 supra) that "the Act is not intended to determine when a school corporation is required to employ a [licensed] teacher." I further stated that that determination must be made pursuant to various statutes, and rules of the State Board of Education, and that a comprehensive discussion of those statutes and rules was outside the scope of that opinion. I also stated that school corporations are authorized to determine the nature and extent of a teacher's duties, but that that authority "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."
Although the variety of duties which may be given to a licensed teacher are (in contrast with the school corporation's authority) without limit, it is possible, in my opinion, to set forth standards by which the reasonableness of a school corporation's exercise of its authority to determine the nature and extent of a teacher's duties may be judged.

The basic purposes and powers of a school are to establish a curriculum, and to see that the subjects selected are taught by competent persons. The curriculum for Indiana public schools is determined in part by the General Assembly, which has required or authorized particular subjects to be taught. See the statutes collected in Burns §§ 28-3401 to 28-3439. Additions to the required curriculum for elementary schools are established by the governing body of the school, see Acts 1919, ch. 18, § 1, as amended by Acts 1931, ch. 95, § 1, Burns § 28-3401. Additions to a high school curriculum are also established by the school governing body, subject to revision of the state board of education, Acts 1907, ch. 191, § 2, as last amended by Acts 1923, ch. 91, § 1, Burns § 28-3418. The 1965 General School Powers Act also gives each school corporation authority to conduct an educational program for children in kindergarten and in grades one through twelve, to conduct an educational program for adults and children over the age of fourteen not attending the first program, and to provide vacation school and recreational programs and additional educational or other activities authorized or required by law, Acts 1965, ch. 307, § 201, Burns § 28-6409.

If the governing body of a school has made a class a part of the curriculum of the regular school term, it has, in my opinion, established the fact that professional service is required of the teacher who teaches the course during that time. Both the letter and the spirit of the supplementary services contract act would be violated should the school corporation decide that the same course offered at night or during summer school did not require professional services of the person who then taught the course. Such a decision would not be reasonable. Therefore, it is my opinion that any night or summer school course which is also a part of the regular curriculum of a school corporation requires professional services of the person who teaches that course. The teacher of the course
in night or summer school is entitled to a supplementary service contract.

Another standard for determining the reasonableness of a school corporation's decision that a particular school duty does or does not amount to the providing of professional services is based upon the licenses or certificates issued by the State Superintendent of Public Instruction as executive officer of the Commission on Teacher Training and Licensing of the State Board of Education, Ind. Acts of 1945, ch. 330, § 4, Burns § 28-408; Acts 1923, ch. 11, § 2, Burns § 28-4202. If the Superintendent, as executive officer of the State Board of Education's Commission on Teacher Training and Licensing, issues a certificate or license for teaching a course offered in night or summer school by a school corporation, it would be unreasonable, in my opinion, for such school corporation to deny that the services of the licensed teacher teaching the course were professional services for which a supplemental service contract must be signed.

Whether or not credit is given for a particular night or summer school course, and whether or not the State of Indiana reimburses the school corporation in part for the teaching of the course appear to me to be irrelevant factors in determining whether a teacher is providing professional services. The school corporation may not by indirection evade the supplemental services contract act and pay the licensed teacher four dollars ($4.00) an hour for services for which it must pay six dollars ($6.00) an hour during the regular school term.