



11-1-1932

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Recommended Citation

Roland Obenchain, *Construction of Indiana's \$1.50 Tax Law of 1932 with Respect to Contracts of School Cities in Force at the Time of the Passage of the Act*, 8 Notre Dame L. Rev. 1 (1932).

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NOTRE DAME LAWYER

A Quarterly Law Review

VOL. VIII

NOVEMBER, 1932

NO. 1

CONSTRUCTION OF INDIANA'S \$1.50 TAX LAW OF 1932 WITH RESPECT TO CONTRACTS OF SCHOOL CITIES IN FORCE AT THE TIME OF THE PASSAGE OF THE ACT

ON August 8th, 1932, Chapter 10 of the Acts of the 1932 Special Session of the General Assembly of Indiana became a law without the signature of the governor. This act is commonly called the "\$1.50 Law."

After fixing a maximum state property tax levy of 15 cents per \$100 of assessed valuation the act establishes county boards of tax adjustment for the purpose of revising local levies if for any given area in the aggregate they exceed \$1.35 per \$100. The board is given power to reduce any or all such levies so as to bring them within the total of \$1.35. The board is given power to declare an emergency and allow and allot a total levy of more than \$1.35. If such emergency be not declared, then the total local rates cannot exceed \$1.35. The board is ephemeral, holding but one official session, which in 1932 was fixed for October 10th.

The current fiscal years of school cities, such as South Bend and Mishawaka, began August 1, 1932.

On that date were outstanding contracts to be performed after that date between such cities and others. Among such contracts are:

School Superintendents' contracts, which at least in the case of South Bend, had on that date two years to run, and

Teachers' contracts for the current fiscal and school year.

These school corporations formulated their budgets and certified their levies to the auditor as required by Section 14237, Burn's Annotated Indiana Statutes (1926), and Section 14239, Burn's Annotated Indiana Statutes (Supplement of 1929), and Chapter 53 of the Acts of 1932. These levies are:

School City of South Bend including Public Library	\$1.18½
Mishawaka excluding Public Library	\$1.31
Mishawaka Library	\$.05.

Included in these levies are amounts adequate, if collected, to pay in full the described contractual obligations.

Can the \$1.50 tax limitation law (Chapter 10) be so construed so as to permit the tax adjustment board to exclude from the levies of said school cities amounts adequate to meet such contractual obligations?

An act must, if reasonably possible, be construed so as not to conflict with the Federal and State Constitutions.¹

The Federal Constitution expressly provides in Section 10, Article 1, that "no state shall . . . pass any law impairing the obligation of contracts." The Constitution of the State of Indiana contains a similar provision.²

It is clearly recognized in constitutional law that public officers are not protected by these provisions in the Federal

¹ Zoercher v. Agler, 202 Ind. 214 (1930).

² Ind. Ann. Stat. (Burns, 1926) § 76.

and state constitutions. An office is not a contract or employment.³ However, teachers employed by school cities are not officers but are employees.⁴

The question seems to be put completely at rest for Indiana by the decision of the Supreme Court of Indiana in *Elwood v. State*,⁵ where the court, in discussing a case arising under the Tenure Law, said:

"The position of a teacher in the public schools is not a public office, but an employment by contract between the teacher and the school corporation."

So, likewise, it is generally held that a superintendent is not an officer, but an employee of the school city.⁶ This seems to be confirmed by several statutes in Indiana. For example, Section 6600, Burn's Annotated Indiana Statutes (1926), provides that school trustees of cities "shall have power to employ a superintendent for their schools and to prescribe his duties and to direct in the discharge of the same." Likewise the seventh clause of Section 7 of Chapter 53 of the Acts of 1931 expressly authorizes trustees of school cities of the same class as South Bend "to employ and discharge superintendents of schools and fix and pay their salaries and compensations." The Tenure Law by its express provisions includes within the word "teacher" licensed assistant superintendents and superintendents of school cities.⁷

At least two decisions of the courts of appeal of this State, *viz.*, *Reubelt v. School Town of Noblesville*⁸ and *Moon v. School City of South Bend*,⁹ seem to support the

³ Public Officers, 22 R. C. L., p. 379; Constitutional Law, 6 R. C. L., p. 337; *State v. Yancey*, 129 Ind. 296 (1891); *Butler v. Pennsylvania*, 10 How. 402 (1850).

