In summarizing, I would answer your two specific questions by stating first, that elected officials do not qualify under the terms of the Acts of 1957, Ch. 296, supra, and second, that governmental units may participate in paying for the insurance in question to any extent short of full payment so long as requirements regarding the appropriations of funds are met.

OFFICIAL OPINION NO. 22

June 19, 1957

Mr. Norval Martin
Executive Secretary, Indiana State Teachers’ Retirement Fund
145 West Washington Street
Indianapolis 4, Indiana

Dear Mr. Martin:

Your letter of May 27, 1957, requesting an Official Opinion, has been received and reads, in part, as follows:

"* * * The pension supported by the employer’s contributions shall be computed upon the average of the annual compensation of the employee not in excess of $7200 during any consecutive five of the ten (10) years of service immediately preceding his retirement date or during his entire period of service subsequent to the date of this act if higher than his average for such period. * * *"

"We will appreciate your Official Opinion regarding the effective date of the above reference to Chapter 311, Section 8 of the Acts of 1957. Mrs. Ellen Anne Lloyd, Deputy Attorney General, rendered an unofficial opinion on this question under date of March 21, 1957.

"In reference to Chapter 219 of the Acts of the General Assembly of 1957, we will appreciate your Official Opinion as to whether or not we are to pay the increase in benefit to co-survivors. Mrs. Lloyd rendered an unofficial opinion on this question under date of April 4, 1957.

"In reference to Chapter 219 of the Acts of 1957, we
will appreciate your Official Opinion on the following questions:

"1. Is the increase in benefit as provided under Chapter 219 of the Acts of 1957 to be added to the benefit of teachers retiring after July 1, 1957?

"2. If a recipient of benefit from the Indiana State Teachers' Retirement Fund begins receiving a primary social security benefit after the State grant has been added to the benefit under Chapter 219 of the Acts of 1957 is the increase to be deleted from the benefit."

Your first question has reference to the effective date of the Acts of 1957, Ch. 311, Sec. 8. This section amends the Acts of 1955, Ch. 329, Sec. 17, as found in Burns’ (1955 Supp.), Section 60-1928(a). The language of the 1955 Act which read “during each of the ten years of service immediately preceding his retirement date” was changed by the new act to read “during any consecutive five of the ten years of service immediately preceding his retirement date.” Otherwise, the amendment is a re-enactment of the original Act.

The rule for determining the effective date of such an amendatory act is clearly stated as follows in Sutherland, Statutory Construction, 3rd Ed., Vol. 1, Sec. 1933, p. 426:

"* * * The provisions of the original act or section re-enacted by the amendment are held to have been the law since they were first enacted, and the provisions introduced by the amendment are considered to have been enacted at the time the amendment took effect. * * * If the word ‘hereafter’ is used in the act or section as amended, as to provisions re-enacted it means subsequent to the time of their original enactment; as to new provisions it means subsequent to the time of the amendment."

A like statement of the rule of law is found in Thompson v. Mossburg (1923), 193 Ind. 566, 139 N. E. 307, 141 N. E. 241, where the Court said at page 574:
"The recital in this manner, in an amendatory act, of language contained in the act amended, does not show a legislative intent to make any change in the law as expressed by the language so re-enacted; but the unchanged portions of the statute are continued in force, with the same meaning and same effect after the amendment that they had before. * * * The portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along."

In Sutton v. State (1951), 230 Ind. 62, 101 N. E. (2d) 636, the Court quoted from 59 C. J. Statutes § 527, p. 925, and stated as follows:

"* * * An amendatory act which provides that the original statute shall be amended ‘so as to read as follows,’ or otherwise purports to set out in full all that statute as amended is intended to contain, becomes a substitute for the original; but this does not necessarily mean that the original is abrogated for all purposes. So much of the original as is repeated in the later statute without substantial change, is not repealed and re-enacted or enacted anew, but is continued in force without interruption from the time it was first enacted; so much of the act as is omitted is repealed; and any substantial change in other portions of the original act, as well as any matter which is entirely new, is operative as new legislation." (Our emphasis)

In applying the above rules of construction to the amendment in question, it is to be noted the new language appearing in such amendatory statute prescribes a new formula for the determination of pension benefits, which formula is a part of the same paragraph and sentence referring to "the date of this act." For this reason, I am of the opinion the "date of this act," set out and quoted in your letter, means the period of service subsequent to the date of the amendatory act. Since it contained an emergency clause, the amendment will be in effect after the date of signing, which was March 14, 1957.

Your second question asks whether or not the additional retirement benefit provided for in the Acts of 1957, Ch. 219,
should be paid to co-survivors as well as retired teachers. Section 1 of that Act reads, in part, as follows:

"SECTION 1. Every person who shall be receiving a retirement benefit from the Indiana State Teachers' Retirement Fund shall be eligible to receive and shall receive from such fund an additional retirement benefit equal to five dollars ($5.00) per month for a person with thirty (30) years of creditable service and a greater or less amount per month for more or fewer years of service, adjusted on an actuarial basis by the actuary of the fund. Said benefit shall be payable beginning July 1, 1957, and shall be paid from an appropriation from the General Fund of the State of Indiana from moneys not otherwise appropriated; and there is hereby appropriated for the Indiana State Teachers' Retirement Fund from moneys not otherwise appropriated in the General Fund an amount sufficient to satisfy the requirements of this act."

