waiving and his privies. Where parties for whose benefit conditions are imposed waive them, strangers there-to cannot complain."

It would thus appear that a retired teacher who voluntarily and intentionally relinquishes a known existing legal right to a retirement benefit from the Indiana State Teachers’ Retirement Fund has effectively waived that right and cannot later reclaim or recapture it without the consent of the retirement fund. Thus a properly executed written form of waiver would effectively waive the retired teacher’s right to the benefit permanently, unless and until the State Teachers’ Retirement Fund consented to a release or retraction of such waiver.

OFFICIAL OPINION NO. 26

March 30, 1962

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

Dear Mr. Wilson:

Your letter of March 21, 1962 has been received requesting an Official Opinion on the following question:

"‘As stated in the above communications, the Comprehensive Plan that includes the two school corporations in question was submitted to the State Commission for Reorganization of School Corporations on October 23, 1961. Sometime after that date, the City of Mishawaka annexed certain areas included in the plan to be voted on in May 1962. Since the aforesaid plan did not require the voters of Mishawaka to vote on the approved plan, what is the voting status next May on the school reorganization plan of the voters out of Mishawaka on October 23, 1961, but annexed to Mishawaka at a later date?’"

Acts of 1959, Ch. 202, Subsec. (2a) of Sec. 7, as added by Acts of 1961, Ch. 302, Sec. 1, as found in Burns’ (1961 Supp.), Section 28-6116a, provides as follows:
"In instances where the proposed school corporation reorganization plan approved by the state commission involves no change in territorial boundaries or in the board of school trustees or other governing body of a school corporation, other than a change, if any, in the time of election of board members, or the time such board members take office, such approved plan shall automatically come into being on either July 1 or January 1 following the date of such approval, whichever is earlier. In such event, no interim board members shall be appointed, the board members in office on such date shall continue to constitute the governing body of the school corporation until their successors are qualified, and the terms of their respective offices and their board memberships shall remain unchanged except to the extent the plan provides otherwise."

The Comprehensive Plan adopted by the St. Joseph County Committee for the Reorganization of School Corporations, and approved by the State Commission for the Reorganization of School Corporations, on page 49, after having made provisions for other reorganized school corporations in the county, provides:

"IV.

"Name: School City of Mishawaka

"(Inasmuch as the proposed school corporation reorganization plan involves no change in the territorial boundaries or in the board of school trustees of the School City of Mishawaka, the present form of that school corporation in its entirety is maintained.)"

On the date that the Comprehensive Plan was adopted by the St. Joseph County Schools Reorganization Committee the territorial boundaries of the School City of Mishawaka were fixed as being co-extensive with the corporate limits of the City of Mishawaka.

The Supreme Court of Indiana in the case of Fort Wayne Community Schools v. State ex rel. New Haven Public Schools et al. (1959), 240 Ind. 57, 159 N. E. (2d) 708, 712, states in part:
"We believe that the annexation statutes can be construed in a manner compatible with the purpose and intent of the school consolidation statutes, without defeating the purpose of annexation and without causing untold confusion between the civil and school corporations in a particular area. And as the annexation statutes do not expressly provide for the acquisition of a consolidated school corporation, we do not believe the language and construction given the earlier annexation statutes should be extended to cover the acquisition of consolidated school districts in the face of the spirit and intent of the school consolidation statutes which militate to the contrary."

The Comprehensive Plan has been adopted by the county committee and the limits of the various school corporations has been determined thereby. In such plan, as set forth above in part, it is stated that the then-present form of the Mishawaka School Corporation "in its entirety is maintained." The geographical limits of such Mishawaka School Corporation, being part of its form, would continue if the aforesaid plan is finally adopted, even though the plan does not become effective until a date after there has been a change in boundaries of the Civil City of Mishawaka. The change of any civil boundaries should be considered as separate and distinct from the boundaries of a school corporation fixed in the Comprehensive Plan.

Those persons living within the present corporate limits of the City of Mishawaka but within the area annexed after the date the Comprehensive Plan was adopted by the county committee would still be in a school district other than the School City of Mishawaka.

I am of the opinion that those people in the area annexed to the city subsequent to the adoption of the plan by the county committee would vote on the school reorganization plan applicable to them, as would any others residing in the same school district.