⁴ Public Officers, 22 R. C. L., p. 397; Schools, 24 R. C. L., p. 612; Schools and School Districts, 56 C. J., p. 382; *Mootz v. Belgea*, 60 N. D. 741, 236 N. W. 358, 75 A. L. R. 1347 (1931); Notes: 54 L. R. A. 572; 30 A. L. R. 1424.

⁵ 180 N. E. 471, 474 (Ind. 1932).

⁶ Schools, 24 R. C. L., p. 612.

⁷ Ind. Ann. Stat. (Burns Supp. of 1929) § 6967.

⁸ 106 Ind. 478 (1886).

⁹ 50 Ind. App. 251 (1911).

proposition that a superintendent is an employee. In each of these cases the superintendent sued for his salary under contracts of employment and recovered. In the first case the court said:¹⁰

"The authority of the Board of School Trustees to employ teachers, and a superintendent of the schools in the town or city, is given in general terms, just as the authority to make other contracts is given."

* * *

"There is nothing in this grant of power to employ teachers and a superintendent, which in any way limits the authority of the board of trustees to contracts that are to be performed during the existence of any particular organization of that body."

* * *

"It may be that instances will occur when the authority to employ teachers and superintendents in advance of the incoming of a new member of the board may be abused, but the possibility is not very great, as but one member goes out at a time."

* * *

"On the other hand, desirable teachers and superintendents might be lost to the schools, if the board were not authorized to employ them until after the election in June."

In the *Moon* case the court said:¹¹

"The statute clearly empowers the board to employ a superintendent, and the contract is valid unless vitiated by the length of the term of employment."

The constitutional provisions protect from impairment obligations of contracts of municipalities, including school cities. The obligations of such contracts may be impaired by subsequent legislative limitation of taxation.¹²

In *Louisiana, etc., v. Mayor*,¹³ the Supreme Court of United States held unconstitutional certain legislation of

¹⁰ *Op. cit. supra* note 8, at pp. 481, 482.

¹¹ *Op. cit. supra* note 9, at p. 252.

¹² *Scotland v. United States*, 140 U. S. 41 (1891) (Tax limited to general county purposes); *Port of Mobile v. Watson*, 116 U. S. 289 (1886) (Municipal bonds are contracts); *Ft. Madison v. Water Co.*, 134 Fed. 214 (1904) (Reducing of taxable value); *Leonard v. Shreveport*, 28 Fed. 257 (1886) (Taxation to cover current expenses only, but court can compel tax sufficient to cover contractual obligations); *Nelson v. Police Jury*, 111 U. S. 721 (1883) (Repealing of tax legislation); *Sampson v. Perry*, 17 Fed. (2d) 1 (1927) (Change from 100% to 60% of real value with rate of tax unchanged).

¹³ 215 U. S. 170 (1909).

the State of Louisiana delaying the payment of judgments against the City of New Orleans. The judgments had been rendered in favor of a receiver of an abolished metropolitan police board to cover its warrants for salaries. The warrants were issued upon the faith of the exercise of the taxing power for their payment. The city levied and collected the taxes, but used the money for other purposes, and the Supreme Court of the United States held that the power to tax still continued. The court said:¹⁴

"Where a municipal corporation is authorized to contract, and to exercise the power of local taxation to meet its contractual engagements, this power must continue until the contracts are satisfied, and . . . it is an impairment of an obligation of the contract to destroy or lessen the means by which it can be enforced."

