

## OPINION 33

provided for the fixing of such compensation, then the board members of the reorganized school must also serve without compensation.

3. The answers given herein with respect to your questions Nos. 1 and 2 provide, in part, the answer to your third question. However, if the Comprehensive Plan does not provide a compensation, or does not delegate the fixing of compensation to the board itself, or places the school corporation in a classification under the general law which does not provide a compensation for such school board members then the school board members must serve without compensation.

---

### OFFICIAL OPINION NO. 33

May 15, 1962

Mr. Earl M. Utterback, Executive Secretary  
Indiana State Teachers' Retirement Fund  
506 State Office Building  
Indianapolis 4, Indiana

Dear Mr. Utterback:

This is in reply to your request for an Official Opinion on the following question:

"What constitutes substitute teaching and for how long may a teacher substitute and not jeopardize his retirement benefits (teachers drawing retirement and doing substitute teaching)?"

The Indiana statutes require that all teachers' contracts be in writing.

Acts of 1899, Ch. 111, Sec. 1, as found in Burns' (1948 Repl.), Section 28-4302;

Acts of 1921, Ch. 91, Sec. 1, as found in Burns' (1948 Repl.), Section 28-4304;

Board of School Commissioners of the City of Indianapolis *et al.* v. State *ex rel.* Wolfolk (1936), 209 Ind. 498, 199 N. E. 569;

1962 O. A. G., page 102, No. 24.

The Acts of 1943, Ch. 202, Sec. 1, as found in Burns' (1948 Repl.), Section 28-4330, provides that all teachers employed in the public schools of the state shall be employed under the regular teacher's contract prescribed by the State Superintendent of Public Instruction except for those teachers hired under a temporary teacher's contract issued for the reasons specified and in conformity with the requirements of the said statute. The temporary teacher's contract form is to be used only in cases where a teacher is employed to serve because of absence of a regular teacher who has 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 is attested to by a licensed physician. The only other exception in Burns' 28-4330, *supra*, concerns casual substitute teachers, and provides, in part:

"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 [6] weeks of consecutive employment  
\* \* \*"

The exception concerning substitutes quoted in the section immediately above has since been qualified by virtue of the provisions of the Acts of 1945, Ch. 231, Sec. 2, commonly called the Minimum Salary Law, as last amended by the Acts of 1959, Ch. 243, Sec. 1, as found in Burns' (1961 Supp.), Section 28-4333, to provide, in part:

"The term 'substitute teacher' shall include those teachers working in the public schools for not more than six (6) weeks during any one school year and who hereafter may be employed without a written contract."

Under this provision of the statute, a substitute teacher may not be employed for a period of more than six weeks during any one school year. Any further employment for that year would require a regular written contract and the teacher technically would not be a "substitute."

## OPINION 33

In addition to asking what constitutes substitute teaching, your letter also asked how long a teacher could substitute and not jeopardize his retirement benefits. Any teacher who retired under the terms of the Acts of 1915, Ch. 182, as amended, would be subject to the provisions of Section 14 of that Act, as amended and found in Burns' (1961 Supp.), Section 28-4511(i), which provides:

“\* \* \* Occasional substitute teaching or other comparable service for compensation by retired teachers may be permitted by the board regardless of age up to a total of ninety [90] days, and *without annuity reduction up to a total of thirty [30] days* in any one [1] [state] fiscal year.” (Our emphasis)

Any teacher who retired under the terms of the Acts of 1955, Ch. 329, as amended, would be subject to the provisions of Section 18 of that Act, as amended and as found in Burns' (1961 Repl.), Section 60-1929, which provides for the reemployment of employees who are receiving retirement income payments under that act. Subsection (a) reads as follows:

“(a) If a member who is receiving retirement income payments under this act becomes reemployed in a *position covered by this act*, his retirement benefit payments shall cease after thirty [30] consecutive school days or working days of such reemployment. During such period the member shall also make contributions under section 18(a) of this act.” (Our emphasis)

In order to be in a position covered by Burns' 60-1929, *supra*, as a member of the Teachers' Retirement Fund, it is necessary for one to be a “legally qualified and regularly employed teacher”—the requirement for membership established by the Acts of 1915, Ch. 182, Sec. 14, as amended and found in Burns' (1961 Supp.), Section 28-4511. The scope and meaning of the term “regularly employed,” as used in this section, was considered in 1943 O. A. G., page 34. That Opinion states:

“\* \* \* It seems to me that the words, ‘regularly employed’, when taken in their ordinary and usual

sense imply a service under contract which is continuous as compared with intermittent. I think, too, that they imply a service of some duration, as distinguished from one or two days. It should not be so limited, however, as to eliminate the possibility of certain days off duty or even a part-time service, so long as the service is under contract and is rendered at fixed and regular periods \* \* \*\*"

It is my opinion that a teacher receiving retirement benefits under the Acts of 1955, Ch. 329, as amended, who works in the public schools as a substitute teacher for not more than six weeks during any one school year and who is not under written contract would not be considered as an active, participating member of the Teachers' Retirement Fund inasmuch as he is not a "regularly employed" teacher, and he would therefore not be in a position covered by Burns' 60-1929, *supra*. He could, therefore, continue to receive retirement benefit payments while acting as a substitute teacher, as that term is used herein. However, if he teaches more than six weeks during any one school year, he is required by statute to be under a written contract, and as a "regularly employed" teacher he would again be in a position covered by the Fund and by Burns' 60-1929, *supra*, and his retirement benefit payments from the Teachers' Retirement Fund would cease after thirty consecutive school days of such reemployment.

I find no statutory provisions which would authorize a teacher who retired due to years of service to receive retirement benefit payments from the Teachers' Retirement Fund and simultaneously receive service credit under the Fund for the same period of time, except for the first thirty school days of his reemployment as a regularly employed teacher.

In summary, it is my opinion that a substitute teacher is one who teaches in the public schools for not more than six weeks during any one school year and who may be employed without a written contract. A teacher retired pursuant to the terms of the Acts of 1915, Ch. 182, as amended, may do occasional substitute teaching up to a total of thirty days in any one fiscal year without having his benefit from the Teachers' Retirement Fund reduced. A teacher retired under the terms

## OPINION 34

of the Acts of 1955, Ch. 329, as amended, would be considered a "regularly employed" teacher if he taught, even as a substitute, for more than six weeks during the school year and would be required to be under written contract. Such retiree's benefit payments from the Teachers' Retirement Fund would then cease after thirty consecutive school days of such re-employment.

---

### OFFICIAL OPINION NO. 34

May 16, 1962

Hon. Charles O. Hendricks  
Secretary of State  
201 State House  
Indianapolis 4, Indiana

Dear Mr. Hendricks:

Your letter concerning the Indiana Yearly Meeting of Friends, in which you request an Official Opinion from this office, reads as follows:

"This letter is in reference to a letter received December 1, 1961, by the office of the Secretary of State, concerning the corporate capacity of the Indiana Yearly Meeting of Friends.

"This Concern was originally incorporated in the State of Indiana by an Act of the Legislature of 1850. The Indiana Yearly Meeting has recently been re-incorporated under the Act of 1943, Chapter 108. There is some question as to the intent of the Act under which they were originally incorporated. This Act attempted to impose the limitation of \$20,000.00 on either:

- “(a) The amount of gifts which could be received each year, or
- “(b) The amount of income of the corporation to be received each year, or
- “(c) To limit in some other way.

"Prior to the re-incorporation, the Yearly Meeting was made the beneficiary under the will of Miss Lillian