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“This section does not preclude an employee from paying the difference between the cost of group insurance covering himself only and the cost of group insurance covering his family.”

The employee should have the benefit of buying the insurance at the reduced rate that would be available from the group insurance plan sponsored by the municipal employer, but it should be the employee and not the municipality that pays for such insurance.

OFFICIAL OPINION NO. 45

December 30, 1966

TEACHERS—Tenure Contracts—Honoring of Contracts Where School Corporation Reorganization Has Been Effected—Accumulated Sick Leave of Teacher.

Opinion Requested by Hon. William E. Wilson, State Superintendent of Public Instruction.

Your letter of December 12, 1966, reads as follows:

“After studying official opinions, No. 41, June 8, 1962, and No. 63, Nov. 5, 1962 I would appreciate receiving an official opinion on the following:

“A teacher taught twelve successive or consecutive years in a city school system under regular teachers contract from September 1942 to June 1954, and then in September 1954 began to teach in a township of the same county but outside of the city school corporation in which the twelve consecutive years mentioned were taught. The teacher then taught eight consecutive or successive years under regular teachers contract from

September 1954 until July 1, 1962 in the above mentioned township. At the time of leaving the above mentioned city school system in June of 1954 the teacher had twenty days of accumulated unused sick leave. On June 30, 1962 the teacher had forty days of accumulated unused sick leave credited from service in the above mentioned township. The forty days included a ten day "first year" of service sick leave as a result of the 1959 amendment (Burns 28-4333).

"The schools in the said township and said school city were consolidated so that the school city and the school township became a part of a consolidated school unit by special election under Chapter 202, Acts 1959 as amended, with such consolidation effective July 1, 1962.

"The new reorganized corporation assumed the above teacher's contract July 1, 1962 and has continued to employ this teacher under a regular teacher's contract since that time.

"1. Is this teacher a tenure teacher by virtue of having been a tenure teacher in a school city which later became a part of a larger corporation which assumed his contract and has reissued regular annual teacher's contracts to him since that time?

"2. For how many days of accumulated unused sick leave was the teacher eligible upon the assumption of his contract July 1, 1962 by the new larger reorganized corporation, in its assumption of all assets and liabilities of the school corporations consolidated therein?"

Your first question indicates that the teacher taught in a city public school system under a regular teacher's contract from September 1942 to June 1954. Acts 1927, ch. 97, as amended, and as found in Burns IND. STAT. ANN., § 28-4307, provides, in part as follows:

"Any part who has served or who shall serve under contract as a teacher in any school city corporation or in any school town corporation in the state of Indiana

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for five [5] or more successive years, and who shall at any time hereafter enter into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation."

Under the cited statute the teacher acquired status as a tenure teacher in the city public school system by serving five (5) successive years and thereafter entering into a teacher's contract for further service.

The teacher "in September 1954 began to teach in a township of the same county but outside of the city school corporation in which" he had acquired a tenure status, and by so doing he temporarily gave up his tenure status since township school corporations are excluded from the requirements of the tenure law.

Under a statement of facts as outlined above, it has been authoritatively held that whenever such a teacher was or is re-employed in the same school corporation in which he had attained tenure status, he would regain his tenure rights and be re-employed subject to an indefinite contract within the provisions of the tenure law. *School City of Lafayette v. Highley*, 213 Ind. 369, 12 N.E. 2d 927 (1938); 1943 O.A.G., p. 195.

As of July 1, 1962, the school city corporation and the township school corporation were joined into a reorganized school district under Acts 1959, ch. 202, as amended and as found in Burns IND. STAT. ANN., §§ 28-6101—6131, and the question now evolves itself into whether tenure is revived for the teacher under contract with the township school corporation during the school year 1962-1963, and if so when.

In the case of *State ex rel. Tittle v. Covington Community Consol. Schools*, 229 Ind. 208, 96 N.E. 2d 334, 336, 337 (1951) involving the consolidation of schools, the Indiana Supreme Court on pages 215 and 216 of the Indiana report states the following:

"In Indiana, teacher tenure is based wholly on contract. This proposition is no longer open to question.

It is also based upon the public policy of protecting the educational interests of the state. It should be liberally construed to effect its general purpose since it is legislation in which the public at large is interested. [Cases cited.]

“There is nothing in the title of Ch. 123, Acts 1947, page 409, indicating any intention on the part of the General Assembly to legislate concerning the teacher tenure law. It is wholly a law providing a way for the consolidation of schools, presumably for their more efficient operation. A careful consideration of the entire act with special attention to Section 7 thereof fails to indicate, even remotely, that the legislature had any intention that the legislation should affect the tenure law. On the contrary Section 7 clearly protects both parties to existing teacher contracts including, of course, tenure contracts, for with respect to the abandoned schools it provides that,

‘ . . . all their school property rights, and privileges as well as any indebtedness it may have, shall be deemed to have accrued to *and be assumed by* the new consolidated school corporation, and the title of such property shall pass to and become vested in the consolidated school corporation, and all debts of the former school corporations *shall be assumed and paid by such new consolidated school corporation*, and all the privileges and rights conferred by law upon such school townships, school towns or school cities *shall be and are granted to such new consolidated school corporation.*’ (Our italics.)

“From this section it is quite apparent the legislature made a direct effort to protect both the teacher and the public in teacher tenure rights, by transferring them to the new consolidated school corporation. See Opinions of the Attorney General of Indiana (1936), pp. 172, 173.”

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Acts 1959, ch. 202, as amended and as found in Burns IND. STAT. ANN., § 28-6120 (10), provides as follows:

“(10) The transfer of powers, duties, property rights, other assets, liabilities, contracts both as to rights and obligations, and all else connected with the transfer of authority from existing school corporations to the community school corporation shall take place at the time of the formation and creation of the community school corporations and are hereby declared vested in the community school corporations of that time.”

From the foregoing section of the statute it is quite apparent that the General Assembly intended that all liabilities and obligations of the merging school corporations were to continue in the future and become the liabilities and obligations of the newly reorganized school district made up of the school city corporation and the township school corporation. Among the liabilities and obligations of the school city corporation were the dormant tenure rights of the school teacher, and among the liabilities and obligations of township school corporation was the definite contract with this teacher for the school year 1962-1963, all of which were transferred to and assumed by the newly created community school corporation as of July 1, 1962.

In reviewing Acts 1959, ch. 202 as amended, as found in Burns IND. STAT. ANN., §§ 28-6101—6131, I find nothing therein indicating any intention on the part of the General Assembly to legislate concerning the teacher tenure law. As in the case of *State ex rel. Tittle v. Covington Community Consol. Schools, supra*, it appears to me to be wholly a law providing a way for consolidation or reorganization of schools “presumably for their more efficient operation.”

Thus, consistent with the 1962 O.A.G. No. 41, p. 210, I am of the opinion that when the newly created community school corporation assumed the contract from the township school corporation with the teacher mentioned in your letter for the school year 1962-1963, such contract was for further service under a regular teacher’s contract with the reorganized school

corporation wherein the teacher had acquired a tenure status through the school city corporation and such assumed contract revived the tenure status of the teacher as of July 1, 1962 in the reorganized school corporation within the meaning of the foregoing tenure statute.

Your second question reflects that the teacher under consideration had acquired twenty (20) days of accumulated unused sick leave in the school city corporation as of June 1954, and that thereafter and up to July 1, 1962, he had accumulated unused sick leave of forty (40) days in the township school corporation.

By Acts 1959, ch. 202, as amended, as found in Burns IND. STAT. ANN., §§ 28-6101—6131, and more especially § 28-6120(10), hereinabove set out, it becomes evident that as of July 1, 1962, when the newly created community school corporation assumed the regular teacher's contract for the year 1962-1963, it also assumed the forty (40) days accumulated sick leave as a liability and obligation of the township school corporation; and incidentally, since the teacher had already received the benefits of the ten (10) day "first year" sick leave provision allowed by Acts 1945, ch. 231, under the 1959 amendment, as found in Burns IND. STAT. ANN., § 28-4333, he was not entitled to another such ten (10) day credit. (See 1962 O.A.G. No. 63, p. 347.)

Acts 1945, ch. 231, as amended, and as found in Burns IND. STAT. ANN., § 28-4333, has always stated that accumulative days of accrued sick leave *shall* be credited to the teacher, and this has been interpreted to mean that such days of sick leave are a liability and an obligation of the school corporation to which a teacher is entitled on re-employment even though there may be intervening employment. (See 1949 O.A.G. No. 36, p. 137.)

Therefore, by the same interpretation and application of the law which leads to the conclusion that on reorganization a community school corporation must assume the tenure rights and the contract of the teacher from both the school city corporation and the township school corporation, so the reorganized school corporation must assume the accumulated days of sick leave up to the maximum allowed by the statute.

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On July 1, 1962, the school teacher was entitled to a credit in the newly created community school corporation of twenty (20) days as the obligation of the school city corporation and of forty (40) days as the obligation of the township school corporation, both of which obligations were required by law to be assumed by the community school corporation.

Specifically, the teacher in your question revived and acquired his tenure status as of July 1, 1962 by the newly created community school corporation assuming the liabilities and obligations of the school corporations merged into one, and similarly the teacher was entitled to a credit of sixty (60) days accumulated sick leave as of July 1, 1962 in the newly created community school corporation.

OFFICIAL OPINION NO. 46

December 30, 1966

**COUNTY OFFICERS—Contracts Between Banks Having
Data Processing Equipment and Local Units of
Government—Liability in Case of Error
or Other Misfeasance.**

Opinion Requested by Mr. Richard L. Worley, State Examiner,
State Board of Accounts.

This is in response to your inquiry concerning a contract between a county hospital and the data processing center of a bank, other than its duly designated depository, for the preparation and use of the bank's official checks or drafts for payroll purposes pursuant to Acts 1965, ch. 42, Burns IND. STAT. ANN., §§ 18-2016 and 18-2017 (hereinafter referred to as the "Bankers' Act").