

1959 O. A. G.

If the teacher is, either through incompetency, or some other manner, guilty of infractions of the requirements of the statute or rules of the school corporation constituting grounds for dismissal of a tenure teacher, as above referred to, the only manner in which this could be tried and determined would be by preferring charges under the foregoing statute and could not be indirectly accomplished by action of the school board through the medium of reducing her salary pursuant to both rule or schedule for "inferior performances."

In answer to your third question, I am of the opinion the teacher is not obligated to accept a 1959-60 teaching contract at the state minimum salary where there is a salary schedule in effect in said school corporation fixing a higher salary for her class of teachers, based upon the training, experience, and degree completed as of the first day of service, but could insist upon a contract containing the proper stated salary. If the contract were refused the teacher, I am of the opinion she should offer her services when school starts and reasonably keep such offer open and then if necessary pursue her remedies in court to secure the execution to her of a proper contract. However, I am of the further opinion should she accept such a contract containing only the minimum salary schedule, and served under the same, she could, during or after service, successfully maintain an action for the difference in salary due her under such schedule, without consideration for the limitation therein prescribed, or any reduction for "inferior performances."

OFFICIAL OPINION NO. 36

August 3, 1959

Hon. Albert A. Steinwedel
Auditor of State
238 State House
Indianapolis, Indiana

Dear Mr. Steinwedel:

Your letter of June 24, 1959 has been received and reads as follows:

OPINION 36

"We submit herewith the proposed distribution of excise funds as of May 1, 1959, which has been filed with this office by the Alcoholic Beverage Commission, and request your official opinion regarding the following item.

"Please note that in this distribution, as was done in the last one made as of November 1, 1958, the appropriation made to the Special Education Fund by Chapter 317, Acts of 1957 (Burns' 1957 Supp. to Vol. 6, Part 2, Page 152; 28-3530), has been deducted in its entirety from the one-third of permits allocated to school units (Burns' 12-811).

"Chapter 317, Acts of 1957, reads as follows: 'For the administration and field service of the division of special education within the Indiana state board of education, as created in this act, there is hereby appropriated annually out of the excise funds of the alcoholic beverages commission, the sum of twenty-four thousand five hundred dollars (\$24,500). Funds so appropriated shall be deposited into a special fund in the state treasury to be known as the "Special Education Fund," and to be administered by the state superintendent of public instruction and which shall be used for no other purposes than for the administration of the provisions of this act.'

"Since the statute does not direct that the above transfer shall be deducted in its entirety from the schools' distribution, this office questions whether such transfer should not first be taken from all excise funds before making any distribution."

Your letter correctly quotes Acts of 1957, Ch. 317, Sec. 1 as found in Burns' (1959 Supp.), Section 28-3530, which amends the Acts of 1947, Ch. 276, Sec. 10, regarding the appropriation of such amount to the Special Education Fund.

The statute concerning the distribution of such excise fund is Acts of 1935, Ch. 226, Sec. 40, pars. 3 and 4 of cl. f, as amended by Acts of 1939, Ch. 30, Sec. 5, as found in Burns' (1956 Repl.), Section 12-811, which provides that 33 $\frac{1}{3}$ % of the funds collected and paid into the "Excise Fund" shall be

distributed by the Superintendent of Public Instruction semi-annually on the 1st day of June and the 1st day of December of each year among the several school taxing units of the state. It provides that the remaining $66\frac{2}{3}\%$ of said fund shall upon warrant of the auditor of state be paid into the general fund of the treasury of the city, town or county in direct proportion to the amount of dealers' or retailers' license fees paid in respect to establishments located in said cities, towns or counties.

