1936

The Legal Status of the Indiana Teacher as Revealed by a Study of Court Decisions

Marie H. Stewart

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THE LEGAL STATUS OF THE INDIANA TEACHER
AS REVEALED BY A STUDY
OF COURT DECISIONS

This dissertation presents a few of the many legal problems which confront the educator. This field of investigation is not new, but it is hoped that the facts which have been brought together for this particular consideration, seemingly for the first time in any study, will prove as helpful to the reader as the work has been beneficial to the writer. It endeavors to do two things; first, to determine the teacher's status in Indiana and second, to discover what protection the state and its agent, the court afford the teacher.

This study was made possible by the kind cooperation of the following persons: Dr. Albert Beck whose aid in the organization of material has been invaluable; Dr. William Leola Richardson, Dean of The College of Education, Butler University, whose kind guidance and encouragement have been inseparable; and the members of the staffs of the local libraries. These libraries are: The Indiana Supreme Court, The Indiana State, The Indianapolis Teachers' Special Branch and Butler.

A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of Master of Science

M.E.S.

Indianapolis, Indiana
June 1936

COLLEGE OF EDUCATION

BUTLER UNIVERSITY

1936
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For this assistance the writer is deeply grateful.

M.N.S.

Indianapolis, Indiana
June 1936

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1. INTRODUCTION

It is an accepted truth that public education in Indiana is a State function. The reader has only to search through the court decisions bearing upon educational litigation to see clearly that the State's attitude toward education is one of extending equal opportunity to all children. Although the Federal Constitution did not mention education, the tenth amendment reserved to the states or people all of the powers not delegated to the general government. It was this right that Indiana exercised in the furtherance of the free school plan.

In consideration of the economic phase of education,

2 William A. Cook, Federal and State School Administration, Thomas Crowell Co., 1907, p. 47.
our state could not afford to permit the children to grow up into future citizens in ignorance. This is evidenced by the thought expressed in the State Constitution in "knowledge and learning, generally diffused throughout a community being essential to the preservation of a free government." This idea of education has been woven into the fabric of the life of the state. It has a profound meaning to the people. The spirit of equal opportunity in education found expression in one of the early newspapers which presented the matter as: "We cannot afford to be contented with education but as the measure of the progress of the states or people all of the powers not delegated to the general government." It was this right that Indiana exercised in the furtherance of the free school plan.

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\[3\] Indiana State Constitution, 1816, Article XX, Sec. 1.
\[5\] David Cooten, Indiana's Common School System, 1855, N. S., p. 33, 1 knowledge and authority.

Source of Material: The material for this study was
The Purpose: This study will undertake to determine the teacher's legal status in Indiana. The fact that questions relative to the teacher do arise each year, this investigation will prove profitable not only to the writer but administrators, teachers, and students of education, particularly the administrative field.

The Thesis: In this dissertation the thesis is to ascertain whether the state and its agent, the court, protect the teacher.

The Need for the Study: Very often the teacher who enters into a contract to teach fails to fully realize the major importance of the relationship created by the signing of the teacher's contract. The administrator has situations arise which require a knowledge of case law and the statutes. An attempt will be made to bring before the reader the principles underlying the legal relationships which are pertinent.

The teacher's contract is only one phase of the legal status of the teacher but it is beyond doubt the most important legal instrument around which all other relationships revolve. It is over this legal relationship that cases are brought to the courts each year. Not only the teacher, but those who bear the responsibility of the administration of public schools meet legal situations which are a challenge to their legal knowledge and authority.

Source of Material: The material for this study was
derived principally from the Indiana Statutes, annotated by Harrison Burns, Indiana State Law Reports, Indiana State Public Instruction Reports, Richard G. Boone's History of Education in Indiana, Charles Kettleborough's Constitution Making in Indiana, and Newspapers in the State. The source of material for this discussion is the original legal data recorded in the Indiana Law Reports of Indiana cases, the early Session Laws and later Statutes of Indiana. The data are authentically sound for they are constantly referred to by judges and lawyers in the pursuance of their legal profession.

To bring the source of material before the reader in a more concise form, the following table will give a tabulated account:

<table>
<thead>
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<th>Sources</th>
<th>Number</th>
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<tbody>
<tr>
<td>Books</td>
<td>30</td>
</tr>
<tr>
<td>Bulletins, magazines, monographs, reports</td>
<td>24</td>
</tr>
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<td>Indiana Newspapers</td>
<td>8</td>
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<tr>
<td>Total cases cited</td>
<td>64</td>
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Previous Studies in This Field: There have been several studies made in this field of administration, of these, another publication on school law which has been
a few have been limited to Indiana. Among the important studies in the latter group are those including teacher status, the contractual status of the teacher and a handbook of Indiana School Law.

In 1933, Ira Madison Allen made a very thorough study of the contractual relationship of the teacher in his contribution to knowledge, The Teacher's Contractual Status. He discusses the certification, selection, appointment, and dismissal of the teacher. His wide scope of cases indicates an exhaustive study of the statutes and the interpretation of them by the courts in the light of the teacher's contract.

Three years later, Clement T. Halan published his book on Indiana School Law. His work is wide in scope covering many phases of school law. One chapter is devoted to the discussion of the legal status of the teacher and the court cases. The judicial decisions contribute in an important way to the establishment of teacher status in Indiana.

Two years later, Newton Edwards published his book, The Courts and the Public Schools. In this work Mr. Edwards brings before the reader a clear analysis of the laws and court decisions bearing upon the employment of the teacher. Under this classification he discusses the certification and contract. The cases which are cited are not limited to Indiana but are national in scope.

Another publication on school law which has been
invaluable to the administrator and teacher is Frank R. de-Stephenson's Handbook of Indiana School Law. It is signifi-
cant in that it brings to the attention of the reader in a
concise way the important measures of school law. He discusses
the legal status of the Indiana teacher, setting forth the
important aspects of the contract. The court cases cited are
mostly limited to Indiana.

The Plan of this Study: The plan of this study resolves
itself into four main divisions. First, the plan will be to
review the Indiana statutes pertaining to the teacher, second,
to search the Indiana State Instruction Reports, magazines,
bulletins, and newspapers for important data in regard to
certification and training of teachers; third, to note the
changes in the trend of educational administration as present-
ed in books on the history of education in Indiana, and fourth,
to review the court cases which have arisen in regard to edu-
cational litigation relating to the teacher. From this materi-
al findings will be made and conclusions can be drawn.

1. The Method of Attack: The method of developing the
dissertation is "case-study" from cases selected in the
Indiana Law Reports and interpreted by the courts in terms
of the Indiana statutes. Any source was derived from the stab-

The historical method has been resorted to only to
establish the desired historic background on which to build
the discussion of the relationship of the teacher to the state.
4. Limitation of the Problem: This problem has been delimited to the study of the status of the Indiana teacher. The principal cases cited are in Indiana. Where other cases are mentioned it is for the purpose of showing how cases are interpreted in terms of outstanding case decisions of the past. The limitation of the problem requires the definition of the term, teacher. For this study the legal definition of "teacher" will be used. It is: The term "teacher" as used in this act shall mean and include any principal, assistant principal, assistant superintendent, supervisor, assistant supervisor, persons in charge of any special instruction, and any teacher or instructor regularly employed by the board of school commissioners of such city. In addition to this term the study will include the superintendent of schools.

Summary: In summarizing the chapter, concise statements of the important thoughts expressed will fix in the mind of the reader the entire organization of the subject matter. They are as follows:

1. To attempt to establish the teacher status in Indiana.
2. To ascertain whether the laws of the state and the interpretation of the laws by the court protect the teacher.
3. The material of primary source was derived from the statutes, session laws and ruling case law of the state. Data gathered, the intention is to set forth the findings and from these Indiana Statutes (28-467) Annotated - Burns.
4. Secondary source material was obtained from Indiana Instruction Reports, Histories of Indiana, education, magazines, bulletins, monographs and newspapers of the state.  

5. The study is delimited to the Indiana teacher including the superintendent, assistant superintendent, principals, assistant principals, supervisors, and teachers engaged in the instruction of children. The purpose of this chapter is to present a brief overview of the history of education in Indiana in which the early teacher was involved. This permits a foundation upon which to attempt to construct the present teacher legal status. On account of the forceful political and educational activities which are carried on in organizing a state and district system, the discussion divides itself naturally into three main periods. The early period extended from the beginning of the Ordinance of 1785 to the beginning of state organization. The middle period comprises the extent of the period of centralisation of administration as far as 1900. The last period begins from the centralisation of administration in 1900 and Court cases.

6. By the interpretation and assimilation of all the data gathered, the intention is to set forth the findings and from these make recommendations and conclusions.
The purpose of this chapter is to present a brief overview of the history of education in Indiana in which the teacher status is involved with the purpose of establishing a background for the discussion of the legal status of the Indiana teacher in the chapters which will follow.

On account of the forceful political and educational activities which are carried on in organizing a state and free public schools the discussion divides itself naturally into three main periods. The early period extended from the beginning of the Ordinance of 1785 to the beginning of state organization. The middle period comprises the extent of the district system, 1816 to 1851. The third period extends from the beginning of free public education through the period of centralization of administration as far as 1900. This last date was chosen arbitrarily, for centralization of educational administration is still going on. However, this division is sufficient to serve the purpose for this study.
show the important trends in the relation of the teacher to
to the state; as the first school of any consequence in Indiana
and in the relation of to in the relation of

During the early period of Indiana history one of the
first attempts to express the ideals of education was the
articles of legislation bearing upon education in the Ordinance
of 1787 which set forth that "religion, morality, and knowledge
being necessary to good government and happiness of mankind,
schools and the means of education shall forever be encoura-
ged." This legislation did not prove mandatory and it was
not until the State Constitution of 1816 that the legislation
was directed to carry out the law affecting the educational
provision in the Constitution. The early people of Indiana found much to do in strug-
gling for an existence, combatting Indians and wild beasts,
clearing forests and building roads. Conditions did not per-
mit the establishment of a school system but the germ of
educational ideals lived and found new soil in which to
develop in the constitutional provision of 1816.

Many of the teachers in the early schools of Indiana
were of foreign lineage. Records show that one person who
substantiates this evidence was Father Rivet, a French mission-
ary, was banished from his country during the French Revolution

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1Ordinance of 1787.
2Clement T. Malan, Indiana School Law, Teachers College
and wandered into Indiana to teach. He conducted what was recognized as the first school of any consequence in Indiana and was held at Vincennes. Often the early teacher tramped from house to house seeking pupils to instruct. When the situation was found the teacher lived in the home and taught the children within and in the immediate neighborhood. Many of the homes bore the resemblance to a fort so necessary was it to secure protection from the Indians and wild beasts. Mrs. Julia Dumont who conducted a school in her home at Vevay in 1813 was held in high esteem by the people of that locality for the teacher of the previous year, he could teach with The teacher of the early school found hardships on every hand. The struggle for existence was so severe and the compensation for teaching so meager that the life of the teacher was far from attractive to others who were planning life work.

Wm. college who taught in Evansville in a brick house. At the outset, in the beginning of the district system of education, the ideals of the democracy were preserved in the Constitution of the State in the words; "Knowledge and learning, generally diffused through a community being essen-


David B. Banta, "Early Indiana Schools", Indianapolis News, Jan. 6, 1892.
tional to the preservation of a free government. 5 The well people wanted teachers and the question arose whether they should employ the teacher of "foreign or domestic growth and manufacture" they felt that with united efforts, the worthless teachers preying upon the inhabitants could be driven back from the state. 6 Across the palm of hand. We the subscribers, agree. At this juncture in the discussion, attention will be drawn to the individual teacher. At a town meeting a heated debate arose over two teachers. One, John Primer, could write and spell, and Abram Aten could do even more than Primer the teacher of the previous year, — he could teach arithmetic. The hat was passed and the ballots collected and counted allowing the vote to be in favor of Aten and arithmetic. 7 References from many sources show that the important qualities Another teacher in this period was Daniel Chute a graduate of Dartmouth College who taught in Evansville in a brick house for three hundred dollars. 8 John Dunn who taught inspiring the school of Johnson county canvassed the community with his Christmas the pupils exercised their authority in demanding

7Fassett Cotton, Education in Indiana, Progress Printing Co., 1934, p. 56.
8David D. Banta, Early Indiana Schools, Indianapolis News, March 25, 1892.
"article" the important parts of which will be stated."

Will teach spelling, reading, writing and arithmetic as far as the single rule of three. My government will be; for being idle, two lashes; for pinching, three licks across the palm of hand with my ferule; for tearing the books or thumbing, four licks with the ferule across the palm of hand. We the subscribers, agree to pay said Dunn in vegetables; such as potatoes, onions, beets, cabbage; in fruit, such as apples, peaches; in corn, bacon and wheat all at market prices or money in payments; last payment at end of term." The subscribers agreed also to provide a home and board. This contract reflects the conditions of the time and indicates the social as well as the legal status of the teacher, abolished in 1833. The same. The evidences from many sources show that the important qualification of the teacher was the ability to govern the pupils. Judge Banta gives an account of one teacher making the rounds of the school room four times a session and whipping one pupil in three each round. Upon occasions such as Christmas the pupils exercised their authority in demanding a "treat" and if it were not forthcoming all systems of chastisement were resorted to in the activity. Other

Indiana Public Instruction Report 1906, p. 44.


Ibid., 1902.
instances of cases of discipline are called to the attention by an article in the Wayne County Record ordering an inquiry into the reasons for a severe flogging of a nine year old boy. "Parents against Teachers" was another discussion by Rev. L. Jameson appealing to teachers to be considerate in the exercise of their duties.

The cases of discipline mentioned are convincing that the early teacher exercised authority to maintain order although it was accomplished in most instances with the rod.

Legislation which affected the teacher status during this period began with the provision for appointment of sub-trustees who levied local tuition revenue and the examination of teachers. This law was abolished in 1833. The same year Governor Noble in an address to Legislature, spoke of the lack of competent teachers to instruct in the township schools. This is not startling when it is known that one

\[\text{Wayne County Record, Centerville, Ind., June 4, 1845, Vol. 5, 75.}\]

\[\text{Common School Advocate, Indianapolis, 1847, p. 137.}\]

\[\text{Vanvactor v. State, 115 Ind. 276, 15 N. E. 341.}\]

\[\text{Indiana Legislative Bureau, "What Has Been Done in Indiana For Public School Education", 1914.}\]

\[\text{William Rawles, Centralizing Tendencies in Administration in Indiana, Macmillan, 1903, p. 200.}\]

\[\text{David D. Santa, "The Hoosier School", Indianapolis News, Feb. 10, 1892.}\]
seventh of the adults of Indiana were illiterate.\textsuperscript{18}

In 1836, the householder could employ a certified teacher when the trustee failed to do so. This entitled the householder to his share of the revenue of the township, thus giving state aid.\textsuperscript{19} The law of 1837, required the appointment of a county examiner to relieve the township trustees of the examination of teachers as to their qualifications and knowledge.\textsuperscript{20} The most important legislation was the appointment of the superintendent of common schools in 1843.\textsuperscript{21} The first of these appointments was George H. Dunn Esquire.\textsuperscript{22} With the office of superintendent established, the teachers came under the direction of a central officer although the office of administration was not so well organized until a later date. The beginning of the "School Bill" was attributed to the convention of "Friends of Common Schools" in May 1847, later becoming a law in 1849. This bill became a law largely through the efforts of Caleb Mills and was known as the "nine-line of public instruction was apostrophized with a June line of.

\textsuperscript{18} Mary Harding, The Early History of Education, 1916, M.S.

\textsuperscript{19} Session Laws, 1836, p. 33.

\textsuperscript{20} James H. Smart, Indiana Schools, Wilson, Henkle & Co., 1876, p. 12.

\textsuperscript{21} Session Laws of Indiana, 1843, p. 89.

\textsuperscript{22} Indiana State Report of Common Schools, Document #16, 1844, 1912, p. 7.
"An Act to Increase and Extend the Benefits of Common Schools,"23 teacher status of the period is reflected in the discussion of "The School Bill" where it was stated that "nothing has tended to degrade our common schools, than the want of well qualified teachers. But their ignorance and inefficiency is not to be wondered at, when it is remembered that the lowest bidder for a school, with little or no reference to his qualifications is generally the successful candidate."24 Even in 1848 teachers were licensed in Johnson County whose licensed "certified that they could teach arithmetic to the single rule of three."25

The third period of history of education to be considered for our purpose in this study extends from the beginning of the free schools system to 1900. This date has been chosen rather arbitrarily for the centralization of administration is still in process. But "by 1850 it was felt that the state had outgrown the Constitution of 1816."26

At the opening of this period the State Superintendent of Public Instruction was appointed with a long line of

23 David Goetting, Indiana's Common School System, 1893, p. 19, M. S.
24 Indiana State Report of Common Schools, 1847.
The teacher was benefited in many ways by legal provisions such as consolidation of school funds and supervision of instruction directed from a central department. With the central organization came the increase of requirements for license. The teacher in 1855 was required to be qualified to teach orthography, reading, writing, arithmetic, English, grammar and geography.

The county superintendent appointment was considered very important legislation in that the officer functions as a law-enforcing agent for educational laws.

Samuel L. Bugg reported the numbers of men and women licensed to teach in 1861 during the era of the requirement for license of orthography, reading, writing, geography, arithmetic, English and grammar. The greatest number of licenses issued were to men for the duration of a year. There were twenty-five women making a total of four hundred and...
fifty-nine. The table showed that more women than men had a license for less than six months. One hundred and seven men had a license for two years as compared with twelve women. The total licenses granted were six-hundred and thirty-seven to men and fifty-six to women. Of the women who were teaching in 1865 the following report was made:

**TABLE II. Report on Female Teachers 1865**

<table>
<thead>
<tr>
<th>Year</th>
<th>20 per cent</th>
<th>Licensed 10 per cent</th>
</tr>
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<tbody>
<tr>
<td>1869</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>1870</td>
<td>22 &quot;</td>
<td>21 &quot;</td>
</tr>
<tr>
<td>1862</td>
<td>54 &quot;</td>
<td>37 &quot;</td>
</tr>
<tr>
<td>1864</td>
<td>42 &quot;</td>
<td>46 &quot;</td>
</tr>
</tbody>
</table>

This is conclusive evidence that nearly half of the teachers in the field were women and of that number nearly half of them were licensed. This is a marked increase over the report of 1855 when it was reported that only one fourth of the teachers were women and by 1890 they held 49% of the teaching positions. The salary of the men was $23.76 as compared to $16.84 of the woman in 1855 and in 1890 it was $44.40 per month for men as compared to the sum, $40.20 per month, for women.

The number of pupils in charge of the teacher has changed with the years also. In 1855 the average teacher had fifty-eight pupils, in 1860 the average number was 53.

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32 Indiana State Public Instruction Report, 1865.
33 Richard Boone, op. cit., p. 318.
pupils to each teacher. For twelve months, sixteen months, twenty. The Board of Education was given power to grant State certificates of qualifications to teachers. Table III shows numbers of teachers' licenses in Indiana from 1867 to 1884. This data indicates that more state certificates were granted during the years 1872 to 1876 which seems natural after the state certificate law went into effect. Teachers trained for their work, were examined and granted licenses.

TABLE III. NUMBER OF TEACHERS' STATE CERTIFICATES GRANTED IN INDIANA 1867 TO 1884

| Year | Pupils
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1867</td>
<td>6</td>
</tr>
<tr>
<td>1868</td>
<td>2</td>
</tr>
<tr>
<td>1870</td>
<td>4</td>
</tr>
<tr>
<td>1871</td>
<td>7</td>
</tr>
<tr>
<td>1872</td>
<td>25</td>
</tr>
<tr>
<td>1873</td>
<td>37</td>
</tr>
<tr>
<td>1874</td>
<td>13</td>
</tr>
<tr>
<td>1875</td>
<td>15</td>
</tr>
<tr>
<td>1876</td>
<td>11</td>
</tr>
<tr>
<td>1877</td>
<td>12</td>
</tr>
<tr>
<td>1878</td>
<td>4</td>
</tr>
<tr>
<td>1879</td>
<td>5</td>
</tr>
</tbody>
</table>

State licenses were granted upon examination of teachers.


Session Laws of Indiana, 1865, p. 33.

This Table was developed from list of names, State Report of Public Instruction, 1884. It has been established through state legislation.
The licenses were granted for twelve months, sixteen months, twenty-four months and thirty-six months. In 1889, township institutes were established and in the same year an attempt was made to establish central control by making the State Superintendent of Public Instruction the only agent for issuing the teachers' licenses.

Since 1900 the trend has been toward greater central control with State support and State aid to teachers.

One of the important considerations of this period of Indiana education which relates to and affects the teacher status was that of State aid afforded the teacher in professional improvement. Table IV, shows in a concise way the important aids established by the state for the purpose of helping the teacher. Indiana University was the first state established school for higher education. The teachers were able to have a report of education of the state by 1844. Later the Indiana State Teachers' Association and Journal helped to unify the educational information. Soon after the Civil War, the Normal school for training teachers was established and on the heels of it came the provision for teacher's institutes. Indiana University opened the doors to women in 1867. Two years later the state made possible the establishment of Purdue University.

All of these agents of improvement for the teacher have been established through state legislation. This has come
### Table IV: State Aid Afforded the Teacher in Professional Improvement

<table>
<thead>
<tr>
<th>Institution</th>
<th>Date Established</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana Seminary</td>
<td>1824</td>
</tr>
<tr>
<td>Changed to Indiana University</td>
<td>1839</td>
</tr>
<tr>
<td>Indiana Common School Report</td>
<td>1844</td>
</tr>
<tr>
<td>Northern Teachers' Institute</td>
<td>1849</td>
</tr>
<tr>
<td>Indiana State Teachers' Association</td>
<td>1854</td>
</tr>
<tr>
<td>Indiana School Journal</td>
<td>1856</td>
</tr>
<tr>
<td>Indiana State Normal School</td>
<td>1865</td>
</tr>
<tr>
<td>County Teachers' Institute</td>
<td>1865</td>
</tr>
<tr>
<td>Township Teachers' Institute</td>
<td>1866</td>
</tr>
<tr>
<td>Indiana University Admitted Women</td>
<td>1867</td>
</tr>
<tr>
<td>Purdue University</td>
<td>1869</td>
</tr>
<tr>
<td>Teachers' Reading Circle</td>
<td>1883</td>
</tr>
</tbody>
</table>

---

about largely through the increasing efforts of educators and friends of education. 36

One author in writing of this middle period of Indiana Education, says: "This was a chaotic period. Educational funds were mismanaged, or lost, tramp teachers abounded, all grievously incompetent and school equipment of all kinds was unknown."

Education in general in Indiana in this period moved from the religious influence to the civil and came into Indiana to grow from the top downward.

For many years the state did not provide any institution of learning, institute, or publication which would contribute to the improvement of the teachers of the state. Later when educators believed that the teachers should not be of foreign "growth and manufacture", 39 the state university and normal schools were established.

In summarizing the chapter the main points will be set down in the form of brief statements:

1. The early teacher usually was of foreign birth.

36 The Spiceland Reporter, Nov. 9, 1873, #21.
2. The incompetency of teachers was outstanding.

3. The teacher became the victim of the town meeting at the time of employment and this stigma more or less has come on down to the present time.

4. The compensation of teachers was meager.

5. Certificates of teachers in the early days required little preparation on the part of the teacher.

6. With the state issuance of certificates to teachers came the increase of requirements for the permit to teach.

7. Increase of requirements for license increased the compensation.

8. The examinations which teachers were required to take for licenses gave the index to the quality and character of the teaching.

9. District control of educational administration gradually gave way to state control.

10. State established institutions of learning for improvement of teachers.


12. State support supplanted the uncertainty of local support.

In order to preserve a free school system in our state, the organizers of the Indiana schools no doubt exercised much wisdom in considering the outstanding characteristics
of the school legislation in the older states. Indiana could profit by their experiences when laws were formulated for the schools. Although these laws were available and principles were followed, the quality of style was not adhered to in the present, and it is calculated to search the early volumes for school laws to see how complicated and vague they are compared with the provisions of the constitutional hath.

CHAPTER III

THE SCOPE OF THE SCHOOL LAWS RELATING TO THE TEACHER

The purpose of this chapter is to reveal to the reader the many provisions in the present state school laws. In the previous chapter attention was called to a few of the laws necessary to the organization of a free common school system in the early years of education in Indiana. As time elapsed the laws have been revised and other laws formulated until the present school laws show by their legal allocation the importance of administration of education in the public school.

At the outset, in the consideration of school laws in general, they are restrictive, prohibitive and limiting in character. At the same instance the laws are protective in detail. Each law has not only one provision but oft times a provision. It is the intention of this chapter to show the scope of these laws and point out the protective functions that relate to the teacher.

In order to preserve a free school system in our state, the organizers of the Indiana Schools no doubt exercised much wisdom in considering the outstanding characteristics
of the school legislation in the older states. Indiana could profit by their experiences when laws were formulated for the schools. Although these laws were available and principles were followed, the clarity of style was not adhered to in the content. One has only to search the early volumes for school laws to see how complicated and vague they are compared with the provisions of the constitutions both State and United States. These laws are succinct and clear.

Many laws which failed to pass the Legislature would have reformed the legislation and improved the statutory laws now existing and which are in need of rewriting.

To bring the scope of the laws relating to employment, dismissal, license, retirement and tenure of the teacher before the reader a list of statutes will be found in the appendix.

The purpose of the overview of the laws relating to the legal status of the teacher is to give to the reader an understanding of the scope of the laws before discussing them in detail. Each law has not only one provision but oft times many sections. The space in this dissertation will not permit

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1Indiana State Public Instruction Report, 1892, p. 48.
3Ibid.

Ibid. v. Farlow, 75 Ind., 118.
the statement of all the provisions. Only a few of the important laws will be discussed in the light of their relation to the teacher.

In the first consideration, the law pertaining to employment and dismissal will be analyzed. The teacher will find that the trustees are not permitted to employ a teacher in any of the common schools unless he has a license in force at the time he is employed. It must be issued from the proper authorities. The penalty of teaching without a license is the loss of all claim to compensation out of school funds. However, if the license expires during the service the teacher is rendering, he will be permitted to finish the term. This law does not appear unreasonable yet cases at law have come to the attention of the courts over the failure to obtain a license. The teacher will find that this law provides also that the trustee is not permitted to employ a person to teach whom the majority of voters at the school meeting do not want employed. The same people may cause the trustee to dismiss a teacher providing that the dismissal is done only upon due notice and good cause shown. The dismissed teacher may receive the wages for the length of time services were rendered.

4Indiana Statute, (28-5005) Annotated, Burns.
5Jackson School Township v. Farlow, 75 Ind. 118.
The license is the legal document which is the written grant of the right to teach. "A certificate of qualification is held to be prima facie evidence of that qualification," however it is agreed that there is no legal difference between certificate and license. The teacher applying for a license subscribes to the oath or affirmation. This applies to teachers who are seeking a renewal of licenses also. No license is permitted to be issued unless the oath is filed in the Department of Public Instruction of the State. The teacher's license is issued by the State Board of Education through the Superintendent of Public Instruction. Since they have the power to issue licenses to teachers they have the power to revoke licenses. The teacher has an opportunity to be heard publicly in case he is notified that his license is threatened for good cause shown. This power years training from a standard college or university with specialization.


Indiana Statute (28-5112) Annotated, Burns.

Indiana Statute (28-4202) Annotated, Burns.

Indiana Statute (28-4203) Annotated, Burns.

Indiana Statute (28-4206) Annotated, Burns.
TABLE V. INDIANA TEACHERS' LICENSES

License are issued upon the bases of training and experience of the teacher. The examination of the different licenses will show that a specified amount of training is required for different grades of license and upon training, licenses may be raised from a low grade to a higher grade.

Table V simplifies the laws and indicates the scope of laws relating to the licenses. It is revealed that all first grade licenses issued to superintendents, supervisors, high school principals, and elementary principals require that the person be a graduate of a standard college or university and have one year of graduate work in addition to the other.

This first grade license in all departments is valid for five years and upon successful work is renewal for life. All second grade licenses of superintendents, supervisors, high school principals and elementary principals require four years training from a standard college or university with special training in supervision and administration. The second grade licenses are renewed after three successful years of service for three more years. The lowest grade is that of the second grade rural school teacher's license which requires one year of training from a two year standard normal

<table>
<thead>
<tr>
<th>License Type</th>
<th>Training Requirement</th>
<th>Validity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superintendent</td>
<td>3 years college, 4 years special training</td>
<td>Life</td>
</tr>
<tr>
<td>High School Principal</td>
<td>4 years college, 4 years special training</td>
<td>Life</td>
</tr>
<tr>
<td>Elementary Principal</td>
<td>2 years college, 3 years special training</td>
<td>Life</td>
</tr>
<tr>
<td>Second Grade Rural School Teacher</td>
<td>1 year college special training</td>
<td>Life</td>
</tr>
<tr>
<td>Junior High School</td>
<td>3 years standard college</td>
<td>Life</td>
</tr>
<tr>
<td>High School</td>
<td>First year standard college, more branches</td>
<td>Life</td>
</tr>
</tbody>
</table>

\[11\] Indiana Statute (28-4206) Annotated, Burns.
<table>
<thead>
<tr>
<th>License</th>
<th>Grades</th>
<th>Training</th>
<th>Specialization</th>
<th>Valid</th>
<th>Renewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superintendent</td>
<td>First</td>
<td>4 years graduation and 1 year graduation and 1 year graduate work standard college</td>
<td>Administrator and Supervisor</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td></td>
<td>&quot;</td>
<td>Second</td>
<td>&quot;</td>
<td>3 years</td>
<td>3 years</td>
</tr>
<tr>
<td>Teacher</td>
<td>Third</td>
<td>3 years work in standard college</td>
<td>&quot;</td>
<td>2 years</td>
<td>2 years</td>
</tr>
<tr>
<td>Supervisor</td>
<td>First</td>
<td>4 years standard college and 1 year graduate work</td>
<td>&quot;</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td></td>
<td>&quot;</td>
<td>Second</td>
<td>&quot;</td>
<td>3 years</td>
<td>3 years</td>
</tr>
<tr>
<td>High School Principal</td>
<td>First</td>
<td>4 years standard college and 1 year graduate work in High School or elementary college</td>
<td>Administrator and Supervisor</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td></td>
<td>&quot;</td>
<td>Second</td>
<td>&quot;</td>
<td>3 years</td>
<td>3 years</td>
</tr>
<tr>
<td>Elementary Principal</td>
<td>First</td>
<td>4 years standard college</td>
<td>&quot;</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td></td>
<td>&quot;</td>
<td>Second</td>
<td>&quot;</td>
<td>3 years</td>
<td>3 years</td>
</tr>
<tr>
<td>Rural schools</td>
<td>Third</td>
<td>3 years standard college</td>
<td>&quot;</td>
<td>2 years</td>
<td>2 years</td>
</tr>
<tr>
<td>High School Teacher</td>
<td>First</td>
<td>4 years standard college and 1 year graduate work in High School</td>
<td>Two or more teachers</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td></td>
<td>&quot;</td>
<td>Second</td>
<td>&quot;</td>
<td>2 years</td>
<td>2 years</td>
</tr>
<tr>
<td>Special High Sch.</td>
<td>First</td>
<td>4 years standard college and 1 year graduate work in some special branch college</td>
<td>&quot;</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td>Junior High Sch.</td>
<td>First</td>
<td>5 years standard college and 1 year graduate work in two or more branches</td>
<td>&quot;</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td>License</td>
<td>Grades</td>
<td>Training</td>
<td>Specialization</td>
<td>Valid</td>
<td>Renewable</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>--------------</td>
<td>-------------------------------</td>
<td>----------------</td>
<td>-------</td>
<td>-----------</td>
</tr>
<tr>
<td>Elementary school Teacher or Kindergarten</td>
<td>First</td>
<td>2 years standard normal school</td>
<td>Kindergarten</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td>Primary Teacher</td>
<td>First</td>
<td>2 years standard normal school</td>
<td>1 - 2 - 3 grades</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td>&quot;</td>
<td>Second</td>
<td>1 year standard normal school</td>
<td>1 - 2 - 3 grades</td>
<td>2 years</td>
<td>2 years</td>
</tr>
<tr>
<td>Interim-grade teacher</td>
<td>First</td>
<td>2 years standard normal school</td>
<td>4 - 5 - 6 grades</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td>&quot;</td>
<td>Second</td>
<td>One year of a two year standard normal school</td>
<td>4 - 5 - 6 grades</td>
<td>2 years</td>
<td>2 years</td>
</tr>
<tr>
<td>Grammar grade teacher</td>
<td>First</td>
<td>Two years of a standard normal school</td>
<td>7 - 8 grades</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td>&quot;</td>
<td>Second</td>
<td>One year of a two year standard normal school</td>
<td>7 - 8 grades</td>
<td>2 years</td>
<td>2 years</td>
</tr>
<tr>
<td>Rural school Teacher</td>
<td>First</td>
<td>Two year work of One Teacher normal school</td>
<td>School</td>
<td>5 years</td>
<td>Life</td>
</tr>
<tr>
<td>&quot;</td>
<td>Second</td>
<td>One year of a two year standard or approved normal school</td>
<td>&quot;</td>
<td>2 years</td>
<td>2 years</td>
</tr>
</tbody>
</table>
school. All licenses of lower grade than first can be raised upon presentation of credentials of further training. However, this work must meet the requirements of the state department or the state department for use in defraying expenses. Third grade licenses are issued to superintendents and elementary principals upon completion of three years' training from a standard college or university with special training in supervision and administration. All the different grades of licenses show that the Indiana teacher has every opportunity for self-improvement in the teaching business of the state.

In 1921 the school survey of education in Indiana indicated that out of 20,243 or ninety-nine per cent of the total number of teachers in the service of the state 4,413 teachers had two years training above high school, 705 teachers had three years above high school training, and 479 teachers had four years above high school. In view of this report of fifteen years ago the teacher still has much to do for himself in his relation to the state.

Returning to the discussion of the license, the Board of Education at its discretion can upon proper notice to teachers, cease to issue any license of a grade lower than

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A small fee of five dollars for conversion of the license into a life license is charged. For the first grade license, a charge of a dollar is made. This sum is turned over to the state department for use in defraying expenses of the tax division. Any surplus arising from this fund is to be turned over to the teachers' retirement fund. In 1933, by December first and thereafter licenses were exchanged on the basis of the standards for all the different grades of licenses held. There are eleven provisions in the law which specify what shall be done. There is a provision for the issuance of a permit to teach to all teachers coming from out of the state. This permit is given until the proper credentials are secured in addition to the training from standard colleges and universities. The State Board of Education designates the grade average for each kind of license, and also publishes bulletins which contain information on grades of licenses issued, rules

13 Indiana Statute (28-4211) Annotated, Burns.
14 Indiana Statute (28-4212) Annotated, Burns.
15 Indiana Statute (6958) Annotated, Burns.
16 Indiana Statute (28-4213) Annotated, Burns.
17 Indiana Statute (28-4214) Annotated, Burns.
18 Indiana Statute (28-4204) Annotated, Burns.
and regulations, the exchange and renewal of licenses, the endorsement of licenses from other states together with credentials. Records of licenses, renewal, academic, professional preparation and experience are carefully preserved in the office of the State Superintendent. The County and City Superintendents likewise keep records of grade of license, success grade, salary of each assistant superintendent, superintendent, principal, teacher and attendance officer and all other regular school employees.

From the examination of the laws referring to the license the State has made provision for the issuance of licenses, the revoking of licenses, issuance of permits to teach until requirements for license are secured, the renewal of licenses and exchange. Grades of licenses are set forth with the requirements of each. The State requires records of licenses and training of teachers to be kept in the State Department of Public Instruction, city and county offices of Public Instruction.

After the license, comes the contract. A teacher cannot secure a contract unless the license is in force. The contract

18 Indiana Statute (23-4215) Annotated, Burns.
19 Indiana Statute (23-4216) Annotated, Burns.
20 Indiana Statute (23-4217) Annotated, Burns.
21 Indiana Statute (23-4304) Annotated, Burns.
is the most important legal instrument which is pertinent to the teacher. Litigation arising from the contractual relationship will be discussed in the next chapter. It is the signing of this legal document that transforms the person, who is entitled to the certificate, into a legal teacher.

Upon the contract rests the employment and dismissal, license, tenure, and retirement. The teacher is the most important person in the school. When the teacher signs the contract the question arises, what legal responsibility does he have in teaching? From an examination of the contract and laws relating to the teacher, statements may be made as follows: Teacher in Indiana must be in writing.

To inspire a protective measure to the teacher in writing:

1. To impart knowledge.
2. To train for citizenship.
3. To train for leadership.
4. To train for worthy home membership.
5. To train for worthy use of leisure.
6. To teach in the building assigned that the teacher is not beholden.
7. To keep all records.
8. To attend institute.
9. To keep records of children's attendance.
10. To meet and take part in meetings.
11. To make reports called for in school form.
12. To care for all school property. 1,991 Ind. 89.
15. Conduct fire drills. Contracts are to be uniform.

16. Observe holidays.

17. Observe special days, Arbor day, Flag day, Armistice, and Indiana day.

18. Sing the State Song on the Banks of the Wabash, Far Away. A certain lack of clarity shown in the type.

19. Sing "The Star-Spangled Banner."

The contract of the teacher is the most important instrument of a legal import that enters into the employment of the teacher. Upon the contract rests teacher employment, dismissal, tenure and retirement.

The contract issued to the teacher in Indiana must be in writing. This is a protective measure to the teacher in that the face of the contract shows the date of the beginning of the term, the number of months in the school term, the total amount of salary to be paid and provides that one month does not include over twenty days. The law providing for the contract in writing is not the same as the one just mentioned but is the law which makes clear that the contract must be properly signed and in writing otherwise action cannot be brought against it if it does not conform to provisions of the act.

22 Indiana Statute (38-4303) Annotated, Burns.

23 Indiana Statute (38-4304) Annotated, Burns.

24 Gutman v. The School Town of Irvington, 69 Ind. 80.
Blanks relating to the contract are to be uniform. This simplifies the entire state contract form and enables the records to be kept which can be claimed as public records and open to the inspection of the people. It was found from a study of contracts a certain lack of clarity shown in the type of contracts from many paged contract to no contract at all. One of the legal phases of the contract form which causes difficulty is the legal terms used. In a study of contracts by Fred G. Stevenson it was found that thirty-five states required written contracts.

Other protective provisions of the laws relating to the contract will be stated in a group as; in days, numbers of teachers may collect pay when schools are closed and average of contracts and provisions and provisions of laws relating to the contract in a group.


Indiana Statute (28-1305) Annotated, Burns.

Indiana Statute (28-4405) Annotated, Burns.

Indiana Statute (28-4317) Annotated, Burns.

Indiana Statute (28-2100) Annotated, Burns.
These laws provide for the compensation of the teacher. Provisions in laws for which a teacher may be employed may be grouped as follows:  

31. Minimum compensation  
32. Beginning Teachers minimum compensation  
33. Payment at Less Rate - Penalty  

This group of laws protect the teacher's remuneration for services. The last law mentioned is very necessary to defend the teacher against employment for less than the wages stated by law.  

The teacher assists in the school work by making reports to the trustee of the length of term in days, numbers of teachers employed, men and women, daily compensation, number of pupils, boys and girls with ages stated and average attendance. This law carries a penalty for non-performance for payment of seventy-five per cent of the salary.  

Another law which does not seem necessary is the provision for protecting the teacher from insults of guardians, parents and patrons. This law has teeth in it for it has a penalty of twenty-five dollars fine for the offender.  

Indiana Statute (22-4319) Annotated, Burns.  
Indiana Statute (22-4318) Annotated, Burns.  
Indiana Statute (22-5103) Annotated, Burns.  

Harry Lester Smith, "Indiana Protects Its Schools" Nation's Schools, 12:27 - 9 Nov. '32.
The law which proves restrictive for the advancement and improvement of the teacher is the provision of Teachers' contracts, provisions contents. It is fortunate that the restriction is of short duration, August 1, 1935 to July 31, 1938 in that no contract for the school year shall be increased. This increase is on salary to the amount of $2.50 per month for each year of teaching experience for the beginning teacher up to and including the fourth year with the minimum salary and with seventy-two weeks of professional training. Law of the cancellation of the indefinite contract requires.

There is no law which safeguards the teacher and stabilizes the position of the teacher more than the tenure law passed in 1927. The provision in this law which is protective in its function, enables the teacher to become a permanent teacher of a school corporation where the teacher under contract has served five years and is entering upon a contract for further service. The amendment to this law of 1933 changes the law to read "any school city corporation or in any school town corporation in the State of Indiana." This change in the law does not provide for teachers of all township school corporations.

34 Indiana Statute (23-1630) Annotated, Burns.
35 Indiana Statute (23-1637) Annotated, Burns.
36 Harry Lester Smith, "Indiana Protects Its Schools" Nation's Schools, 12:27 - 8 Nov. 1932.
The law also provides for the indefinite contract, the date of beginning, length of term and fixing of the salary schedule. When there is a change in salary schedule, a notice is sent within thirty days before its adoption. The teachers' contracts must be uniform as prescribed by the state superintendent.

Other laws relating to the tenure of the teacher are the Indefinite Contract,\(^{38}\) Cancellation by Teacher,\(^{39}\) Leaves of Absence\(^{40}\) and Amendment.\(^{41}\) The law of the cancellation of the indefinite contract requires that the teacher be notified in writing thirty days before the contract is cancelled. Reasons for consideration are sent to the teacher within five days from his request. The teacher also will be given a hearing before the school commissioners of the corporation. The teacher is given the right of a full statement of reasons for the cancellation of the contract. The contract cannot be cancelled until after the date set for the hearing.

While the inquiry is in progress the teacher is not suspended from duty. The cancellation of an indefinite contract should the teacher attempt to cancel his contract in any other way than that provided by law, by which prevent the teacher from cancelling his contract without notice of the hearing.

\(^{38}\) Indiana Statute (28-4309) Annotated, Burns.
\(^{39}\) Indiana Statute (28-4310) Annotated, Burns.
\(^{40}\) Indiana Statute (28-4311) Annotated, Burns.
\(^{41}\) Indiana Statute (28-4312) Annotated, Burns.
tract of a permanent teacher is made for the same stated reasons as the regular contract. The causes for cancellation of the contract may be stated as immorality, and insubordination which go into effect at the end of the term. The procedure of cancellation of the indefinite contract may be stated as follows: When the decision of the board is final the majority of the vote and the signed statement in the record of the board cancels the indefinite contract with the teacher. All other provisions of the act have been duly considered.

In the law, Teachers - Condition - Precedent to Appointment - Superintendent, etc., may be stated as; no person shall be appointed to and become a permanent teacher until the school superintendent makes a report on the teacher's preparation, training, experience and license within ten days after the request.

The law governing cancellation of the contract by the teacher includes provisions which prevent the teacher from cancelling his indefinite contract thirty days before the beginning of the term unless the transaction is agreed upon. Should the teacher attempt to cancel his contract in any other way than provided by the act, shall be considered unprofessional and will become liable to the suspension of the license.

By law, the teacher may be granted a leave of absence for one year for study or professional benefit or for sickness.
Should the teacher be placed on an enforced vacation because of illness, he is entitled to the right of a hearing salary. The laws relating to retirement are numerous and contain many provisions under each law. It is impossible to discuss all the retirement laws within the limits of this dissertation; therefore, only a few of the outstanding statutes will be analyzed.

The first law of importance is that which provides for the creation of the fund. This fund is created for the purpose of paying annuities to persons teaching in the public schools after they have given stated periods of service. This law functions as protection to the teachers of the state who have served in the interests of education down the years and are not retired without due consideration of the service rendered. The entire provision by law is sound.

The pension system is not class legislation as many persons have believed, but is protection to the employed of the state. It annuus, provided that the benefit paid is not at a great. The state assumes the responsibility of paying four the sevenths of the fund while the teacher pays three sevenths of the money to the fund. At the end of forty years service the teacher has created an estate of twenty-eight hundred dollars.

Indiana Statute (28-4501) Annotated, Burns.
Since 1929, a law provided for a receipt of the amount of money paid into the fund from the teacher's monthly salary. The amount is paid into the pension fund in May and December of each year. Annual contributions into the fund differ at the different age levels on beginning service as a teacher. 44

The annual contribution which is highest is thirty-five dollars and seventy-seven cents at the age of twenty. The lowest annual contribution is eighteen dollars and four cents at the age of forty years at the beginning of service. This law also provides for the withdrawal of portions of the contributions when necessary. At the end of one year the teacher is entitled to withdraw twenty-five per cent of the amount paid into the fund. After ten years, the teacher may withdraw one hundred per cent of the amount paid into the fund. The entire provision by law is sound.

Disability benefits are written into the law. The benefits paid shall be at the rate of ($500.00) Five Hundred dollars per annum, provided that the benefit paid is not at a greater "rate than five eights of the contract salary of the teacher." Otherwise, the combined funds made for greater security are held in trust. The State Board is under the state depository law.
teacher may continue until he has reached the age of sixty-six.46

A comparison of the annual reports of the Indiana Pension Fund in comparison with that of the state fund, the state pension fund and the combined funds for the year 1934, reveals a state fund with a total of $9,444,989.96, while the combined funds are $9,963,000.00.

Another important provision in the laws bearing upon the teacher's pension is the membership, assessment and deceased member. The law states:

"In the event of death of any teacher who is a member under the provision of this act, before such teacher has retired on an annuity and in that event the estate of the deceased teacher shall be entitled to a sum changeable to the annuity savings account equal to the contributions of the teacher with interest thereon compounded annually at four per cent, if application therefore be made within three years (3) after the death of such teacher but not otherwise."47

From the import of this law, it behooves each teacher to state the provision of this law in his estate otherwise after three years an application for the pension accumulation will be void. The pension provisions for the teacher are sound and prove to be a good investment building up an estate of twenty-eight hundred dollars during the forty years of service.

In 1927, when the Indianapolis Pension Fund was merged with the state fund, the State Pension Fund amounted to

$9,444,989.96 thus the combined funds made for greater security of the fund. "The state fund is under the state depository law. Investments can be made only in municipal bonds

46 Indiana Statute (23-4507) Annotated, Burns.
47 Indiana Statute (23-4511) Annotated, Burns.
* See Report of Indianapolis Committee, Jan. 1931
within the state or in government bonds. 48

A comparison of the annual reports of the Indiana Pension Fund show a marked increase from September 30, 1931 to June 30, 1934. The fund increased to $14,503,545.46 in June 30, 1934.

TABLE VI. Comparison of Annual Reports of Pension Fund 49

<table>
<thead>
<tr>
<th>Active teachers in the fund</th>
<th>Sept. 30, 1931</th>
<th>June 30, 1933</th>
<th>June 30, 1934</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teachers on pension</td>
<td>2,161</td>
<td>18,702</td>
<td>18,378</td>
</tr>
<tr>
<td>Teachers on securities</td>
<td>174</td>
<td>999</td>
<td>1,067</td>
</tr>
<tr>
<td>Cash and securities</td>
<td>$231,574.98</td>
<td>$13,366,061.09</td>
<td>$14,503,545.46</td>
</tr>
</tbody>
</table>

These laws that the state does attempt to safeguard the
The fund is payable to the assaulted in four install-
teacher on every hand. This protection is afforded through;
ments during the year. This income is subject to the tax
1. The license

according to the gross income tax law. 51

The pension provision is a protection to the Indiana

teacher in many ways which may be stated as follows:

1. Eliminates the necessity of teaching after the
   teacher's efficiency has passed.

2. Pension provision in the state increases the
   attractiveness of the teaching position.

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48 Report of The Indianapolis Committee on The City and State Pension Laws, 1927 - Typed M.S.
50 Ibid. Section of position created by the Tenure Law
51 The Indianapolis News, April 8, 1936, or during his
3. The retirement provision retains better teachers in state positions.

4. The retirement system creates independence on the part of the teacher during his senescence.

5. The retirement provision increases the desire on the part of the teacher to become proficient in his position through study and travel.

6. The retirement provision protects the children and patrons of the state by removing inefficiency in teaching.

In the previous chapter of this dissertation the laws relative to the teacher's contract were analyzed in an attempt to reveal the laws relating to the teacher's contract and their power to the teacher and protect the state. It is shown by analyzing these laws that the state does attempt to safeguard the teacher on every hand. This protection is afforded through the contractual powers of the Indiana teacher.

1. The license

2. The contract (In Writing)

3. Minimum wage law

Before proceeding with the discussion of the teacher's contract as a basis for license and salary

As previously: mentioned, the law provides:

5. Provision for advancement in grades of license by training assistance

6. Provision for education through state established normal schools and universities

7. Penalty for employment of teachers for less than specified sum

8. Protection against insults from patrons of the schools

9. Security of position created by the Tenure Law

10. Provision for the care of the teacher during his senescence by the creation of the State Pension Fund
CHAPTER IV

THE CONTRACTUAL RELATIONSHIP OF THE TEACHER

Legal Aspects of the Contract

In the previous chapter of this dissertation the laws relative to the teacher's contract were analyzed in an effort to reveal to the reader their scope and their provisions.

The purpose of this chapter will be an attempt to determine the contractual powers of the Indiana teacher, the school-board, and to discover the legal principles underlying the teacher's contract.

Before proceeding with the discussion of the teacher's contractual powers, the term, teacher is in need of defining.

As previously stated, the term includes any principal, assistant superintendent, supervisor, assistant supervisor, persons in charge of any special instruction, and any teacher or instructor regularly employed by the board of school commissioners of such city. Additionally, the teacher's state relationship the teacher's contract is paramount. It is the legal instrument which in-fact is evidenced by conduct. It is the expressed contract
definitely affects license, tenure, dismissal and retirement. A discussion of any one of the latter will definitely lead to the consideration of the legal phases of the teacher's contract or vice versa. The legal status of situations involving the teacher's contract include problems; these problems present relationships and these relationship implicate two or more persons.

The question then arises, What is a valid contract? An attempt to answer the question can be made by two procedures. First, to understand the concept of the contract it must be examined as to its elements and stages of its formation; second, the contract can be understood by studying its operation, testing its legal strength as it passes through critical court examination and court decision in cases arising as a result of insufficient legal knowledge.

Authorities are agreed that there exists many different kinds of contracts, but for the specific study of a teacher's contract, three kinds of contracts will be considered. They are; the expressed contract, contract implied-in-fact and contract implied-in-law or the quasi-contract. The contract-in-fact and the expressed contract are based on agreement. The contract-in-law lacks the proper agreement on the part of persons concerned. The expressed contract is evidenced by spoken or written words. The contract-in-fact is evidenced by conduct. It is the expressed contract
which has direct bearing upon the teacher's contract. Use and keep a valid contract requires agreement of persons. In order to form an agreement there must be an offer and acceptance. After the offer has been imparted to the person. An agreement is not a contract unless obligation is created from the agreement after the offer and acceptance. The formation of the contract includes offer, acceptance, obligation, competency of parties, correct form, legality of subject-matter and consideration. By competency of persons is meant, that persons contracting must be of legal age; they must be free from the influence of liquor and must be sound of mind. Consideration in a contract means that something of value passes between the persons contracting. It is a benefit to the party promising, or a loss or detriment to the party to whom the promise is made. Benefit as thus employed, means that the promisor has acquired some legal right for his promise. 1 "A contract must be valid, mutual, certain, definite and free from fraud and illegality. It

Some of the provisions relative to the teacher's by the statute entered into and signed by the proper contract in Indiana are as follows: "In consideration of the time of employment, wages to be paid and special agreements hereinafter contained said teacher agrees to

all the board requires the teacher to pass a satisfied teach ... to perform all the duties ... to use only such

text-books ... to observe all rules ... to attend and

participate in the exercises of each institute ... to use and keep accurately all registers and blanks ... to make all other reports ... to care for all school property". The contract also states what the employer agrees to perform, namely; "To keep the building ... to furnish the necessary fuel, ... to provide such janitor help" ... and other acts.

A teacher's contract then, must be in correct form, definite and certain. In agreement the parties must be competent and there must be consideration. It must conform to the requirements of the Indiana statutes. On its face it contains the date, name of the school or district; the name of the teacher; the willingness to obey rules and to teach where he is placed; statement of the salary; time specified for acceptance of offer; names of officers and teacher's signature. Trusler says in writing on the subject of a contract:

"A contract must be valid, mutual, certain, definite and free from fraud and illegality. It must comply with all formal requisites prescribed by the statute entered into and signed by the proper authorities, signed by both parties and to specify time of employment, wages to be paid and special agreements that parties have made. And where a rule of the board requires the teacher to pass a satisfactory physical examination this must be done."


very done or the contract is not effective. The Indiana statute requires that the teacher's contract be in writing and that the teacher have a license or certificate when the contract is signed, for the reader, who is not familiar with the Indiana teacher's and the Indianapolis teacher's contracts, will find examples of them in Appendix B. These contracts are long and somewhat copious, however, they are definite and certain. In a study of contracts it has been found that superintendents believed the teacher's contract to be a source of dispute and discomfort, nevertheless there is a need for a contract which insures mutual understanding and satisfactory service.

Fred Stevenson made a study of teachers' contract forms used in making contracts. He studied four hundred and sixty-two public school systems finding that there exists

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4 Indiana Statute (22-4302) Annotated, Burns.
5 Indiana Statute (22-5005) Annotated, Burns.

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very little standardization of contracts and that the trend was toward the short form of the notice and acceptance type of contract. Two forms of this type of contract will be sent shown. The first contract represents School District No. Seventy-Six, Cook County. It is as follows:

School District Number Seventy-Six

A teacher at any time of Cook County, Illinois ........, 192...

You have been elected teacher in the schools of District 76 for the coming year of ten months at a salary of .......... Dollars ($ ) per month. An answer within ten days is requested.

I accept the position upon the terms stated.

(Signature)

Secretary

There is a difference in wording of the Indiana teacher's contract and the Indiana Teacher's Contract. The second contract is that of Emporia, Kansas. It is as follows:

Teacher's Contract

In the attempt to determine the status of the Indiana Emporia, Kansas ........192....

THIS IS TO NOTIFY YOU, That you have been elected to a position of Teacher in the Emporia City Schools at a salary or school trustees.

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of §..... for the coming year, subject to the rules and regulations of the Board of Education. The work assigned to you is ........... in the ............ Building. If you accept the position, please sign below. If your acceptance is not received on or before ........, 1931, the position will be considered vacant. The Board reserves the right to transfer a teacher at any time. The Board will not look with favor on a resignation after acceptance.

I accept the position upon the terms stated.

(Size of card 3" x 5")

There is a difference in the wording of the Indiana Teacher's contract and the Indianapolis Teacher's contract, however, both forms of contracts are within the requirements of the Indiana statutes.10

In the attempt to determine the status of the Indiana teacher the contractual powers of the school-board and the law. The violation of this law is shown in the case of teacher will be analyzed. For this discussion the term school-board will be understood to mean the school-board or school trustees.

The function of the school-board is really an extension

10Indiana Statutes (28-4303) (28-4307) Annotated, Burns.
of the educational authority of the State of Indiana. The power of the school-board is found in the laws of the state. The school district is a quasi-corporation exercising a limited power.\textsuperscript{11} A case in point which illustrates the meaning of the term, quasi-corporation is the study of Daniel Hodgdon.\textsuperscript{12} He found in his study of illegal contracts for the reduction of teachers' salaries that a number of boards of education acted on the advice of municipal attorneys and wrote teachers' contracts requiring a reduction in salary below the legal schedule. These contracts were found to be unenforceable and illegal because the lawyers made the mistake of considering the school-board in the light of any other quasi-corporation or municipal corporation. Such contracts as these mentioned, represent the ultra vires acts of the board i.e., the school-board acted beyond the power which is vested in it by the state.

In Indiana, the school-board cannot contract with a teacher for less than the amount of salary specified by law.\textsuperscript{13} The violation of this law is shown in the case of

\textsuperscript{11}\textit{Indiana Statute (23-2324) Annotated}, Burns. 3, 896.


\textsuperscript{13}\textit{Indiana Statute (23-4515) Annotated}, Burns.
Hobbs v. Gibson Township\textsuperscript{14} where the amount of money due the teacher for attending institute at four dollars and seventy-five cents each day was requested as specified by the acts of 1839.

The school-board must meet in the customary meeting place after the members of the board have been duly notified. There must be corporate action, i.e., a meeting of members, as a body; for it is a violation of the law to delegate the duties of the board.

The board of school commissioners are not permitted to contract with a teacher when the appointment will exceed the debt limit. The closing of school or the failure to make the necessary collections of funds in order to provide for the salary will not lessen their responsibility. When the circumstance does arise that the trustee in contracting does force the teacher to finish the term without compensation, the teacher is permitted to recover the salary,\textsuperscript{15} however, the school-board may contract for more than minimum wage providing the appropriation has been made.\textsuperscript{16}

\textsuperscript{14} Hobbs v. Gibson Township, 105 Ind. 1, 44 N. E. 526.
\textsuperscript{15} Harmony Township v. Moore, 80 Ind. 276.
\textsuperscript{16} Harrison School Township v. McGregor, 96 Ind. 185.
\textsuperscript{17} Mitchelltree School Township v. Baker, 55 Ind. 472, 101 N. E. 1037, Navasc, 76 Ind. 973.
This teacher’s contract was created by an ultra vires act of the board. The debt limit of the district was exceeded. The school-board is a continuous corporate body and the employment of a teacher when one member or the trustee is retiring does not prevent the contract from being enforceable. In the case of Superintendent Moon of South Bend the law did not prohibit the employment of the superintendent of schools for three years.

A similar case arose in West Virginia. A school principal was employed in June. In July two new board members were placed in office and they failed to recognize the appointment. The case found its way into court as a result of which the court ruled that the district was liable. By statute the school-board is a corporation and corporate action took place in the employment of the teacher.

The school-board is not permitted to employ a teacher unless he has in his possession an Indiana certificate or license to teach.

In summarizing the powers of the school-board to contract it may be said:  

18. Moon v South Bend, 50 Ind. App. 251.  
20. Butler v Haines, 79 Ind. 575.
Rules and regulations specified by the school-board may be written into the contract so long as such rules are reasonable and within the requirements of the state laws.

The school-board is not obliged to notify the voters of the district of the proposed teacher appointment. However, should the voters of the school district demand a public hearing of the proposed appointment of the teacher the board must conduct the meeting. When the school board is acting in its full capacity it is known as a de jure board. When the board acts with apparent right it is known as a de facto board. The latter may be applied to the employment of a teacher when members of the board are retiring and new members are assuming their duties.

A case in point is that of the failure of the board to recognize the employment of the teacher. This contract was made in June, a few days before the new board was in power. The court ruled that a contract of de facto trustees was binding on the school corporation.

In summarizing the powers of the school-board to contract it may be said that their power is one extended by state authority. The powers are as follows:

Schwier v Zitike, 136 Ind. 210

Moon v School City of South Bend, 750 Ind. App. 251.
1. The power of the school-board to contract with a teacher providing that the salary of the teacher does not exceed the debt limit of the district.

2. The power to meet in the correct district as a corporate body.

3. The power to contract with a teacher who has an Indiana certificate or license at the time of contracting.

4. The power to contract as a corporate body. Duties of the board cannot be delegated.

5. The power to contract with a teacher for more salary than specified by law if the appropriation has been made. The school-board does not have the power to contract with a teacher for less than the minimum salary specified by the Indiana statute.

6. The school-board is not permitted to confirm acts which are perpetrated in violation of the laws of the state or the United States. Where the teacher does not have a certificate or license at the time of contracting with the board, the procuring of the license at a later date does not render the contract enforceable. Such an act in contracting was committed in violation of the state law and the contract therefore, was void.

7. The power to contract with teachers but the school-board cannot exceed the power vested in it by the state. When it happens that the board's powers have been exceeded the acts are known as ultra vires acts. When these acts apply to the teacher's contracts the document is void.

The Contractual Power of the Teacher

When the Indiana teacher signs his contract to teach he is obligated to fulfill the duties prescribed by the school-board. It is necessary for the teacher to examine the written contract to determine whether it is definite and
certain, signed by the proper authorities. 23

This contract when signed invests the teacher with "public character". He is placed "in loco parentis" to the children in his care. It is the signing of the contract which changes the status of the person who is entitled to a certificate or license to teach, into a teacher.

The signing of the contract or the creating of the state-teacher relationship appears to be the root to which the litigation arising each year is traced. These cases will continue to arise as long as teachers, administrators and trustees are not familiar with the existing state laws.

Whenever a teacher finds that he has signed a contract for less than the minimum required by law for any delinquent

Employment and Dismissal

The teacher who contracts with the school-board must have in his possession the certificate or license to teach. 24 A case which involved the license was one Lydia R. Putnam who brought action against the town of Irvington for money she alleged was due her upon a contract to teach in the Irvington public school. In June 1877, Miss Putnam had an oral contract to teach for the following nine months at sixty dollars. Later the contract was put into written form and signed by G. W. Julian and John O. Hopkins. Sometime

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23 Taylor v School Town of Petersburg, 33 Ind. App. 675.
24 Elmore v Overton, 104 Ind. 548.
Jackson School Township v Farlow, 75 Ind. 118.
during August the teacher was licensed to teach for eighteen months. In the fall term she resumed her duties as teacher. She was ready and willing but one day was prevented from doing so by being excluded forcibly by Mr. Johnson and Mr. Shank, the school trustees. The court held the complaint which the teacher made was in error because she was not properly licensed at the time the contract was made. The contract became void by the action of the Indiana statute. He was. The diploma of a normal school cannot serve as a document equivalent to a license. The teacher in possession of such diploma must secure a certificate or license to teach. Whenever a teacher finds that he has signed a contract for less than the minimum salary, he is not in "pars delicto" with the trustee and can recover salary due him.

There are many cases and conditions under which a teacher may be dismissed when he is under contract. In some states the teacher may be dismissed at the pleasure of the board.

26 State ex rel Benham v. Bradt, 170 Ind. 490.
Generally, the teacher is dismissed for incompetency, insubordination, immoral conduct and neglect of duty. An example of incompetency of a teacher was the case of the School City of Mount Vernon. In this particular case the teacher signed the contract to teach and taught over a month when he received a written notice to the effect that he was no longer needed. The reason for dismissal was the inability of the teacher to do his work. When he signed the contract he indicated that he was capable of assuming the duties of a teacher and later stated that his reputation was injured. He claimed that he was required to leave the city to secure employment in school another location, his marriage status which is considered in probation. When a teacher, after signing a contract to teach, finds that he is assigned to subjects for which he is not licensed and is dismissed, may recover the salary for the full term. He was dismissed at the pleasure of the Board. The courts have held that the teacher who contracts with the Board and later marries after five years of service is not dismissed from service. It has been agreed by the Court that marriage is not a reasonable cause for dismissal. Marriage in Indiana is sanctioned and encouraged. It is not held against public policy.
One case of dismissal for marriage cause came to court because the trustee refused to employ a married teacher to teach in the school district of Guilford School Township. This happened in July 1899. In September the same year the contract of the teacher was signed in her maiden name although the teacher had been married for four days. This teacher was dismissed immediately because she obtained the position under false representation. When cases come to the attention of the court for settlement great emphasis is put upon the reasonableness of the rules of the school-board. In Indiana there is no school law relative to the marriage status which is considered in opposition to public policy. The court has ruled that certain school-board rules are not reasonable. A case in Chicago, which is applicable to this situation, arose when the teacher was dismissed at the pleasure of the board. The court held an opinion entirely different. The judges objected to the board action and replied by the following expression:

"A rule can easily be imagined the adoption of which would be unreasonable, contrary to public policy and on the face of it, not calculated to promote the best interests and welfare of the schools."

31 Guilford School Township v Roberts, 29 Ind. App. 355.
32 Frank Stephenson, Handbook of Indiana School, Benton Review Shop, 1929, p. 18.
33 People v City of Chicago, 220 Ill. 318, 88 N. E. 158, L. R. A.
of a case which reviewed an unreasonable situation was one brought by a teacher in Henry School Township. This suit disclosed that the teacher was serving on a written contract and during that time the pupils were transferred to another district. The trustees had successfully induced the parents to send the children to another school thus bringing about the condition of a closed school to the teacher. It was found that the contract omitted the length of term and with this defect in the document, advantage was taken. The court held that the teacher was entitled to recover for services actually rendered. Lee parents' to the children. The teacher has another situation arose when a teacher, after school was in session, found that a meeting was held to the effect that a vacation was in order after the school was held four months. The teacher gained consent of the parents to continue school through the vacation period as set aside by the school authorities. This condition lasted until March when the trustee appeared at the building and assaulted the teacher by violently laying hold of him. The case was taken to the Elkhart Circuit Court where it was held the teacher was entitled to recover damages.35

When it happens that schools are closed by an epidemic

34 Henry School Township v. Meredith, 32 Ind. App. 667.
35 White v. Kellogg et al., 119 Ind. 320.
of a contagious disease or because of the destruction of the school-house by fire, it does not lessen the responsibility 36 of the school-board or the teacher. If the school-board closes the schools the teacher is in position to recover the salary for the time the school was closed. When the Board of Health closes the schools the teacher has no power to recover the salary for the time lost. 37 The Legislature amended the law in 1909. This permits the Board of Health to close schools and churches in times of epidemics.

The teacher in signing the contract creates the relationship of "in loco parentis" to the children. The teacher has the right to discipline the pupils who are committed to his care, however, this power is discretionary in cases of discipline. One case in which this discretionary power of the teacher was exercised was one in which the teacher whipped the child with a green switch. The case reached the courts. It was held that the teacher was not guilty of deliberately injuring the boy. 40

37. Gregg School Township v Hinshaw, 76 Ind. App. 503.
40. Vanvactor v State, 113 Ind. 276.
of the court proved to be the opposite. It was held in this case 41 that the teacher unlawfully assaulted the pupil. The fact that the instructor resorted too much to the rod as a means of maintaining order is indicative of his inability to control the school.

Legal Phases of Teacher's Tenure

Upon inquiry into the beginning of tenure it is a significant fact that tenure originated in 1867 when an act passed by Congress prohibited the President of United States from dismissing any man from office without the consent of the Senate. H. W. Marsh calls attention to tenure in governmental affairs when President McKinley issued a rule to the effect that reasons for the removal of an employee, by the officers in charge, must be in writing and an opportunity for the employee to submit a written reply. Mr. Marsh in referring to tenure said; "This rule has been observed ever since regardless of the party in power showing that we are committed to the principle of tenure in government." 42

In the teaching field as well as the political world there was a need for creating more stability to the teacher's position in Indiana, hence a law was passed in 1927 known as

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41 Cooper v McJunkin, 4 Ind. 220.
the Indiana Teachers' Tenure Law. Because of the limited space in this dissertation, the provisions of the tenure law will be found in Appendix B. However, for the discussion of the tenure cases which follow, the reader will need to keep in mind this important provision as amended in 1933. It is in position to discharge teachers before they win as follows:

That any person who has served or who shall serve under contract as a teacher in any school city corporation or in any school town corporation in the State of Indiana for five 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"... 43

It should be very obvious to the reader that the sponsors of the amendment were aware of the fact that the township is not included in its protection. In January 1933 when the Tenure Law was amended a heated debate arose in the Senate. Senator John Bright Webb believed that the law was satisfactory in Marion County but the people in Johnson County, which is made up of many small rural sections, felt very much opposed to it. Senator E. Curtis White expressed a similar opinion. He too, believed the larger cities were in favor of retaining the tenure of teachers. He felt that the teachers understood their problems and that it was democratic to offer the teachers their positions when they

43 Indiana Statutes (28-4307) Annotated, Burns.
44 Indianapolis News, "The Teacher Tenure Repeal Limited", Jan. 01, 1933.
were qualified. The main difficulty with the tenure law seemed to be with the rural communities, the charges placed against him.

It is the "The majority of the Senate seemed agreed that the tenure law obviously was satisfactory to large cities, but communities where the trustee has been in position to discharge teachers before they win tenure rights after five years of service. Sponsors of the amendment said limiting repeal to the school board township would tend to correct any such situation," the

These expressions by representatives of the people reflect the attitude of both large and small communities of the state. The Indiana case in which a teacher was removed by the school board as it should be very obvious to the reader that the sponsors of the amendment were unaware of the fact that the township teachers needed the tenure law protection as much as the other communities because of the practices of the trustees in dismisg teachers for political reasons.

The basis of the teacher's tenure is the contract between the school-board and the teacher. There are certain specific reasons for which teachers can be dismissed. These causes will be set forth later in this study. This action compels needlessly to say authorities are agreed that The Tenure Law does not prevent the dismissal of the teacher by the end of 1927 but married in June 1928. The board then cancelled her

45 Ibid.
school-board. It does provide a legal remedy for the dismissed teacher. The teacher who has been dismissed for cause has a right to be heard on the charges placed against him. It is the teacher's duty to refute the accusation or to give an acceptable explanation.

When the rules of the school-board prohibit the marriage of the teacher while in the service of the schools, the teacher who marries will not be considered as one who commits an act of insubordination. This point was illustrated in an Elwood Indiana case in which a teacher was removed by the school-board for marriage while in the service of the public schools. The case was brought to court. As a result it was held by the court that marriage of a teacher in service does not constitute "a good and just cause" for the dismissal of the teacher.48

A case which tested the tenure law came to the attention of the court in an action of mandamus against the school-board of Crawfordsville.49 It was brought by a teacher who had been serving the schools for six years. This action compelled the board to reinstate the teacher in the schools. She became a permanent teacher according to the Tenure Act of 1927 but married in June 1929. The board then cancelled her

48 School City of Elwood v State ex. rel. Griffin, 203 Ind. 628.
49 Kostanzer v State ex. rel. Ramsey, 205 Ind. 536.
contract. The relatrix requested a statement of the reasons for her dismissal. The board answered the request in the following reply: "First, it was a violation of the board rules for the teacher to marry; second, there was a justifiable decrease in the number of positions open to teachers."

It was found that the law in the case favored the teacher and that the plaintiff was entitled to an order from the court instructing the school-board of Crawfordsville to reinstate the teacher under the contract of a permanent teacher. It was also discovered that no decrease in teaching positions existed and that the real cause of dismissal was the teacher's marriage. It was found in a previous court ruling that marriage is not an act of insubordination. It is not a reasonable rule. The marriage status does not have any bearing upon the efficiency of the teacher, her qualification as a teacher or her ability to teach in the schools. In both of the cases of dismissal of teachers, marriage was the direct cause. In this connection it should be noted that the board can dismiss the teachers for only the reasons written into the provisions of the Indiana Teachers' Tenure Law. The law provides for the dismissal of teachers for the following reasons:

50 School City of Elwood v State ex rel., Griffin, 203 Ind., 626.
51 Barnes v Nandenhall, 93 Ind. App., 229.
"Cancellation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean a willful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons, . . . .\" 51

To continue the discussion of the cases which involve tenure teachers, attention is directed to a case originating in Terre Haute. 52 The teacher in the litigation was serving under an indefinite contract with a life license, issued by the proper officers of the state. On May 27, 1929 she received a statement to the effect that she was a permanent teacher according to the Tenure Law. On March 8, 1927 she was notified to sign the contract, if she desired to continue teaching, and return it to the school-board. In May 1930 the teacher received a notice of cancellation of her permanent contract. After requesting the reasons for such a cancellation, the superintendent made a reply in which he stated that a reduction in teaching positions made it necessary. It was found that non-tenure teachers were serving in the schools at the time. According to the provisions of the Tenure Law the dismissal of a permanent teacher upon the grounds of a justifiable decrease in teaching positions

51Indiana Statute (28-4308) Annotated, Burns.
52Barnes v Mendenhall, 98 Ind. App. 229.
is prevented. This condition if permitted to exist would extend the power of the school-board and allow it to do indirectly what it was not permitted to accomplish directly.

This case established two classes of teachers as follows:

"(1) Tenure or permanent teachers who, by virtue of this legislation, enjoy indefinite contracts which may be cancelled only for causes enumerated in section 2 of the act, and in accordance with the procedure therein provided (2) non-tenure or non-permanent teachers who are not protected by said act and who do not enjoy indefinite contracts."

In another court case the school-board had cancelled an indefinite teacher's contract for "insubordination". The teacher had served the schools for thirty years and had reached the age of seventy years. It was the refusal of the teacher to retire that brought about the action of the board. The court held that the board's rules violated the Teacher's Tenure Law. This law definitely states specific causes for dismissal. For these only can the teacher be dismissed. The court held that the cases which have been studied indicate evidences of the constitutionality of the Tenure Law. In all instances the court recognized the violations of the provisions as set forth. contract for the teacher. This contract is

53 Ibid.
In a local case\(^{55}\) cited, it was alleged that the teacher was not notified of the cancellation of the indefinite contract. This act on the part of the board prevented her from continuing as a permanent teacher, a privilege which she had enjoyed for three years.

It was shown that the teacher was qualified as a permanent teacher having served beyond the required time for a permanent teacher. The proper remedy, a writ of mandamus was executed in this case. The writ was applied in two other cases as follows: (1) the School City of Elwood et al v State ex rel Griffin et al, 203 Ind. 326 and (2) Kostander et al v State ex rel., Ramsey, 205 Ind. 556. This case involved the Teachers' Tenure Law, mandamus, statutes repeal, schools and school districts, Teachers' Tenure Law in Cities over 300,000 and acts of 1931 providing for annual appointment of the teacher. It was thought that the Indianapolis Codification Act was in conflict with the Teachers' Tenure Law. The court found no conflict of laws.

In all of these cases the Tenure Law and the court, as far as jurisprudence is concerned, protect the teacher. The law creates a contract for the teacher. This contract is known as an indefinite contract with the only possibility of

\(^{55}\)Black v Board of School Commissioners City of Indianapolis, 167 N. E. Ind. 398.
cancellation being based statutory causes.

It is indeed, disheartening, for teachers in communities in which tenure of office does not exist as E. E. Bigbee states in his article, Tenure for Teachers, that such a system is proved to be one object. "As long as a teacher finds that he must be regarded as a hireling with no guarantee of remaining in office over a year, and with all the uncertainties of an annual election before his vision - so long he finds himself not connected with a profession, properly so called, he lacks one of the greatest incentives to professional study, and is tempted to make his teaching not even a calling, but only a stepping stone to some other work." 56

For the teachers who have the tenure protection, that teacher is more fortunate in his teaching field. When the tenure teacher is dismissed for cause and this reason is set down in the statute, the teacher does not have much of a chance for reinstatement. But when the cause is not recorded in the statutes the teacher does have a remedy by an appeal to the court. The number of cases in tenure show that the teacher appealing for justice is usually reinstated in the schools.

It was found by a study of the decisions of cases appealed to the State Commissioner of Education that the teachers have very good chances of winning their cases. It was also known that school-boards in disposing of the inefficient

teachers used other methods than dismissal. 57

One tenure case which resulted in a negative ruling was that of a sewing teacher who sued the Board of School Commissioners of the City of Indianapolis. 58 This case proved to be one which involved a part-time teacher's contract. The Indiana Supreme Court reversed the decision of the Marion County Circuit Court. The Supreme Court held that a writ of mandamus could not be issued upon the school-board to reinstate the teacher according to the Tenure Law. This decision was based upon the fact, "That the part-time contract did not come within the provisions of the law to be a part of the time considered." 59

The ruling of the Indiana Supreme Court in this case will no doubt be referred to in the future as one which is outstanding with respect to The Tenure Law and part-time contracts.

Another case which bears upon the contractual relationship of the teacher is the case of the teacher's pension. The litigation was

**Retirement and the Law**

The pension relationship with the teacher is a contractual one, therefore a change in the contractual rights

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58 Board of School Commissioners of the City of Indianapolis et al v State of Indiana, ex rel. Italy, Wolfolk #26474, Typed Manuscript.

59 Ibid.
cannot be made without the consent of all persons concerned.

The discussion of the contractual status of an organization usually involves the famous decision in the old Dartmouth College Case. Clarence Ackley in his article, Prohibitive Legislation Regarding Common Schools, sums up the situation of a change in contract as follows:

"In the famous Dartmouth College case, in 1819 the Supreme Court of the United States defined the nature of corporations in a doctrine that has become firmly established in the courts. By a charter granted by the English Crown in 1769, Dartmouth College in New Hampshire was a corporation with twelve trustees possessed of appropriate privileges and powers to conduct the affairs of the college and with authority to fill vacancies in their body. In 1816, the New Hampshire Legislature attempted to alter this charter by increasing the number of trustees, the additional number to be appointed by the governor and to be given the more important functions of the trustees in controlling the institution. The original trustees contested the legislation and the United States Supreme Court declared the original charter to be a contract, perpetually continuing, and not subject to alteration." 60

Another case which bears upon the contractual relationship of the teacher arose in New Jersey. The litigation came about when an amendment in 1899 affected the teachers' retirement law in that state. This amendment made retirement of the teacher dependent upon the decision of trustees instead of the teacher's having the right to annuity upon completion of the twenty years of service as specified by their retire-

ment law. The court ruled that "the act of 1899 attempted to impair the obligation of the contract and this is beyond the power of legislation." 61

In view of the findings in the cases mentioned the Indiana Pension System, then, in all probability cannot be changed by Indiana Legislature without the consent of all those concerned.

Summary

1. The teacher's contract was studied from two angles: first, its elements were analyzed and second, its operation was studied by the examination of court decisions in those cases which reached the courts.

2. It was found that the teacher's contract is the expressed form of contract which has the same elements found in other forms of expressed contracts. The expressed contract is a valid contract when it is written and signed.

In Indiana the teacher's contract must be in writing.

3. The contractual powers of the teacher and the school-board may be considered collectively for one depends largely upon the other. In summarizing the contractual powers it may be said that:

4. The teacher has power to contract. The person who has

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12. 61 Ball v Board of Trustees, 71 N. J. L. 64, (56 Atl.111)

The school-board has the power to dismiss the teacher.
a license or certificate issued from the proper authorities in Indiana has the power to contract for a teaching position.

5. The teacher has power to maintain order in the classroom for he is acting "in loco parentis" to the children.

6. The teacher has power to recover for breach of a valid contract.

7. The teacher serving on a valid contract has power to recover the salary lost when the school-board closes the school on the account of an epidemic.

8. The teacher has power to demand the minimum salary as specified by statute.

9. When the teacher is dismissed by the school-board for a cause in violation of the statutes pertaining to tenure of the teacher has a right to seek a remedy at law.

10. The teacher has power to contract with a de facto school-board. Since the school district is liable, it is the duty of the incoming members of the school-board to recognize the contract.

11. The teacher who is on tenure has the right to marry.

The school-board has power to contract with the teacher when the members of the board have been properly notified and the members meet as a corporate body in the regular meeting place.

12. The school-board is not permitted to delegate its duties.

The school-board has the power to dismiss the teacher
for incompetency, insubordination, neglect of duty and immorality.

13. The school-board has the power to dismiss the teacher on the grounds of a justifiable decrease in the teaching position.

14. The school-board does not have the power to contract with a teacher if the contract exceeds the debt limit of the school district. Such an act is called ultra vires.

Principles Underlying the Teacher’s Contract

1. The teacher’s contract in Indiana is the same as any other expressed contract.

2. The signing of the teacher’s contract bestows “public character” upon the teacher. The person becomes a public employee of the state.

3. The teacher’s contract becomes the measure of the teacher’s power when it is properly signed.

4. The teacher’s contract permits the legal protection which is offered through the Indiana statutes and courts.

5. The teacher’s contract makes obligatory certain mandatory duties specified by the statutes.

6. Through the teacher’s contract a contractual relationship is created between the teacher and the Indiana Retirement provision.
The purpose of this chapter is to present the facts concerning the findings in the litigation brought to the attention of the Indiana courts by the teachers of the state.

At the outset, the reader is aware that a court of law is impersonal. The decisions in cases are rendered only after a careful consideration of the facts are presented. Lawyers often review the Indiana statutes bearing directly on the cases and study the previous similar cases which have been settled. Even then, after great care has been exercised in the decision, the case is often taken to a higher court for final settlement. A case appealed often results in a reversal of the decision with a statement of the points in which the lower court erred. Again, the appeal to the higher court results in the same decision rendered by the lower court. Frequently, the plaintiff is satisfied with the first decision and the defendant does not carry the case further by an appeal. Generally, the plaintiff is not willing to accept a reversed decision as final when he has the Supreme Court to which he can appeal as a last resort in
obtaining justice. To defective in that the names of officers were. Although cases in this study definitely show that the state protects the teacher, the court rarely provides remuneration for the teacher while he is pursuing justice nor is there any adjustment made for the embarrassment and perhaps injury to the educational standing of the teacher.\(^1\) However, without this legal protection, the status of the teacher in Indiana would be entirely different.

At this point in the discussion, a review of a number of court cases will reveal to the reader certain specific facts which will bear directly upon the legal status of the Indiana teacher.

In this dissertation, sixty-one Indiana cases and three from other states have been examined. A careful attempt has been made to classify these cases. It was found that twenty-four cases were concerned with the employment of the teacher. Of this number, eight cases were due to the fact that the teachers had no license at the time they were employed. These cases proved to be indirect violation of the statute. The amended acts of 1883 require that the teacher have a license when the contract is made.\(^2\) Eight cases were found that were brought by teachers whose contracts were not full and definite.

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\(^2\) Indiana Statute (29-5005) Annotated, Burns.
These contracts were defective in that the names of officers were omitted, spaces were left blank and the length of term was not specified. Such defects as these rendered the contract to be questioned as to its validity and often resulted in the contract being unenforceable.

Four cases revealed that the school-boards failed to recognize the contracts of employment of the de facto boards. One case was that of fraud. The teacher signed the contract, using her maiden name although she had been married four days. Two cases were brought because the taxpayers objected to the employment of the teachers by the trustees. One case was found which revealed the fact that the license had been revoked before the term of school began.

There were twenty cases of dismissal found. Of this number, eleven cases involved tenure teachers. Four cases involved the closing of school, thus eliminating the duties of the teachers. Nine cases were found in which teachers were dismissed for other causes such as incompetency, the accidental burning of the school building, political reasons, license deficiency and other causes. Nine cases were found which sued for recovery on breach of the teachers' contracts. This condition of breach of contract exists when the school-board, for causes stated refuses to pay the teacher out of license. One case was pursued because the contract was defective.

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3 Indiana Statute (23-5005) Annotated, Burns.
the public funds and the teacher brings suit to recover for the services rendered. Four cases of discipline were found of this number two cases were reported in 1883.

TABLE VII.  PER CENT OF COURT CASES RECORDED UNDER EACH CLASSIFICATION

<table>
<thead>
<tr>
<th>Number of Cases</th>
<th>Kind of Case</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>employment</td>
<td>39.34</td>
</tr>
<tr>
<td>20</td>
<td>dismissal</td>
<td>32.78</td>
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<tr>
<td>9</td>
<td>recovery</td>
<td>14.76</td>
</tr>
<tr>
<td>4</td>
<td>discipline</td>
<td>6.66</td>
</tr>
<tr>
<td>4</td>
<td>closed schools</td>
<td>6.66</td>
</tr>
</tbody>
</table>

Total 61 cases

In the following Table VIII, page 65 shows that the numbers of cases occurring by years will be recorded. The largest number of cases arising are shown in 1881. In 1886, 1904 and 1935 three or more cases are reported.

In 1881 fifty per cent of the cases reported for the year were settled in favor of the teacher. The other cases were found to be in direct violation to the statutes. These cases were pursued for various reasons. One case involved the employment of the teacher which exceeded the debt limit. One case was a matter of discipline in which the teacher was required to pay a fine for willfully injuring the pupil. Two cases were brought to court by teachers serving without a license. One case was pursued because the contract was defective. The teacher was permitted to recover for services
rendered and an other case involved the non-performance of
the contract when the teacher was ready and willing to teach.
No building was provided by the trustee after the fire de-
stroyed the building and records of the teacher.
In considering the ratio of men and women teachers
pursuing justice it was found that out of sixty-one Indiana
cases there were thirty-four cases brought by men and twenty-
seven cases brought by women. This is probably due to the
fact that more men were in the teaching field at this time
than there were women. Out of the sixty-one cases cited in
this study thirty-four or 55.74 per cent of the cases were
settled in favor of the teacher. Out of the successful cases
which rendered judgment in favor of the teacher eighteen
cases were brought by men and sixteen cases were settled for
women.
This finding indicates clearly that the Indiana teacher
has more than an even chance of winning the case.
The reader may be interested in knowing the kind of
cases brought by men compared with those brought by women.
The chart page 87 shows the cases brought by the teachers in
Indiana. More men have cases of employment difficulties and
more women are represented in cases of tenure. More men have
cases of recovery on breach of contract and discipline cases
than women.
In locating the court cases by counties on the map of
## Table VIII. Number of Cases Brought to the Indiana Courts from 1848 to 1936

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1848</td>
<td>1</td>
</tr>
<tr>
<td>1853</td>
<td>2</td>
</tr>
<tr>
<td>1856</td>
<td>1</td>
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<td>1877</td>
<td>1</td>
</tr>
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<td>1879</td>
<td>1</td>
</tr>
<tr>
<td>1881</td>
<td>1</td>
</tr>
<tr>
<td>1884</td>
<td>2</td>
</tr>
<tr>
<td>1886</td>
<td>4</td>
</tr>
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<td>2</td>
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<td>1905</td>
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<td>4</td>
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<td>1924</td>
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<tr>
<td>1926</td>
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</tr>
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<td>3</td>
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</tr>
<tr>
<td>1934</td>
<td>5</td>
</tr>
<tr>
<td>1935</td>
<td>3</td>
</tr>
</tbody>
</table>

Total 61
### LEGEND OF THE MAP OF INDIANA

Indiana, the reader will note (page 36) that more of the
litigation Legal Cases Indicated by Counties

<table>
<thead>
<tr>
<th>Identification Number</th>
<th>County</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Allen</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Cass</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Clark</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>Clay</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>Dearborn</td>
<td>1</td>
</tr>
<tr>
<td>6</td>
<td>Decatur</td>
<td>5</td>
</tr>
<tr>
<td>7</td>
<td>Madison</td>
<td>3</td>
</tr>
<tr>
<td>8</td>
<td>Marshall</td>
<td>1</td>
</tr>
<tr>
<td>9</td>
<td>Martin</td>
<td>2</td>
</tr>
<tr>
<td>10</td>
<td>Monroe</td>
<td>1</td>
</tr>
<tr>
<td>11</td>
<td>Morgan</td>
<td>1</td>
</tr>
<tr>
<td>12</td>
<td>Owen</td>
<td>1</td>
</tr>
<tr>
<td>13</td>
<td>Perry</td>
<td>1</td>
</tr>
<tr>
<td>14</td>
<td>Pike</td>
<td>1</td>
</tr>
<tr>
<td>15</td>
<td>Posey</td>
<td>1</td>
</tr>
<tr>
<td>16</td>
<td>Ripley</td>
<td>2</td>
</tr>
<tr>
<td>17</td>
<td>Rush</td>
<td>1</td>
</tr>
<tr>
<td>18</td>
<td>St. Joseph</td>
<td>1</td>
</tr>
<tr>
<td>19</td>
<td>Tippecanoe</td>
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<tr>
<td>20</td>
<td>Vanderburg</td>
<td>2</td>
</tr>
<tr>
<td>21</td>
<td>Vigo</td>
<td>1</td>
</tr>
<tr>
<td>22</td>
<td>Washington</td>
<td>1</td>
</tr>
</tbody>
</table>
| 23                    | L

These cases are in counties in the central and southern parts of the state. The same represent as many of cases as will include one case which is a typical one selected for a

Each classification of cases as set forth in this study. The first case selected is from the classification of employment.

This case came about when a teacher contracted for less...
Indiana, the reader will note (page 84) that more of the litigation arising comes from counties in the central and southern portions of the state.

In many of the counties there are no cases reported. The total number of counties in which cases appear is 35.

The counties in which three or more cases are reported are Clay, Decatur, Madison, Marion and Montgomery. Again these cases are in counties located in the central and southern parts of the state.

These cases represent a variety of causes. Two cases of breach of contract were reported in Decatur county and two cases of tenure were reported in Marion county. The other cases involved the question of exceeding the debt limit, refusal to issue a certificate to teach, no license and verbal contract.

It is impossible in the short space of this study to analyze all of the court cases and their decisions, therefore, only a few of the cases which are contributory to the status of the teacher and which show undoubtedly the protection to the teacher by the state will be selected.

The plan of procedure for the discussion of the cases will include one case which is a typical case selected from each classification of cases as set forth in this study. The first case selected is from the classification of employment. This case came about when a teacher contracted for less
<table>
<thead>
<tr>
<th>Category</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>24.58</td>
<td></td>
</tr>
<tr>
<td>Dismissal</td>
<td>14.76</td>
<td></td>
</tr>
<tr>
<td>Tenure</td>
<td>9.84</td>
<td>4.92</td>
</tr>
<tr>
<td>Recovery</td>
<td>5.26</td>
<td></td>
</tr>
<tr>
<td>Discipline</td>
<td>14.76</td>
<td></td>
</tr>
<tr>
<td>School Closed</td>
<td>4.92</td>
<td>6.56</td>
</tr>
</tbody>
</table>

**Chart: Comparison of Court Cases Brought to Court by Men with Those Brought by Women**

- Per Cent

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3. Indiana Statistics (26-13) Announced, Court.


5. Oil School Township v Hurting, 27 Ind. App. 525.
salary than the statute permitted. The case was not considered as one "in pari delicto" with the trustee. The statute governing the decision of the case reads: "If any school officer shall pay to any teacher for school services at a rate less than that fixed by this act, he shall be fined in any amount not exceeding $100.00 and shall be liable in a civil action for wages to such teacher at the rate provided in this act, which may be recovered by such teacher, together with the attorney's fee of $25.00, in any court of justice of competent jurisdiction." The judgment in this case was rendered in favor of the teacher. The school trustee could not make a contract with a teacher when the act was in direct conflict with the statutory provision.

The second case for examination will be selected from the group of cases classified under dismissal. This particular case of dismissal led to a breach of contract suit. The trustee refused to permit the teacher to carry out his part of the contract. By a finding of facts, later on in a higher court it was shown that the appellee had a right to recover. When the teacher's contract is full and definite the teacher...

3 Indiana Statute (28-4315) Annotated, Burns.
4 School City of Evansville v Hickman, 47 Ind. App. 500.
5 Oil School Township v Marting, 27 Ind. App. 525.
has a legal right to seek a remedy by law for the breach of a contract. It was found that the teacher had complied with the rules. His contract was enforceable and he was ready and willing to carry out his duties in school. The court rendered judgment for the entire amount of salary due the boy teacher. The appellee then filed a paper by which he indicated his willingness to pay five dollars ($5.00) for the cost of this appeal. This sum was deducted from the amount resulting from the judgment. After a period of time, the teacher was paid.

The third case will be chosen from those which involved questions concerning discipline. As has been stated before, most of these cases arose in the early part of the educational experience of our state. A case cited in 1889 concerned a youth who disobeyed the rules of the school. The difficulty arose over the carrying in of the wood for the schoolroom stove. The boy's behavior in this instance was from any cause. Failing to do well, visit a school not proper, therefore the teacher asked him to change his behavior. The teacher in the presence of the school, place and, since this was near the stove, the boy felt that person, for such conduct, shall be liable to a being warmer than usual, he would need an overcoat when he left school. When collected shall go into the general tuition left the school. He appropriated the teacher's overcoat.

Upon the return of the boy to school, the teacher chastised him. He gave the boy, who was the same age as himself, a choice of a whipping or that of being expelled from school.

Vanvactor v State (82-M529) Annotated. NAPCA.
The boy chose the former. The teacher used a green switch which proved effective. Later this case came to the attention of the court. In reviewing the case, it was found that the teacher was acting "in loco parentis" to his pupil. He gave the boy a choice of his own punishment. The weapon used by the teacher was fitting and proper for the boy who was his chronological age. The teacher did not whip the boy until Monday. This act shows that by the interval of time, the teacher was not angry but merely discharging his duty. The court refused to hold the teacher to show that the teacher committed the injury to the boy intentionally.

The law which protects the teacher from insults of parents and guardians when he is discharging his duty in enforcing obedience was passed in 1865. It is as follows:

"If any parent, guardian, or other person from any cause, fancied or real, visit a school authority with the avowed intention of upbraiding or insulting the teacher in the presence of the school, and shall so upbraid or insult the teacher, such person, for such conduct, shall be liable to a fine of not more than twenty-five dollars, which, when collected shall go into the general tuition revenue." 7

The fourth case which will be brought to the attention of the reader is one which has to do with the closing of school. Cases have been known to arise where the school

7Indiana Statute (28-5103) Annotated, Burns.
was closed because of an epidemic of a contagious disease. If the school is closed by the school-board the teacher may recover his salary. If the school is closed by the board of health the teacher does not have power to recover on his valid contract. The case in question concerning the closing of the school occurred when the teacher was serving under a valid contract. She was ready and willing to carry out her duties but the school house had burned and there was no suitable place provided for her to finish the school work after the fire which occurred Jan. 16, 1878. She agreed to the salary of two dollars and twenty-five cents per day ($2.25), or two hundred and ninety dollars and fifty cents ($290.50). After the fire there was still due ninety-six dollars and seventy-five cents ($96.75) of the teacher's salary.

The teacher could not make a report to the school authorities because the records were burned. An Indiana statute provides for the payment of seventy-five per centum of the salary until he makes the entire report of his school.

9Charleston School Township v Hay, 74 Ind. 127.
10Gregg School Township v Hinshaw, 76 Ind. App. 503.
11Indiana Statute (29-431.5) Annotated, Burns.
There is this phase of the requirement of the law which would seem to be in favor of the trustee in withholding the salary. This view, however, is in conflict with the requirement in the teacher's contract.

In the teacher's contract the teacher agrees to discharge his duties and the employer agrees to provide a place for the school. This duty was not performed by the trustee, therefore, the district was liable for the non-performance of the contract. Judgment was rendered in favor of the teacher.

In discussing the fifth case selected for examination it will be well to state at the outset, that this case could be classified under dismissal but since the case dealt with the tenure of the teacher it will be considered under that head and governed by the laws pertaining to it.

This case was one which was appealed from Gibson Circuit Court. It was an action by the state on the relation of the teacher in a writ of mandamus against the trustees of Union School Township. This action was for the purpose of compelling the trustee to recognize her as a permanent teacher.

The complaint was in one paragraph to which a demurrer was filed challenging the jurisdiction of the court (1) over the person of the defendant (2) over the subject matter of the action and (3) for

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12 Brumfield v State, 190 N. E. 363.
rules insufficient facts to state a cause of action.
The court overruled the demurrer and the appellant answered in three paragraphs, the first a general denial and two affirmative paragraphs. The issues of the case closed by a general denial. These were submitted to the jury which rendered a verdict for the appellee.

One of the sixteen paragraphs dealt with constitutional law. It read: "Teachers' Tenure Law held not invalid as interfering with freedom of contract, as violative of constitutional guaranty of equal protection, or as class legislation," position conditional upon satisfactory performance of their duties.

Tenure cases which have tested the constitutionality of the tenure law are instrumental in bringing about the protection of the teachers of the state. One case in particular which has had much weight in this respect is the tenure case of Kostanser v State. 13 The tenure cases of Milan involve difficulties over marriage and failure upon the part of the school official in reporting years of service of the teachers. For this failure the court ruled that the teachers were not to be punished for such negligence.

The courts have frequently ruled that in the absence of a statutory provision to the contrary, marriage is not a sufficient cause for tenure teacher dismissal and that, where

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13 Kostanser v State, 205 Ind. 536.
14 Robinson v School Town of Milan #26207.
15 Whittach v School Town of Milan #26208.
16 Kostanser v State (30-4207) Annotated, Burns.
rules are passed by school-boards against marriage the violation of such rule by a teacher does not constitute insubordination sufficient to warrant dismissal.\textsuperscript{15} The statute which is applied to the interpretation of the court cases on tenure states certain specific things for which a tenure teacher may be dismissed.\textsuperscript{16}

"The teacher Tenure Act is held to be constitutional, as it is clearly within the power of the general assembly to fix the qualifications of teachers and to provide for an indefinite tenure of position conditional upon satisfactory performance of their duties."\textsuperscript{17}

Summary
In this chapter two things have been attempted. First to determine the teacher status and second, to show that protection is afforded the teachers by the state and the courts.

Findings
1. The teachers of Indiana have more than an even chance of winning a case. Out of sixty-one cases, thirty-four or 55.74 per cent of the cases were settled in favor of the teacher.
10. There were fifty-seven counties with no litigation.

\textsuperscript{16} Indiana Statute (25-4507) Annotated, Burns.
\textsuperscript{17} Kostanzer v State (25-4507) Annotated, Burns.
2. Twenty-four cases or 39.34 per cent of the cases were brought to the attention of the court over employment.

1. In a case of employment the teacher contracted for less time than salary specified by statute.

3. Twenty or 32.78 per cent of cases arose over dismissal of teachers.

2. In a case of dismissal the trustees refused to permit the teacher to discharge his duties.

4. Nine cases or 14.76 per cent of cases were brought to court for recovery on breach of contract.

5. In a case involving discipline the teacher chastised a boy for misconduct.

5. Four cases or 6.56 per cent arose over discipline in the schools.

4. In the case of the closing of a school on account of the condition of non-performance of the teacher's contract.

6. Four cases or 6.56 per cent were brought by teachers to prevent destruction of the school building, thus creating a condition of the teacher had the schools closed to them.

7. The greatest number of cases brought to court in any one year occurred in 1881 when six cases were reported.

8. The greatest number of cases brought to court were by men to the amount of thirty-four. Twenty-seven cases were brought by women.

9. Thirty-five counties reported cases from the span of years 1846 to 1856.

10. The greatest number of cases reported were in Clay, Decatur, Madison, Marion and Montgomery counties.

11. There were fifty-seven counties with no litigation.

12. Most of the cases arose in the southern area of the state.

2. The teacher in contracting for less salary than that specified by statute is not considered in cases dealing with
The Nature of cases where Protection is Afforded the Teacher

1. In a case of employment the teacher contracted for less than the salary specified by statute.
2. In a case of dismissal the trustee refused to permit the teacher to discharge his duties.
3. In a case of discipline the teacher chastised a boy for disobedience.
4. In the case of the closing of a school on account of the destruction of the school building, thus creating a condition of non-performance of the teacher's contract.
5. In a case involving tenure of the teacher. A writ of mandamus was filed against the trustee for reinstatement of the teacher.

These cases were selected from groups of cases classified under employment, dismissal, discipline, recovery on breach, and tenure. Since space in this study does not permit the discussion of all the cases these few cases were selected to represent the typical cases under the headings mentioned.

The Status of the Indiana Teacher

1. The teacher in possession of a valid contract has the right to recover for breach of contract.
2. The teacher in contracting for less salary than that specified by statute is not considered "in pare delicto" with
3. The teacher is held "in loco parentis" and has a right to use discretionary power in discipline.

4. The teacher has a right to appeal to the courts for a remedy when the performance of the contract has been prevented and salary loss suffered.

5. The tenure teacher upon dismissal for cause not involving violation of the statute has a right to a writ of mandamus for reinstatement.

The Value of the Study

Very often the teacher fails to realize the slow but steady growth and improvement of the teacher's status in Indiana; the many perplexing problems which involve the teacher's power derived from his contract, and the need of legal knowledge which if possessed often would have prevented litigation.

It is hoped that this study will prove valuable in directing attention to the early and feeble beginnings of teacher status; the foundation of laws which have strengthened the power of the teacher's contract and the underlying legal principles of the contract which have contributed materially to the legal status of the teacher in recent years.

The Purpose

The purpose of this study is an attempt to reveal the Indiana teacher's status with a view to preparing a work...
while investigation, such poor situations arise which are a
challenge to the legal understanding and experience of educators,
therefore, it is especially necessary to bring to the attention the facts of the teacher-state relationships which will
be relevant and most helpful to the teacher.

CHAPTER VI
GENERAL SUMMARY AND CONCLUSIONS

This chapter will attempt to present to the reader
a summary of the dissertation, the findings and the conclusions resulting from the discovery of the facts, etc.

The Value of the Study

Very often the teacher fails to realize the slow but
steady growth and improvement of the teacher's status in
Indiana; the many perplexing problems which involve the
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While investigation. Each year situations arise which are a challenge to the legal knowledge and experience of educators, therefore, it is especially necessary to bring to the attention the facts of the teacher-state relationships which will be relevant and most helpful to the teacher.

The Thesis

In this study the thesis is to discover whether the state and its agent, the court, protect the teacher.

Source of Material

The material for this study was gathered entirely from

The Indiana State Library, The Indiana Supreme Court Library,
The Butler University Library and the Teachers' Special Library, branch of the Indianapolis Public Library.

The data obtained for the historical background used in this study were derived from the books, records, newspapers and typed manuscripts in the Indiana State Library. The court cases selected and used were obtained from the State Court Reports in the Indiana Supreme Court Library. The magazine articles bearing upon school administration and school law were gathered from the Teachers' Special Library.

The legal material was gathered from a standard authentic source. It is the same source material which is drawn upon repeatedly by lawyers in the making of their briefs.

This material is found in the Second Decennial Edition, Digest
In developing this study it was found that much more material was collected than was used. A system of classification and elimination of material followed which excluded all material not relevant to the problem. This resulted in the use of thirty books, twenty-four bulletins, magazines, monographs and reports, eight newspapers, sixty-four law cases and one hundred and fifty-six statutes of Indiana.

The plan Previous Studies in the Field

A number of writers have made studies of the contractual status of the teacher and Indiana School Laws. Among the studies that have contributed to education are the following: The study made by Ira Madison Allen, The Teacher's Contractual Status; the book by Clement T. Malan on Indiana School Law; the book by Newton Edwards, The Courts and The Public Schools and the book by Frank R. Stephenson, Handbook of Indiana School Laws relating to teachers.

Apparently, no study has been made which deals with the status of the teacher in Indiana with a definite view to discovering the extent to which the teacher is protected by law, contract, dismissal, discipline, closed schools, recovery on breach. The study of Mr. Allen includes a wide scope of legal cases which indicate an extensive study of the statutes and court cases. Mr. Malan's work is wide in scope. It covers
all phases of school law which contribute to the status of the teacher in Indiana. The book by Newton Edwards brings before the reader a clear understanding of the analyses of the laws relating to the teacher. The legal cases are not limited to Indiana but are national in scope. The Handbook of Indiana School Law is an example of a concise, well organized group of statutes and cases bearing upon Indiana School law. The cases cited are limited to Indiana.

The Plan

The plan of this study divides itself into four main divisions. In order to develop a background for the teacher status in Indiana it was necessary to search through the Indiana State Instruction Reports, magazines, bulletins, newspapers and books on the history of Indiana education. For the development of the remainder of the study there was a need to review the Indiana statutes; to note the changes in educational administration as presented in reports bulletins and to read the court cases relating to teachers.

By a study of the statutes of Indiana it enabled the writer to select certain outstanding legal cases which will prove to be typical examples of cases representative of employment, dismissal, discipline, closed schools, recovery on breach of contract and tenure. By the citation of the sixty-one Indiana cases the writer had an opportunity to note the numbers of cases which proved to be successful in rendering
judgment in favor of the teacher, the numbers of cases brought by men and women and the nature of the cases brought to the courts.

The study of decisions rendered reveals the fact that the state protects the teacher.

Findings Presented

The State Protects the Teacher

The protection extended to the teacher by the state flows through the arteries of legal provisions. The laws of the state are created by educated people with a vision for the benefit of the future citizens of the state.

The Educational Aids

1. Establishment of the State Universities.
2. Establishment of the State Normal School.
4. The Indiana Teachers' Journal.

The Teacher's License

1. It is evidence of training and efficiency.
2. Most Indiana licenses are of two grades. In a few cases there are three grades.
3. Opportunity for raising the license to a higher grade upon presentation of training and successful service.
4. All first grade licenses are renewable for life upon
4. five successful years of service and evidence of training in specific subjects. Relieves the teacher of the
5. The license must be in the possession of the teacher at the time of employment.
6. The license in Indiana protects the teacher from undue attacks of criticism from outsiders who seek to lower the efficiency of the teacher's educational standard.
7. The retirement benefits cannot be altered by the board.

Tenure of the Teacher
1. Tenure elevates the teaching position.
2. Tenure stabilizes the teaching field.
3. Tenure protects the teacher from undue loss of position or study by providing a remedy at law. It does not prevent the individual dismissal of a teacher.
4. Tenure attracts desirable teachers to the state.
5. Eligible teachers are usually permitted to stay in the educational work.
6. A tenure teacher who marries usually is permitted to continue her duties as a teacher.

Retirement Provision
1. The pension fund created by the state protects the teacher during the declining years of life.
2. The retirement provision in the state attracts the best teachers.
3. The pension provision encourages self improvement of the teacher by travel and study.
4. The pension fund is a sound investment for all teachers.
5. The retirement provision relieves the teacher of the necessity of keeping in the teaching field when usefulness is past.
6. The retirement legislation is not class legislation.
7. The retirement organization is a contractual relationship on the part of the teacher and the state.
8. The retirement legislation cannot be altered by the legislature without the consent of all those concerned.

The Teacher Status in Indiana

In the early beginnings of Indiana education the teacher status was at a very low ebb. He has developed into an individual with legal protection provided by the state and is held in esteem by patrons and educators.

Contractual Power of the Teacher

1. The teacher has power to contract for a position.
2. The teacher in the possession of the Indiana license may sign a written contract to teach in Indiana.
3. The teacher has power to maintain order in the classroom. He acts "in loco parentis" to his children.
4. The dismissed teacher has a right to seek a remedy at law when he has served on a valid contract.
5. The teacher has a lawful right to demand the minimum wage as specified by the statute.
6. The teacher has a legal right to recover on breach of a valid contract.

7. The tenure teacher has a right to marry.

8. The teacher has power to contract with a de facto school-board.

9. The teacher serving on a valid contract has the power to recover the salary for the time the school was closed on the account of a contagious disease providing the school-board closed the school.

Contractual Powers of the School-board which have Bearing Upon the Teacher Status

1. The school-board has power to contract with the teacher as a corporate body.

2. The school-board cannot delegate its duties.

3. The school-board cannot make a valid contract with a teacher who does not have an Indiana license.

4. The school-board has the power to dismiss the teacher for incompetency, insubordination, neglect of duty and immorality.

5. The school-board has power to dismiss the teacher on the grounds of a justifiable decrease of teaching positions open to teachers.

6. The school-board cannot contract beyond the debt limit of the school district.
Nature of the Cases in which

Legal Principles Underlying the Teachers

Contract which affect the Indiana Teachers Status

1. The teacher's contract in Indiana is the same as any

other expressed contract. The Indiana statute requires

this contract to be in writing.

2. The signing of the teacher's contract bestows "public

character" upon the teacher. The person becomes a

public employee of the state.

3. The teacher's power arises by the act of the signing

the contract. The document becomes the measure of the

teacher's power.

4. Through the teacher's contract, a contractual relation-

ship is created between the Indiana Pension Fund Organi-

zation and the teacher.

5. The teacher's contract makes obligatory certain man-

datory teaching duties.

6. The teacher's contract makes possible all of the legal

protection which is afforded through the Indiana statutes

and courts.

Cases Settled in Favor of the Teacher

1. There were thirty-four cases or 55.74 per cent of cases

settled in favor of the teacher. The teacher has more

than an even chance in winning the case.

1. The teacher should be familiar with the opportunities
Nature of the Cases in which Protection is afforded the teacher

1. In a case of employment in which the teacher contracted for less salary than that specified by statute.
2. In a case of dismissal when the trustee refused to permit the teacher to discharge his duties.
3. In a case of discipline in which the teacher chastised a boy for misbehavior.
4. In a case of closing the school on account of the destruction of the school building rendering the non-performance of the contract.
5. In a case involving teacher tenure. A writ of mandamus was filed for reinstatement of the teacher.
6. In a case which involved a defective contract.
7. In a case in which a de facto school-board employed the teacher.
8. In a case in which the court rendered judgment permitting the teacher to recover salary for the period the school was closed on the account of contagion.
9. In a case of recovery on breach of contract when the trustee dismissed the teacher without authority to do so.

Recommendations Offered

License

1. The teacher should be familiar with the opportunities
1. Teachers' tenure should be extended to all teachers for the purpose of adding security to the position.

2. The teacher should familiarize himself with the important legal implications that pertain to his contract.

3. The teacher should become familiar with the laws relating to the retirement fund.

4. The teacher should know that his heirs must make application for the estate of the deceased teacher within three years.

5. The teacher should realize that the pension fund is a sound investment.

6. The teacher should know that the relationship created by the pension fund is a contract.

7. The teacher should realize the necessity for the college and university training as a basis for license issuance.

8. In addition to the training, the bases for license issuance should include character. Good character is essential to a good teacher.

9. As soon as possible, there should be only two grades of licenses. This condition will improve the teacher and the quality of education.

Tenure

Retirement
by the State Retirement and the teacher is a contractual relationship.

6. The teacher should know that the annuity paid to the teacher is subject to the gross income tax according to the law.

7. The annuity should be paid in more frequent intervals than four installments yearly according to the law provision and when it is paid, it should be free from taxation.

The Contract

1. The teacher should realize that he is an employee of the state.

2. The teacher should familiarize himself with the important legal principles underlying the contract.

3. There should be an arrangement by which the court rulings and statutes could form one body of laws.

4. There should be a collection of the early school session laws extracted from among the numerous laws on roads and other forms of construction.

5. The teacher cannot afford to ignore the laws relating to his contract. Cases show that it is over this document that much of the litigation arises. This is evident that more study should be given to the legal aspects of the educational administration not only of the present but the future.
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### Minimum Requirements for Teachers' License

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Common School District

(28-424) Indiana State, Annotated, Burns

(28-424) Indiana State, Annotated, Burns

(28-424) Indiana State, Annotated, Burns

(28-424) Indiana State, Annotated, Burns

(28-424) Indiana State, Annotated, Burns

(28-424) Indiana State, Annotated, Burns
The Board of School Commissioners of the City of Indianapolis hereby approves the appointment by its Superintendent of Schools of to be a teacher in the common school of said city, to serve during the school year September 1, 1935, to June 30, 1936, both inclusive, unless this contract be sooner cancelled for cause, and the said is hereby employed as a teacher for such school year. The service to be rendered by said teacher and the employment of said teacher hereunder shall be subject in all respects to the Rules and Regulations of the Board, which are hereby made a part hereof as fully to all intents and purposes as if set forth at length herein, and subject also in all respects to the directions of the Board's Superintendent of Schools.

The grade and building to which said teacher is assigned are but this assignment may be changed at any time by the Superintendent of Schools.

The Board agrees to pay, and said teacher agrees to accept, for said teacher's services during said school year, the sum of Dollars.

Payment of said salary shall be subject in all respects to the provisions, conditions, deductions and readjustments set out in four certain paragraphs under the heading, "Conditions Respecting Salary" printed on the reverse side of this contract and hereby made a part hereof.

Said teacher hereby accepts said appointment and employment, subject to all of the provisions of this contract.

All of the provisions of this contract and the agreements of the respective parties herein contained are subject to the duties imposed and the rights granted by the Indiana Teacher's Retirement Fund concerning teachers' pensions.

APPENDIX B

TEACHER'S CONTRACT

1935 - 1936
Statute providing for the Indiana Teachers' Retirement Fund concerning teacher's pensions.

THE BOARD OF SCHOOL COMMISSIONERS OF The City of Indianapolis

schedule adopted by the Board and shall be submitted to the Board for approval. Each shall be paid at the rate of one-hundred ninety dollars and forty-eight cents to each teacher.

Salary contracted for subject teacher in the following:

(a) There shall be deducted from the amount payable, a sum equal to one-hundred ninetieth of the annual salary for each school day that such teacher shall be absent from duty, but no to each teacher absent from duty on any school day on account of personal illness, death of relative, or both, together, which absence interrupts service actually entered upon for the then current year, there shall be given for each school day that such absence from duty shall continue, not as a salary, but as a sick leave of absence, a sum equal to the difference between one one-hundred ninetieth of said teacher's annual salary and the salary allowance for a substitute teacher, whether said substitute teacher is engaged or not, provided, however, that such allowance shall not be paid for more than ten (10) days in the aggregate in any one school year. Days of absence for personal illness or death of relative of a teacher occurring during a vacation period other than referred to in section (a) hereof, and while the contract is effective, shall be computed as days of absence unless the teacher shall be present on the school day immediately preceding or following the vacation period.

(b) When a teacher resumes his or her school duties after temporary absence, and fails to notify the superintendent in time to save a substitute from going to the school, the substitute shall receive pay for one-half day, the same to be deducted from the salary of the teacher.

(c) Christmas holidays and spring vacation days are not included in the schedule upon which the salary is based.
Conditions Respecting Salary

The pay rolls shall be prepared according to the schedule adopted by the Board and shall be submitted to the Board for approval. Each such pay roll shall allot to each teacher, employed upon such contract, one-tenth of the annual salary contracted for, subject, however, to the following:

(a) There shall be deducted from the amount payable, a sum equal to one-hundred ninetieth of the annual salary for each school day that such teacher shall be absent from duty, but to each teacher absent from duty on any school day on account of personal illness, death of relative, or both together, which absence interrupts services actually entered upon for the then current year, there shall be given for each school day that such absence from duty shall continue, not as a salary, but as a sick or death of relative allowance, a sum equal to the difference between one one-hundred ninetieth of said teacher's annual salary and the salary allowance for a substitute teacher, whether said substitute teacher is engaged or not, provided, however, that such allowance shall not be paid for more than ten (10) days in the aggregate in any one school year. Days of absence for personal illness or death of relative of a teacher occurring during a vacation period other than referred to in section (c) hereof, and while the contract is effective, shall be computed as days of absence unless the teacher shall be present on the school day immediately preceding or following the vacation period.

(b) When a teacher resumes his or her school duties after a temporary absence, and fails to notify the superintendent in time to save a substitute from going to the school, the substitute shall receive pay for one-half day, the same to be deducted from the salary of the teacher.

(c) Christmas holidays and spring vacation days are not included in the schedule upon which the salary is based. Books, and blanks, and such other appliances as may be necessary for the systematic and proper conduct of said school, and to provide such janitor help as may be necessary properly to care for said school and its premises.
APPENDIX B

SCHOOL LAWS OF INDIANA

Official Form for School City or School Town or Township Teacher’s Contract.

This Contract Between

___________________________ School City or School Town or Township
___________________________ County, Indiana, hereinafter called employer and
___________________________ a teacher who holds a ...........
grade license, issued ............19.... by the
Indiana State Department of Education and whose success
grade of ........... per cent, was issued ................ 19....

WITNESSETH: That in consideration of the agreements
hereinafter contained said teacher agrees to teach in the
Public Schools of said School City or School Town or Township
in such building, room, and such grade or grades as shall be
designated by such employer, for the school term of .......... ...
months commencing on the ..............day of .......... 195.... Said teacher agrees faithfully to perform all the
duties of a teacher in said school; to use only such text-
books as are prescribed by the said employer in accordance
with the law, and to observe all rules and regulations of the
properly constituted school authorities; to attend and par-
ticipate in the exercises of each institute or other teachers’
meetings that may be appointed for the teachers of said
school corporation; to use and keep accurately all registers
and blanks placed in h.... hands by said employer and to
make a complete and accurate report at the close of the school
term and to make all other reports required of h.... by said
employer, the Superintendent, or the laws of Indiana; to
exercise due diligence in the preservation of all school
property committed to h.... care, and to turn the same over
to the employer or his representatives at the close of the
term of school, in as good condition as when received, damage
and wear by use excepted.

The employer agrees to keep the school building in good
repair, to furnish the necessary fuel, furniture, apparatus,
books, and blanks, and such other appliances as may be
necessary for the systematic and proper conduct of said
school, and to provide such janitor help as may be necessary
properly to care for said school and its premises.
And said employer further agrees to pay the said

in

for the school year of

months, said sum to be paid in

equal payments (semi-monthly) (monthly) during said school
(calender) year.

Said employer further agrees to pay said teacher five
dollars for attendance at each full day's session of the

teachers' meetings, which may be held in accord with Acts
of 1929, Chapter 187.

All teachers new to the service shall fill out the

prescribed record form of application for membership in the

Indiana State Teachers' Retirement Fund at the time of

signing their contracts; and all teachers coming under said

law, whether a beginning teacher, a former member of the

Retirement Fund, or one who has elected to take advantage of

said law, hereby consent that the employer shall deduct from

the employee's salary one-third of the assessment accruing

to the Indiana State Teachers' Retirement Fund at the end of

the second, the fourth, and the sixth months of the school

year. The employer shall issue a receipt for each assessment

so deducted in accord with Acts of 1929, Chapter 102.

It is agreed by the parties hereto that in case said

shall be dismissed from said

school by said employer, or their successors in office, for

incompetency, cruelty, gross immorality, neglect of business,

or violation of any of the stipulations of this contract, or

in case his... license should be revoked by the State Board

of Education... he shall not be entitled to any compensation

after notice of dismissal, or notice of annulment of license.

It is further agreed by the contracting parties that in

case the school is closed during the school year by order of

the School Trustees, or by order of the Health Authorities,

or if through no fault of the teacher the school cannot be

continued in session, the said teacher shall receive his...

regular payments during the time the school is so closed,
except the said employer may close the schools not exceeding

two weeks for Christmas holidays without paying the said

teacher, provided that the Christmas holiday vacation shall

not be counted to shorten the length of the school term.

It is further agreed by the contracting parties that all

the provisions of the Teacher Tenure Law approved March 8,
1927, as amended 1933, shall be in full force and effect in

this contract.

In case this form is used for an INDEFINITE CONTRACT the
following spaces shall be used for the annual insertion of length of school term, date of commencing of school term and the salary at per salary schedule or salary agreed upon.

For the school term commencing on the

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Annual salary

This contract is executed in duplicate (triplicate for school relief units) this ___ day of ___ 19 _. and each party has a copy thereof.

Teacher

School Trustees

Sec. 6. Any indefinite contract with a permanent teacher as defined in section 1 of this act may be cancelled only in the following manner: Not less than thirty days nor more than forty days before the consideration of any such school
Teachers--Tenure Law--Amended--Uniformity of Contracts.  
Section 1. That any person who has served or who shall 
serve under contract as a teacher in any school, 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. The 
term "teacher" as used in this section shall mean and include 
licensed public school teachers, supervisors and principals 
of all such public school corporations, and licenses assist-
ant superintendents and superintendents of such school 
corporations. Upon the expiration of any contract between 
such school corporation and a permanent teacher, such contract 
shall be deemed to continue in effect for an indefinite 
period and shall be known as an indefinite contract. Such 
an indefinite contract shall remain in force until such 
permanent teacher shall have reached the age of sixty-six 
years unless succeeded by a new contract signed by both parties 
or unless it shall be cancelled as provided in section 2 of 
this act; Provided, That teachers' contracts shall provide 
for the annual determination of the date of beginning and 
length of school terms by the school corporation; and, Pro-
vided further, That 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, 
and such schedule shall be deemed to be a part of such con-
tract; Provided, further, That such schedule may be changed 
by such school corporation on or before May first of any year, 
such changes to become effective at the beginning of the 
following school year; Provided, That all teachers affected 
by such changes shall be furnished with printed copies of 
such changed schedule within thirty days after its adoption; 
and, Provided, further, That teachers' contracts shall be 
uniform and of the form and wording as prescribed by the 
state superintendent of public instruction. (Amended, Acts 
1933, p. 716.) (88:4307)

Teachers--Indefinite Contract--Amendment--Cancellation. 
Sec. 2. Any indefinite contract with a permanent teacher as 
defined in section 1 of this act may be cancelled only in 
the following manner: Not less than thirty days nor more 
than forty days before the consideration by any such school
corporation of the cancellation of any such contract; such teacher shall be notified in writing of the exact date, time when and place where such consideration is to take place; and such teacher shall be furnished a written statement of the reasons for such consideration within five days after any written request for such statement; and such teacher shall, upon written request for a hearing, file within fifteen days after the receipt by said teacher of a notice of date, time and place of such consideration, be given such a hearing before the school board of such school corporation; such hearing shall be held not less than five days after such request is filed and such teacher shall be given not less than five days notice of the time and place of such hearing. Such teacher, at the hearing, shall have a right to a full statement of reasons for the proposed cancellation of such contract, and shall have a right to be heard, to present the testimony of witnesses and other evidence bearing upon the reasons for the proposed cancellation of such contract. No such contract shall be cancelled until the date set for consideration of the cancellation of such contract; nor until after a hearing is held if such hearing is requested by said teacher; nor until, in the case of teachers, supervisors, and principals, the city or town superintendent shall have given the school corporation his recommendations thereon, and it shall be the duty of such superintendent to present such recommendations upon five days' written notice to him by such school corporation. Nothing contained in this section shall prevent the suspension from duty of any teacher pending a decision on the cancellation of such teacher's contract. Cancellation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean a willful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons; Provided, That when the cause of cancellation of an indefinite contract is immorality or insubordination, as defined in this act, such cancellation shall go into effect at once; and Provided further, That when the cause of cancellation of an indefinite contract is not immorality or insubordination, as defined in this act, such cancellation shall go into effect at the end of the school term following such cancellation. The school boards of any such school corporation, by a majority vote, evidenced by a signed statement in the minutes of the board, may cancel an indefinite contract with a teacher after compliance with the provisions of this section; Provided, That the
decision of the school board shall be final. (Amended, Acts 1933, p. 716.) (28-4309)

Teachers—Condition Precedent to Appointment—Superintendent—Statement. Sec. 3. No teacher shall be appointed by any such school corporation in Indiana, and no teacher shall become a permanent teacher in any such school corporation, until the school superintendent shall have made a report upon such teacher's preparation, experience, and license, and it shall be the duty of every such superintendent, within ten days after request, to make such report upon any person whom the school corporation is considering as an applicant; Provided, That nothing contained in this section shall be deemed to prevent the granting to any superintendent of additional authority in the selection and employment of teachers either by law or by the rules or regulations of any such school corporation. (Amended, Acts 1933, p. 716.) (28-4309)

Cancellation by Teacher. 4. No permanent teacher shall be permitted to cancel his indefinite contract during the school term for which his said contract is in effect nor for a period of thirty (30) days previous to the beginning of such school term unless such cancellation is mutually agreed upon; such permanent teacher shall be permitted to cancel his indefinite contract at any other time by giving a five days' notice to the school corporation. Any permanent teacher cancelling his indefinite contract in any other manner than in this section provided shall be deemed guilty of unprofessional conduct and the state superintendent is hereby authorized to suspend the license of such teacher for a period of not exceeding one year. (28-4310.)

Leaves of Absence. Sec. 5. Any such school corporation, upon written request, may grant leaves of absence, for periods not exceeding one year, to any permanent teacher for study or professional improvement or because of physical disability or sickness, subject to such rules and regulations governing leave of absence as may be adopted by such corporation; Provided, That without written request any such school corporation may place a permanent teacher on leave of absence for periods of not exceeding one year because of physical or other disability or sickness; Provided, That such teacher shall have a right to a hearing on such unrequested leave of absence in accordance with the provisions for hearings contained in section 2 of this act. (Amended, Acts 1933, p. 716.) (28-4311)
Amendment—Act Construed. Sec. 6. This act shall be construed as supplementary to an act of the general assembly, page 195, Acts 1921, entitled "An act concerning teachers' contracts and providing for the repeal of conflicting laws". (Amended, Acts 1933, p. 716.) (28-4312.)