The remedies for the enforcement of an obligation of a municipal corporation which existed when the contract was made, must be left unimpaired by the legislature, or if they are changed substantial equivalents must be provided. Where the resource for the payment of bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States.¹⁵

It must be borne in mind that the school cities in question are exempt from any laws relating to prior or existing appropriations, such as are applied to township business,¹⁶ county business,¹⁷ and to civil cities.¹⁸

This is clearly apparent from the decision in the *Moon*¹⁹ case, which was decided in 1911. On March 17, 1908, the

¹⁴ *Op. cit. supra* note 13, at pp. 175, 176.

¹⁵ Constitutional Law, 6 R. C. L., p. 345.

¹⁶ Advisory Board Act of 1899, § 12062 *et seq.*, Ind. Ann. Stat. (Burns, 1926).

¹⁷ County Council Act of 1899, §§5873-5886, Ind. Ann. Stat. (Burns, 1926).

¹⁸ Municipal Corporation Act of 1905, §§ 10283, 10287, 10306, Ind. Ann. Stat. (Burns, 1926).

¹⁹ *Op. cit. supra* note 9.

School City of South Bend employed Calvin Moon to be its superintendent of schools for a period of three years beginning September 5, 1908. On August 17, 1909, the then board of trustees discharged Moon from his position and refused to permit him to discharge his duties. He sued for the remainder of his salary. The Appellate Court decided that he was entitled to recover and that the contract so made for three years was valid.

The court, in support of its decision, cited *Board v. Shields*,²⁰ wherein the employment of a superintendent for a county asylum for a five-year term was upheld, and quoted from that case the following:

"The power thus conferred upon boards of county commissioners to employ and contract with a superintendent, in the absence of any restriction contained in the statute, of necessity carries with it the power to fix some term of service or time of duration of such employment. It was undoubtedly competent for the legislature to place any restrictions they might see fit on the board in the employment of a superintendent, and provide that no contract of employment should be for longer than a given time, or even to forbid making a contract of employment for any certain and definite term. They have, however, not seen fit to do so.'" ²¹

The court then referred to what is now Section 6964, Burn's Annotated Indiana Statutes (1926), passed in 1893, which made it unlawful for a township trustee to contract with any teacher to teach in any common school if the actual term of service under the contract does not begin before the expiration of the term of office of such trustee, and said:²²

"The fact that the act is limited to township trustees is, however, significant in view of the general and growing custom in the larger cities of this State to employ school superintendents for a term of years. The statute governing the employment in this case confers the power without limitation, and the later act, limited as it is, in so far as it has any effect on the question of public policy, tends to indicate a

²⁰ 130 Ind. '6 (1891).

²¹ *Op. cit. supra* note 9, at pp. 253, 254.

²² *Op. cit. supra* note 9, at p. 256.

different policy in relation to city school superintendents, or at least in a negative sense evidences the legislative intention to leave undisturbed the power conferred by the statute we are considering."

* * *

"In so far as our legislature has indicated any policy, it is to leave the term of the employment of city school superintendents to the sound discretion and judgment of the school trustees."

The foregoing decision is clearly in line with the great trend of authority in the United States,²³ and with the earlier Indiana cases of *Reubelt v. Noblesville*²⁴ and *Milford v. Zeigler*.²⁵

Has there been, since the *Moon* case, any change in the powers of school cities arising out of subsequent legislation? In order to ascertain whether such a change has occurred, it seems advisable to review briefly the general statutory authority under which the school cities involved have operated and now operate. Among many powers given to them by statute are the following:

The power to levy special taxes for the construction, renting, etc., of schoolhouses and equipment for the same and fuel therefor, and the payment of necessary expenses, including tuition and teachers' salaries where the tuition funds are inadequate for the purpose.²⁶

The power and duty to take charge of the educational affairs of the city; to employ teachers, establish and maintain schools and provide equipment, etc., necessary for the thorough organization and efficient management of the schools. If a high school is not provided, then they are required to transfer pupils to another school corporation having such facilities.²⁷

²³ Note: 70 A. L. R. 802.
Schools, 24 R. C. L., p. 579.

²⁴ 106 Ind. 478 (1886) (Superintendent employed in May).

²⁵ 1 Ind. App. 138 (1891) (Teacher employed in June).

²⁶ Ind. Ann. Stat. (Burns, 1926) § 6537 (Passed in 1865).

²⁷ Ind. Ann. Stat. (Burns, 1926) § 6795 (Passed in 1899).

The power to employ a superintendent.²⁸

The power to contract and sue.²⁹

The power and duty to manage all property, real and personal, and the duty to provide such janitor help as may be deemed necessary, the janitor to be paid from the special fund.³⁰

Chapter 53, of the Acts of 1931, which applies to the School City of South Bend, makes all of the foregoing general statutes applicable, and elaborates the powers above referred to.

Other statutes pertinent to the inquiry are those relating to the employment of teachers and fixing of terms. All contracts with teachers must be in writing, and no action can be brought upon any contract not in writing.³¹ The written contract must state the beginning of the school term, the number of months in the school term, the total amount of salary to be paid during the school year, and the number of payments that shall be made during the school year.³²

The power to fix school terms, implied in Section 6967, Burn's Annotated Indiana Statutes (1926), is further covered by the language of the Tenure Act,³³ wherein it is provided that in indefinite contracts with tenure teachers the board may expressly reserve the power to fix the terms. This power, of course, is to be exercised within certain limits. It seems clear that the minimum authorized by law is six months.³⁴

²⁸ Ind. Ann. Stat. (Burns, 1926) § 6600 (Passed in 1873).

²⁹ Ind. Ann. Stat. (Burns, 1926) § 6786 (Passed in 1859), and § 6787 (Passed in 1865).

³⁰ Ind. Ann. Stat. (Burns, 1926) § 6796 (Passed in 1899, and as amended in 1907).

³¹ Ind. Ann. Stat. (Burns, 1926) § 6965 (Passed in 1899). *Lee v. York School Township*, 163 Ind. 339 (1904); *Taylor v. School Town of Petersburg*, 33 Ind. App. 675 (1904).

³² Ind. Ann. Stat. (Burns, 1926) § 6967 (Passed in 1921).

³³ Ind. Ann. Stat. (Burns, 1929) § 6967.1.

³⁴ Ind. Ann. Stat. (Burns, 1926) § 6941 (Passed in 1899).

The minimum wage is fixed at \$800 per school year subject to a larger daily minimum in certain cases.³⁵

Likewise under the Tenure Law it is expressly provided that the school corporation may fix a schedule of salaries applicable to permanent teachers under indefinite contracts, but such schedules must be made before May 1st of each year.

Since as already pointed out the fiscal year commences August 1st, the conclusion seems inescapable that, under the legislative policy of Indiana as applied to school cities such as South Bend and Mishawaka, a board of trustees has ample and complete power to fix terms and to hire teachers and superintendents in advance of the commencement of the fiscal year in which services are to be rendered.

Does the Budget Law alter the foregoing conclusion?

The Budget Law of Indiana is found in Section 200 of the Tax Law of 1919.³⁶

The salient features of this Act in its present form are as follows:

The tax levies and rates shall be established by the proper legal officers of any municipal corporation after the formulation and publication by them of a budget on forms prescribed by the State Board of Accounts showing in detail the money proposed to be expended during the succeeding year and after public hearing. An appeal is provided to the State Board of Tax Commissioners which is authorized to affirm or reduce. If it shall order a reduction, it is required to indicate the item or items in the budget affected by such reduction. The budget as set out in the published statement, or as modified on hearing by the State Board, limits the expenditure for the year except in cases of casualty or accident or extraordinary emergency. An officer who shall appropriate any money for an item set forth in the published

³⁵ Ind. Ann. Stat. (Burns, 1926) § 6972.

