I must conclude that the compensation for members of a precinct election board set out in Burns’ 29-3215, supra, is in full for all their services and is not to be considered as per diem. Since Burns’ 28-2473, supra, adopted the provisions in the general election law providing for compensation of the precinct election board members for a school election, said compensation is in full for all the services performed by the members of the precinct election board at the school election including the services performed in returning the following day to count the votes. The compensation payable to the members of the precinct election board for the school election is, of course, subject to the determination of the county commissioners as it is provided in Burns’ 29-3215, supra, that in school elections the county commissioners may fix the compensation of the precinct election officers at an amount not to exceed the maximum pay schedule first provided in the section.

OFFICIAL OPINION NO. 43
July 28, 1958

Mr. Norval L. Martin
Executive Secretary
Indiana State Teachers’ Retirement Fund
Sixth Floor, 145 W. Washington Street
Indianapolis, Indiana

Dear Mr. Martin:

This is in reply to your recent request for an Official Opinion on the following two questions:

“1. May any widower who received 1/2 or more of his support from his spouse qualify for the benefit provided under Section 1 (1), Chapter 275 of the Acts of 1955, providing he has a minor child of the deceased spouse in his care and the death of the spouse occurred between the effective date of the said 1955 Act and June 30, 1957, or is the benefit payable only on condi-

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tion that the circumstances which made him dependent were beyond his control?

"2. Is (the individual named in the letter) entitled to receive benefit under Section 1 (1), Chapter 275 of the Acts of 1955 as requested in his June 9, 1958 petition to the Teachers' Retirement Fund? A copy of the petition is enclosed. We are also enclosing copy of an affidavit by (the above individual) in support of his claim that more than 1/2 of his family income was from his wife's teaching salary."

The statute referred to in your questions is Acts of 1915, Ch. 182, Sec. 9, as amended, as found in Burns' (1957 Supp.), Section 28-4506. The parts of that statute pertinent to the questions under consideration read as follows:

"(c) * * *

"In lieu of accepting the payment of the total amount paid into the fund with interest thereon by the member, the designated beneficiary of a member with four or more years of Indiana service credit who died either while under contract or within one year immediately following the expiration of his last teaching contract may elect to receive the following survivor benefits if such beneficiary was related to such deceased member in one of the following manners:

"(1) A surviving widow, or dependent widower receiving at least one-half [1/2] of his support from the female member at the time of the female member's death, who had the care of unmarried children of the deceased member under eighteen years of age, or any other progeny of the deceased member adjudged physically or mentally incompetent by a competent court in Indiana, shall be paid one hundred dollars [$100] per month for such time as such children under eighteen years of age or such incompetent progeny are in his care. * * *

"Such survivor benefits shall be payable the month subsequent to the death of the member and shall be terminated at death or marriage or remarriage; * * *
"No survivor benefits provided for in this subsection shall be paid in the event a joint and survivor allowance is paid to the designated beneficiary under the provisions of section 14 of the said chapter 182.

"Any survivor benefits to which the beneficiary of a deceased teacher shall become eligible under the provisions of the Federal Social Security Act, which benefits shall arise and be payable for the same reasons and arising from the same causes, and which benefits shall be payable because of coverage of Indiana teaching service, shall be deducted from the benefits provided in this subsection for such purposes: Provided, That the provisions of this subsection relating to survivor benefits shall expire June 30, 1957, and the only payments made under this survivor benefit subsection following such date shall be those payments herein provided for persons qualifying for such benefit prior to that date."

The Indiana courts have defined a "dependent" as one who looks to another for support and maintenance; one who is in fact dependent—one who relies on another for the reasonable necessities of life, including keeping the family and home in a condition and with surroundings suitable to their station in life.

In re Carroll (1917), 65 Ind. App. 146, 116 N. E. 844;

King v. Illinois Steel Corp. (1931), 92 Ind. App. 456, 176 N. E. 161;

Blue Ribbon Pie Kitchens, Inc. v. Long et al. (1952), 230 Ind. 257, 103 N. E. (2d) 205.

In determining what the word "dependent" meant as used in the Indiana Workmen's Compensation Act, the court in Parke County Rural Electric Membership Corp. v. Goodin (1942), 112 Ind. App. 216, 44 N. E. (2d) 198, stated that in determining whether compensation claimants were "dependent" on a deceased workman, inquiry should not be confined to the question of whether the claimants could have supported life without any contribution from the workman, or whether such contributions were absolutely necessary, but rather
whether contributions from the workman were looked to, or depended or relied on, in whole or in part, by the claimants for means of reasonable support.

By the terms of the Teachers' Retirement Fund Act, a widower is a dependent if he received at least one-half of his support from the female member of the fund at the time of her death.

All other qualifications having been met, in order for a husband who has been designated as a beneficiary by a deceased member of the Teachers' Retirement Fund to receive the benefit in question, it is necessary that he show that he was receiving at least one-half of his support from the female member at the time of her death and that he had the care of unmarried children under eighteen years of age or physically or mentally incompetent progeny of the deceased member. The statute does not set any conditions on the cause of such dependency. Therefore, if all other conditions have been met, the benefit would be payable regardless of whether or not the circumstances which made him dependent were beyond his control. It is a question of fact whether or not the required dependency existed and the reason for such dependency is immaterial.

I would therefore answer your first question by stating that any widower who received at least one-half of his support from his deceased spouse who had been a member of the fund for at least four years and who died while under contract, or within one year after the expiration of the last contract, could qualify for the benefit provided under Burns' 28-4506 (c) (1), supra, providing all other qualifications and conditions have been satisfied, regardless of whether or not the circumstances which made him dependent were beyond his control.

Your second question goes to the problem of whether or not a specific individual is entitled to elect to receive this monthly benefit. The individual in question was designated as beneficiary for the account of his spouse on October 24, 1955. It is my understanding that his wife was hired as a teacher for the school year 1955-1956. At the time of her death on February 17, 1956, she had twelve years of creditable service with the Retirement Fund.
On October 1, 1955, the State of Indiana and the Department of Health, Education and Welfare entered into a modification of the agreement extending social security benefits to state employees, extending such social security benefits to members of the Teachers' Retirement Fund. At the time the provisions of the Federal Social Security Act became applicable to such teachers, they automatically came under the supplemental retirement benefit system provisions of the Acts of 1955, Ch. 329, as amended, as found in Burns' (1957 Supp.), Sections 60-1923 to 60-1940. (See 1955 O. A. G., page 146, No. 38, at page 148.) Burns' 60-1923, *supra*, reads in part as follows:

"* * * The benefits provided under this act shall be in lieu of all benefits to which such employees would or might have become entitled as members of any existing retirement system, and the contributions required under this act shall be in lieu of all contributions heretofore required with respect to such retirement system. Each such retirement system shall nevertheless continue to be a separate retirement system and its affairs shall continue to be administered by the board which has previously administered the affairs of such system, subject to the same terms and conditions as heretofore except insofar as the same are inconsistent with the terms and conditions of this act. * * *

The 1955 General Assembly approved both the Supplemental Retirement Benefits Act and the amendment to the Teachers' Retirement Fund Act on the same day, March 11, 1955. The latter went into effect immediately upon its approval, while the former became effective April 1, 1955. These two statutes undoubtedly were actuated by the same legislative policy. They relate to the same subject-matter and were passed at the same session of the Legislature. Therefore they are *in pari materia* and should be construed together to give effect and efficiency to both statutes.

Long v. Kinney (1936), 210 Ind. 192, 1 N. E. (2d) 929;

Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 5202, p. 537.
The Supplemental Retirement Benefits Act, in Burns' 60-1924 (d), supra, provides that in case of the death of an employee prior to retirement, his accumulated contributions shall be refunded to his beneficiary if one has been designated, or if there is no designated beneficiary, then to his estate. However, the Teachers' Retirement Fund Act provides in Burns' 28-4506 (c), supra, that under certain conditions the designated beneficiary may elect to receive the benefit described therein "in lieu of accepting the payment of the total amount paid into the fund with interest thereon by the member." While this latter provision is not included in the Supplemental Retirement Benefits Act, still it must be construed in connection with that act, and full force and effect must be given to it. Had the Legislature desired to, it could have inserted this provision in the other act. The Legislature undoubtedly expected this provision to be effective even after teachers became covered by the other retirement system, or there would have been absolutely no reason for inserting the following provision, found at the conclusion of Burns' 28-4506 (c), supra:

