

OPINION 31

and is entitled to one and one-half times the base salary for a county coroner when serving in such office.

OFFICIAL OPINION NO. 31

August 17, 1965

Hon. William E. Wilson
Superintendent of Public Instruction
Room 227, State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter of April 12, 1965, has been received and asks the following question concerning the final paragraph of Ind. Acts 1965, ch. 93, § 1, as found in Burns IND. STAT. ANN., § 28-4321 (1965 Supp.):

- “1. Does this paragraph provide that all teachers, including those employed in township school systems, shall be included under the provisions of chapter 97 of the 1927 Acts beginning July 1, 1967?
- “2. Does this paragraph also provide that all teachers who have been employed 5 years or more continuously in the same school system prior to July 1st, 1967, and who are given a contract for the 1967-68 school year are to be classified as tenure teachers and entitled to a permanent contract beginning July 1, 1967?”

Ind. Acts of 1965, ch. 93, § 1, amends Ind. Acts 1939, ch. 77, § 1, commonly known as the Teacher's Definite Contract Act. The original act and the act as amended provide for automatic renewal of teachers' contracts subject to this statute unless the contracts are canceled as specified in the act. The original enactment applied to "Every contract of employment hereafter made by and between a teacher and school corporation," with the exception of contracts with "permanent teachers" as defined in ch. 97 of Ind. Acts of 1927, Burns IND. STAT. ANN., § 28-4307, commonly known as the Teachers' Tenure Law. "Contracts wherein a township school

corporation is a party" were also covered. The 1965 amendment deletes separate provisions distinguishing teachers in township school corporations, and eliminates a previous distinction between the times at which a notice of non-renewal must be delivered by a school city or town and a township school in order to prevent an automatic contract renewal. It also adds the paragraph to which your letter refers, which reads as follows:

"This act shall be effective for all teachers employed in the public schools of the state of Indiana and all such teachers comprehended within the provisions of this act shall be and are hereby granted all the rights, privileges, and protections provided by this act and on and after July 1, 1967, by the provisions of Chapter 97 of the Acts of 1927 and acts amendatory thereof the same as if they were teachers in cities and towns."

You will note that this paragraph provides that the Teachers' Tenure Law (Acts 1927, ch. 97) shall apply to "all teachers employed in the public schools . . . the same as if they were teachers in cities and towns." Thus the phrase "all teachers employed in the public schools" means those teachers employed by school cities and towns and those employed by other public school corporations, including township school corporations.

The Teachers' Tenure Law reads in part as follows:

"Any person who has served or who shall serve under contract as a teacher in any school city corporation or any school town corporation in the state of Indiana 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. . . . And, provided further, That teachers' contracts shall be uniform and of the form and wording as prescribed by the state superintendent of public instruction." Burns § 28-4307.

The Supreme Court has held that Teachers' Tenure Law must be construed with statutes concerning written teachers'

OPINION 31

contracts, *Lost Creek School Township v. York*, 215 Ind. 636, 21 N.E.2d 58, 127 A.L.R. 1287 (1939). Ind. Acts 1943, ch. 202, § 1, Burns IND. STAT. ANN., § 28-4330, commonly known as the Teachers' Uniform Contract Law, expressly supplements the Teachers' Tenure Law and provides for the types of contracts which must be used for all teachers employed in the public schools of the state. It provides for two kinds of contracts, regular and temporary, and excludes tenure provisions from any temporary teacher's contract. See 1943 O.A.G. 655.

The Supreme Court stated in *Board of School Commissioners v. State ex rel. Wolfolk*, 209 Ind. 498, 199 N.E. 569 (1936), that the Teachers' Tenure Law does not apply to "casual substitute teachers." Such term is presently defined in the Teachers' Uniform Contract Law, Burns § 28-4330, *supra*, as it may be modified by Ind. Acts 1945, ch. 231, § 2, as amended, Burns IND. STAT. ANN., § 28-4333 (1965 Supp.). See 1962 O.A.G., page 160, No. 33.

Thus, in spite of the language in the Teachers' Tenure Law which indicates that the statute presently applies to any teacher serving under contract in any school city or school town corporation, only those teachers who serve under "regular contracts" are included within its coverage.

Your first question can be answered by stating that on and after July 1, 1967, all teachers employed by public schools, including those employed in township school corporations, who have served in the same school corporation for five (5) or more successive years under regular contracts and thereafter enter into another regular contract with the same school corporation, will have the rights and privileges and protections of the Ind. Acts 1927, ch. 97.

The answer to your second question depends upon the time the contract for the 1967-68 school year is entered into. You will note that there are two time qualifications for becoming a permanent teacher set out in the Teachers' Tenure Law. The teacher first must serve five (5) or more successive years in any one public school corporation; secondly he must "at anytime *hereafter* enter into a teachers' contract for further service." (Emphasis added.) Other Attorneys General have been of the opinion that the word "hereafter" as used in this

1965 O. A. G.

statute means "after the effective date of the act." See 1933 O.A.G. 139; 1942 O.A.G. 115. See also *Miller v. Barton School Township*, 215 Ind. 510, 20 N.E.2d 967 (1939), decided under the original 1927 Teachers' Tenure Law.

Therefore, in view of the effective date of July 1, 1967, for the application of the Teachers' Tenure Law to teachers under regular contract in public schools which are not those of a school town or school city, and in view of the use of the words "hereafter enter into" concerning contracts under the Teachers' Tenure Law, it is my opinion that any teacher who has served in a public school corporation for five (5) or more successive years before July 1, 1967, under a regular contract, and who after that date enters into his sixth or more year regular teaching contract with that corporation for services to be rendered during 1967-68, will become a permanent teacher within the meaning of the Teachers' Tenure Law. If the sixth or more regular teaching contract of such a teacher and school corporation for 1967-68 is entered into before July 1, 1967, the teacher will not become a permanent teacher under the Teachers' Tenure Law unless and until he enters into a regular and definite contract after that date. See 1942 O.A.G. 115.

OFFICIAL OPINION NO. 32

August 18, 1965

Mr. Richard L. Worley, State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. Worley:

This is in response to the request of your predecessor for an Official Opinion in answer to the question presented by his letter, which reads as follows:

"Chapter 225, Acts of 1965, H.B. 1660, which became effective May 1, 1965, requires each city and town to create a 'Cumulative Capital Improvement Fund' into which the proceeds of the cigarette tax distribution allotted to such city or town in accordance