An examination of the provisions of Acts of 1957, Ch. 317, setting up the "Special Education Fund" shows that the \$24,500 is "appropriated annually out of the excise funds of the alcoholic beverages commission." There are excise funds received by the Alcoholic Beverages Commission other than those which are deposited in the "*Excise Fund*" created by the Acts of 1935, Ch. 226, Sec. 40, paragraph 2 of clause (f), as amended and as found in Burns' (1956 Repl.), Section 12-810. These additional receipts by said commission are provided for by Acts of 1935, Ch. 226, Sec. 40, paragraph 1 of clause (f) as amended, as found in Burns' (1956 Repl.), Section 12-809, which reads as follows:

"It is hereby made the duty of the excise administrator under direction of the department of treasury to collect all license fees paid for or in connection with the issue of any brewer's permit, distiller's permit, rectifier's permit, winery permits, all industrial alcohol permits, all special permits, all beer wholesaler's permits, all liquor wholesaler's permits, all wine wholesaler's permits, all malt permits of every kind and nature, all temporary alcoholic malt beverage permits, all dining-car and boat permits of every kind and nature, or in respect to the continuance of any of said permits, including any deductions authorized by this act and retained by the state of Indiana where applications for permits are refused, or as costs paid on account of the transfer of any permit and/or levied and/or required to be collected under this act, and also all excise taxes and/or license fees derived from the sale or gift or withdrawal for sale or gift of any and all alcoholic beverages and/or malt, wort, malt syrup, malt extract and/or liquid malt, with respect to

OPINION 36

which or on account of which the same are imposed and/or levied at the rate fixed herein per pint and/or per gallon thereof (including all gallonage and pintage tax) and also all moneys derived or collected from the sale of stamps authorized hereunder together with all other assessments not specifically included or any other disposal thereof herein made, all penalties for the non-payment of taxes herein levied, forfeiture not in the nature of a fine or penalty belonging to the common school fund, and the proceeds of all sales and judgments made under or in the enforcement of this act and he shall deposit same daily with the treasurer of state, and not later than the fifth day of the following month shall cover same into the general fund of the state of Indiana for general fund purposes.”

It is a rule of statutory construction that the Legislature is presumed to be acquainted with the existing law and in legislating on any subject to have in view its provisions.

1953 O. A. G., pages 273, 281, No. 57;

1949 O. A. G., pages 213, 217, No. 56.

Repeals by implication are not favored and in case of an apparent conflict in the provisions of several statutes, if they can by any rule of statutory construction be construed in harmony, such construction will be adopted so that each may be given full force and effect.

State ex rel. Davenport et al. v. International Harvester Co. (1940), 216 Ind. 463, 467, 25 N. E. (2d) 242;

State v. Gerhardt (1896), 145 Ind. 439, 44 N. E. 469;

Meyer et al. v. Town of Boonville et al. (1904), 162 Ind. 165, 70 N. E. 146.

It has further been held that where an act is supplemental to another act it will be construed as not being inconsistent therewith if such construction is possible.

State ex rel. Robertson et al. v. Circuit Court of Lake County (1938), 215 Ind. 18, 28, 17 N. E. (2d) 805.

1959 O. A. G.

Under the above rule it is presumed the Legislature knew that the fees received by said Commission and required to be deposited in said "Excise Fund" had already been appropriated at the time Acts of 1957, Ch. 317, herein considered, was enacted. It is equally apparent that other similar excise funds of the Commission, formerly deposited in the general fund, would be available for the \$24,500 appropriation in question. If we give this construction to the statute in question it gives full force and effect to all the statutes involved in accordance with the above legal principles.

I am, therefore, of the opinion that the \$24,500 appropriated by Acts of 1957, Ch. 317, Sec. 1, should be deposited in the "Special Education Fund" from excise funds received by said Commission under Acts of 1935, Ch. 226, Sec. 40, paragraph 1 of clause (f), as amended and as found in Burns' (1956 Repl.), Section 12-809, to the extent such funds are available, before such use could be made of the excise funds collected under the next succeeding section of the same act, Burns' (1956 Repl.), Section 12-810, which funds are those already appropriated and directed to be deposited in the "Excise Fund."

OFFICIAL OPINION NO. 37

August 6, 1959

Mr. John Peters, Chairman
State Highway Department of Indiana
State House Annex
Indianapolis 9, Indiana

Dear Mr. Peters:

This is in answer to your recent letter wherein you request an Official Opinion regarding the disbursement of funds to Grant and Wabash Counties from a special deposit account of the Office of Civil Defense Mobilization on orders of the Regional Director of that office. This disbursement of funds would represent a reimbursement to said counties of a part of the cost of constructing a county line bridge.

The precise question is contained in your first letter of May 15, 1959, and reads as follows: