

inmate status. The Legislature has decided that this procedure will be more beneficial to parolees over whom the parole board has supervision. The two acts in question provide for the transfer of this supervision to other states and once this transfer is effectuated Burns' 52-1134a, *supra*, would no longer be applicable and the law of the receiving state would apply.

It is further my opinion that pursuant to the Acts of 1935, Ch. 289, Sec. 3, as found in Burns' (1956 Repl.), Section 9-3003, the Governor would have the power to provide by compact that our law providing emergency care would apply to parolees from other states in this state if the compacting state would provide the same care for Indiana's parolees. This of course would have to be a matter of agreement.

Your sixth question is as follows:

"6. Do the provisions of this Act apply to any person on parole or leave status who requires emergency medical, surgical or hospital care, as a result of an injury encountered while committing a criminal act or an injury resulting from the arrest of such person who has committed a criminal act?"

Burns' 52-1134a, *supra*, is applicable as long as the injured party is on "parole or leave status." The statute makes no exception. Again an individual remains on parole status until there is a hearing and affirmative action by the parole board. (See answer to questions 3 and 4) The parole status would not be affected by any *charge* of a criminal act or resisting arrest.

OFFICIAL OPINION NO. 56

November 20, 1963

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

Your letter of June 26, 1963, has been received and reads as follows:

OPINION 56

“Frequently the board of school trustees adopts a resolution, and makes same a part of the salary schedule, allowing teachers upon retirement certain fringe benefits or bonus payments. Sometimes the resolution specifies a definite amount to be paid upon retirement. Sometimes the resolution states that payment for a definite number of the teacher’s accumulative sick leave days will be made upon retirement.

“Your official opinion is respectfully requested concerning the following questions:

“1. Are such payments to teachers upon retirement, made in accordance with a resolution adopted and made a part of the adopted salary schedule, legal payments?

“2. If the answer to question no. 1 is in the affirmative, should such additional compensation payments made to teachers upon retirement be considered as salary or as a bonus payment?

“3. Should such additional compensation payments made to teachers upon retirement be considered by the Indiana State Teachers’ Retirement Fund Board as annual compensation for the last school year before retirement and be included in the retirement benefit calculations pursuant to Section 5, Subsection a, Chapter 325, Acts of 1959?”

In answering your questions it becomes necessary to discuss the powers of boards of school trustees generally.

In State *ex rel.* Thurston v. School City of Anderson (1957), 236 Ind. 649, 653, 142 N. E. (2d) 914, it was said:

“Section 28-2402, Burns’ 1948 Replacement, makes the school city a ‘distinct municipal corporation for school purposes.’ The trustees constitute a statutory board, and like other statutory boards, ‘unless a grant of power and authority can be found in the statute it must be concluded that there is none * * *

“‘Cities and towns in Indiana are incorporated entities, possessing only such powers as are granted by the legislature in express words, and those necessarily

implied or incidental to those expressly granted, and those indispensable to the declared objects and purposes of the corporation and to its continued existence. When the manner in which granted powers may be exercised are by statute restricted to a definite course of procedure such procedure must be followed * * *

The Acts of 1927, Ch. 97, as amended, as found in Burns' (1948 Repl.), Section 28-4307, reads, in part, as follows:

“* * * teachers' contracts may contain provisions for the fixing of the amount of annual compensation from year to year by a salary schedule adopted by the school corporation * * *”

The Acts of 1899, Ch. 192, as amended, as found in Burns' (1948 Repl.), Section 28-2410, provides general duties of school trustees which include those to “take charge of the educational affairs of their respective townships, towns and cities” and to “employ teachers,” without elaboration, but there are a few statutes applicable to cities of particular size which are more detailed, such as Acts of 1931, Ch. 149, as found in Burns' (1948 Repl.), Section 28-1907, which reads, in part, as follows:

“Such boards of trustees shall also have power and authority:

* * *

“Second, to take charge of, manage and conduct the educational affairs of their respective cities * * *

* * *

“Seventh, subject to all school laws of the state pertaining thereto, to employ and discharge * * * teachers * * * to fix and pay their salaries and compensation; to classify them and adopt schedules of salaries * * *”

Although all statutes applicable to particular school corporations do not specifically refer to salary schedules, all boards of school trustees, or similarly named boards which are empowered to contract with teachers are bound by the above teachers' contract provision and by the so-called Minimum

OPINION 56

Salary Law, being the Acts of 1945, Ch. 231, as amended, as found in Burns' (1963 Supp.), Sections 28-4332 and 28-4333, and are required to adopt salary schedules. Contracts with individual teachers are based on such salary schedules.

The school governing body has wide discretion in determining what elements should be considered as "salary" in adopting a salary schedule.

Therefore, in answer to your first question, it is my opinion that payments made in accordance with a salary schedule adopted by the governing body of a school corporation pursuant to a resolution are legal payments.

As stated above, no authority is found to make any payments to teachers other than as the result of a duly adopted salary schedule.

In answer to your second question such payments could only be considered as salary and not as a bonus payment.

The Acts of 1959, Ch. 325, Sec. 5, as amended, and found in Burns' (1961 Repl.), Section 60-1928, sets forth the method of computing payments by teachers to the retirement fund and bases such payments on "annual compensation."

Although the word "compensation" may, in certain circumstances have a broader meaning than "salary," these terms would appear to be synonomous in the present case. There is no provision for paying a teacher any money other than a salary set according to a duly adopted salary schedule.

Therefore, in answer to your third question, all payments made to a teacher as salary would be considered as part of the annual compensation and should be considered as such by the Indiana State Teachers' Retirement Fund Board and used in calculating retirement benefits.