"* * * Any survivor benefits to which the beneficiary of a deceased teacher shall become eligible under the provisions of the Federal Social Security Act, which benefits shall arise and be payable for the same reasons and arising from the same causes, and which benefits shall be payable because of coverage of Indiana teaching service, shall be deducted from the benefits provided in this subsection for such purposes: Provided, That the provisions of this subsection relating to survivor benefits shall expire June 30, 1957, and the only payments made under this survivor benefit subsection following such date shall be those payments herein provided for persons qualifying for such benefit prior to that date."

The only way teachers could become eligible for social security benefits was by following the procedure set up in Acts of 1955, Ch. 329, supra. The Legislature in amending the Teachers' Retirement Fund Act evidently was attempting to provide interim benefits for teachers' dependents up until the time such dependents would be entitled to survivor benefits under the federal act. After sufficient time had elapsed for
dependents to receive benefits under the federal act, this state
provision would no longer be in effect, except to pay those
who had qualified prior to June 30, 1957.

The wife of the individual in question made payments under
the 1955 amendment to the Teachers' Retirement Fund Act
from March 11, 1955 until she became covered by the Supple-
mental Retirement Benefits Act on October 1, 1955. The
theory that this benefit should be paid to her properly qualified
beneficiary is further supported by the following statement
from 1955 O. A. G., page 146, No. 38, at page 150:

"* * * Without discussing these provisions in detail,
I believe that teachers who have made contributions to
the Teachers' Retirement Fund under statutes granting
them the right to have death or retirement benefits
payable to certain persons, or classes of persons, named
by the statute or teacher, upon their election or other-
wise, would have acquired a vested contractual right
to have such death or retirement benefits paid in ac-
cordance with the statute under which the contribu-
tions were made to the Fund and the contractual rights
therein created. These rights are retained."

Before the monthly survivor benefit can be paid to the
individual in your letter, the Board of the Teachers' Retire-
ment Fund must determine that all of the following condi-
tions and requirements have been met:

1. The deceased member must have been a member of the
fund at least four years.

2. The member must have died while under a teaching con-
tract or within one year after the expiration of the last
teaching contract.

3. The member must have designated her spouse as her
beneficiary.

4. The beneficiary (a) must be a dependent widower re-
ceiving at least one-half of his support from the female
member at the time of her death, and (b) must have the
care of unmarried children under eighteen years of age
or physically or mentally incompetent progeny of the
deceased member.
5. No joint or survival benefits may be payable to the beneficiary under Acts of 1915, Ch. 182, as amended, as found in Burns’ (1957 Supp.), Section 28-4511.

6. Any social security benefits payable for the same cause shall be deducted from such Teachers’ Retirement Fund benefits payable under Burns’ 28-4506 (c), supra.

7. The beneficiary must have qualified for such benefits prior to June 30, 1957.

If all of the conditions and requirements set out above can be met by the individual claiming survivor benefits, he is entitled to receive $100 per month from the Teachers’ Retirement Fund until the unmarried children in his care reach age 18, or until he dies or remarries.

OFFICIAL OPINION NO. 44

July 29, 1958

Hon. Walter A. Baran
State Senator
4835 Baring Avenue
East Chicago, Indiana

Dear Sir:

This is in reply to your request for an Official Opinion which reads in part as follows:

“I would like an official opinion pertaining to Chapter 166 of the Acts of 1957, entitled, ‘An Act Concerning the indemnification of Police Officers by cities and towns.’

“Section 1 of this Act authorizes the city to procure insurance to indemnify police officers, and Section 2 authorizes the Council to appropriate money from the General Fund to pay any indemnities authorized to be paid under this Act.

“My question is: Can the city be a self-insurer by having the Council appropriate money for an estab-