³⁶ Ind. Ann. Stat. (Burns, 1929) § 14239.

budget in excess of the amount finally fixed without the prescribed emergency proceedings, shall be guilty of malfeasance in office and shall be liable to pay to the corporation the excess so appropriated, together with attorney's fees and a penalty of 25%. The rate certified to the Auditor must not exceed the rate set forth in the published budget.

In the case of *Zoercher v. Agler*³⁷ the Supreme Court held that, in changing the tax rate for the year 1927 for the Municipal City of South Bend from 73 cents to 72 cents, the Board of Tax Commissioners was performing only a mathematical computation and not a legislative act.

It is to be observed that there is no express statement to the effect that a municipality cannot, in advance of the formulation of the budget, bind itself by contract. When the matter of bond issues is considered, it seems perfectly clear that the Budget Law has no effect upon the right and duty of a school city to include in the formulation of the budget and in the determination of the tax levy items sufficient to cover the outstanding bonds in so far as principal and interest would become payable within the fiscal year. If this is true concerning bonds, it would seem necessary to conclude that it would be true concerning any obligation validly contracted by the school city and installments for the payment of which fall due during the fiscal year covered by the budget.

In the construction of Section 14239 of Burn's Annotated Indiana Statutes, it seems important to observe that while with respect to townships, counties and civil cities, the budget is fixed in August and September for the year commencing January 1st, yet in school cities, such as South Bend, the budget period commences August 1st of the year in which the budget is formulated in the months of August, September and October. The Legislature, in the passage of this section, certainly knew that school cities affected

³⁷ *Op. cit. supra* note 1.

thereby had fiscal years commencing on August 1st, and that they must operate without an approved budget for possibly three months. Furthermore, the Legislature also knew that the school terms throughout the state commenced usually on or about the first of September, and that school teachers would start to work long before the approval of a budget under this Section. In the absence, therefore, of specific legislative reference to these matters, it must be concluded that Section 14239 did not alter in any manner the powers of such school cities with respect to the employment of superintendents and teachers and the fixing of the school terms.

The legislature did not, in 1932, repeal any of these essential educational powers and duties imposed on school cities.

Certainly the \$1.50 Law, no more than the Advisory Board Act of 1899, could or did in any manner destroy this fundamental and constitutionally imposed function or the statutes above referred to.

It should be remembered that the Township Advisory Board Act contains exactly the same repeal clause as that contained in the \$1.50 Law.³⁸

In *Advisory Board, etc., v. State*³⁹ the court affirmed a judgment awarding a mandate against an advisory board. A school house had been destroyed by fire and a petition for a new structure was directed to the trustee who denied it. The county superintendent, on appeal, reversed the decision of the trustee. The Advisory Board, upon demand, refused to make any appropriation or to declare an emergency. The trustee, at that time, was ready and willing to do his duty. The court in part said:⁴⁰

"The ordinance for the government of the northwest territory (Art. 3) declared, that, 'Religion, morality, and knowledge, being necessary to

³⁸ Acts of 1899, § 12, c. 105.

³⁹ 164 Ind. 295 (1905).

⁴⁰ *Op. cit. supra* note 38, at pp. 298, 299, 300, 301.

good government and the happiness of mankind, schools and the means of education shall forever be encouraged.' The Constitution of the State adopted in 1816 (Art. 9, § 2), recited that knowledge and learning, generally diffused through a community, is essential to the preservation of a free government, and provided that 'It shall be the duty of the General Assembly, as soon as circumstances will permit, to provide by law, for a general system of education, ascending in a regular gradation from township schools to a state university, wherein tuition shall be gratis, and equally open to all.' The Constitution of 1851 (Art. 8, § 1), makes the same declaration as to the necessity for the general diffusion of knowledge and learning, and provides that 'It shall be the duty of the General Assembly . . . to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.'

"In the construction and application of all laws upon this subject, it is necessary that we keep in mind these basic principles and provisions of our government. To the end that opportunities for a common-school education might be equally open to all, it was very early provided by law that township trustees should divide their townships into proper school districts, in such manner as should be 'most convenient for the population and neighborhoods,' and so as to promote the interests of the inhabitants of the townships concerned."

* * *

"The duty of providing the necessary buildings, furniture, apparatus, appliances and teachers has at all times rested upon the trustees; and the latest enactment upon this subject enjoins upon them the same duty, to-wit: 'That the school trustees shall take charge of the educational affairs of their respective townships, towns and cities. They shall employ teachers, establish and locate conveniently a sufficient number of schools for the education of the children therein, and build, and otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient management of said schools,' etc."

* * *

"These quotations from the Constitution and laws of our State show the pre-eminent importance which has been given to the subject of education and the general diffusion of knowledge among the people from the time of the organization of the state government. A specific duty of the highest concern to the welfare of the State—that of providing and maintaining convenient schools for the education of the children of the State—has been for years, and still is, enjoined upon school trustees.

"A trustee can properly perform his duty with respect to the convenience of the children only by maintaining a school in each school district heretofore created in pursuance of law, and now existing."

* * *

"Can that be done indirectly which could not be directly done? Can the township advisory board virtually abolish a school district, annul a school, and deny to pupils, more than twelve in number, equal and convenient school privileges, by refusing to make an appropriation or to authorize a loan to rebuild in an existing district a school house accidentally destroyed by fire? We have no hesitancy in saying that township advisory boards have not been clothed with any such power. If these boards have power thus to abolish or abandon one district school, they might by the same right abandon all, in a spirit of parsimony. If it should be held that the legislature intended to clothe these boards with such far-reaching power, a more serious question, as to whether or not the act infringed upon the constitutional provisions above quoted, might arise.

"The General Assembly of 1901 (Acts 1901, p. 470) passed an act requiring the attendance at school of children between the ages of seven and fourteen years. We cannot presume that less convenient facilities and accommodations are to be afforded at the very time when stricter requirements with regard to attendance are to be enforced.

"The General Assembly of 1899, by 'an act concerning township business' (Acts 1899, p. 150), created the township advisory boards, and gave them all their powers. This act is to be construed in connection with all other statutes relating to the same subject-matter. It was enacted, not to overthrow, but to be applied and to work in harmony with, the State's long-existing plan and system for the control and management of the common schools. The act does not, in express terms, or by reasonable intendment or implication, confer upon advisory boards the power to overrule the judgment of the township trustee and county superintendent as to the necessity or advisability of rebuilding a schoolhouse in use for school purposes when destroyed by fire."

In the light of the foregoing decision, it seems clear that though Chapter 10 be valid for any purpose, it does not repeal any of the laws pertaining to the maintenance of the public school system and does not transfer the responsibility for that system from the boards of trustees of the school cities of South Bend and Mishawaka to the county board of tax adjustment.

Certainly any valid contract made by a school city prior to the enactment of Chapter 10 would constitute the basis of a valid claim against it despite adverse action by the county board of tax adjustment. This, it seems, is the effect of the decisions pertaining to claims which arose before the enactment of the County Reform Act.⁴¹ This is to say, where a claim is founded upon a contract or order of court made prior to the taking effect of the County Reform Law, judgment could be rendered thereon against the county and the county required to pay,⁴² even though the county council refused to make an appropriation.

It follows that Chapter 10, of the Acts of 1932, if valid for any purpose, cannot be construed in such manner as to permit the county board of tax adjustment to reduce school city levies to such an extent as to prevent the performance by the school cities of the contracts in question. In any event their levies must be large enough not only to pay such contractual obligations but also to perform the essential functions of public education.

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⁴¹ *Op. Cit. supra* note 17.

⁴² *Board v. Moore*, 166 N. E. 779 (Ind. 1929).