The question is whether or not "every person" as used in that Act was intended to include co-survivors as well as retired teachers.

In Burns' (1946 Repl.), Section 1-201, the rule of statutory construction is stated that "words and phrases shall be taken in their plain, or ordinary and usual, sense."

One of the most common rules of statutory interpretation is that a statute clear and unambiguous on its face need not and cannot be interpreted by a court, and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory interpretation.

1945 O. A. G., page 178, No. 38;

Sutherland, Statutory Construction, 3rd Ed., Vol. 2, Sec. 4502, pp. 316, 317;


When the above authorities are applied to Ch. 219, Sec. 1, supra, and the words are given their plain and ordinary meaning, it is at once apparent that the language of this statute is clear and unambiguous and is not subject to construction. The
Act plainly states that "every person" who shall be receiving a retirement benefit from the Teachers' Retirement Fund shall be eligible to receive the additional benefit. Therefore it is clear that the statute intends that co-survivors should have the increase paid to them as well as to the teachers themselves.

Your third inquiry is whether or not this increased benefit is to be paid to teachers who retire after July 1, 1957, the effective date of the Act.

The Act itself states that "every person who shall be receiving a retirement benefit from the Indiana State Teachers' Retirement Fund shall be eligible to receive and shall receive from such fund an additional retirement benefit. * * *"

In 39 Words and Phrases, "Shall," p. 114, it states:

"The word 'shall,' in its common and ordinary usage, unless accompanied by qualifying words which show a contrary intent, always refers to the future."

In Rogers v. Rogers (1893), 137 Ind. 151, 36 N. E. 895 the Court said:

"It is a familiar rule of statutory construction that legislation must be given prospective application, unless a different intention is clearly expressed."

Inasmuch as the auxiliary form of the verb is used here, in the future tense, it is my opinion that the Legislature intended for the provisions of this Act, unless otherwise restricted, to apply to teachers retiring in the future, as well as to those who retired before July 1, 1957.

Your final question concerns the effect of the second paragraph of Acts of 1957, Ch. 219, Sec. 1, which reads as follows:

"Provided, however that no retired teacher shall receive the benefits of this act unless and until such retired teacher shall submit to the Teachers' Retirement Fund Board a signed statement that no primary social security benefits are being received by such retired teacher."

As a general rule, a proviso in a statute is intended to except
something from the enacting part of the statute, or to waive or restrain its generality, and, on construction, to be strictly limited to the objects fairly within its terms.

State ex rel. Bateman v. Hart (1914), 181 Ind. 592, 105 N. E. 149;


The paragraph quoted above is such a proviso, limiting and qualifying the preceding paragraph of Sec. 1, supra. In the quoted paragraph, the term “retired teacher” is used, where in the first paragraph the more inclusive term “every person” is used.

Webster’s New International Dictionary states that the word “retired” is the past tense and past participle of “retire,” and means “withdrawn from active duty or business; as a retired officer.” Therefore in order to come within the terms of the proviso, a teacher must already be retired at the time the Act goes into effect. Different language was used in the proviso from that used in the preceding paragraph and therefore, it is understood that the Legislature intended a different meaning. Had the Legislature intended for the proviso to apply to teachers retiring after the effective date of the Act, it could have used precise language to that effect.

The statute in question should be construed in the way which is most beneficial to the recipients of the benefit. It has been said that such statutes must be construed in the most beneficial way the language will permit to prevent absurdity, hardship, or injustice; to favor public convenience and to oppose all prejudice to public interests.

Town of Brownsburg v. Trucksess et al. (1934), 98 Ind. App. 322, 329, 185 N. E. (2d) 315;


It is my conclusion that each of your questions should be answered as follows:

1. The effective date of the Acts of 1957, Ch. 311, Sec. 8 is March 14, 1957.

2. The additional retirement benefit provided for in the
Acts of 1957, Ch. 219, is to be paid to co-survivors as well as retired teachers.

3. The additional benefit provided under the Acts of 1957, Ch. 219, is to be added to the benefit of teachers retiring after July 1, 1957.

4. A retired teacher, receiving benefits from the retirement fund, who begins to receive primary social security benefits after the effective date of the Act, is not to have the additional benefit under the Acts of 1957, Ch. 219, deleted from his benefit payments.

OFFICIAL OPINION NO. 23

June 20, 1957

Mr. Howard F. Tudor
Chairman, Indiana Real Estate Commission
145 West Washington Street
Indianapolis, Indiana

Dear Mr. Tudor:

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

"It has come to the attention of the Indiana Real Estate Commission through informal complaints received by the Commission that certain foreign real estate brokerage corporations, who are not licensed under the Real Estate License Law of the State of Indiana, and who are not admitted as foreign corporations to do business in the State of Indiana, occasionally send real estate salesmen (who also are not licensed in Indiana) into the State of Indiana to take written listings on Indiana real estate owned by Indiana residents.

"Under Section 17 of the Real Estate License Law of the State of Indiana, Acts 1949, Chapter 44, #17, page 129, the remedy of injunction is made available in such situations. This remedy, however, is not practical in this situation, for the reason that service cannot be obtained upon the foreign real estate brokerage corporation which is not admitted to do business in Indiana."