OPINION 38

OFFICIAL OPINION NO. 38

September 28, 1955

Dr. B. W. Johnson
Executive Secretary
State Teachers' Retirement Fund
336 State House
Indianapolis, Indiana

Dear Doctor Johnson:

The following is in answer to your request for my Official Opinion. I have renumbered your questions and, as so renumbered, your request reads, in substance, as follows:

With reference to Chapter 329 of the Acts of the General Assembly of 1955, I would appreciate your Official Opinion on the following points:

1. Is the effective date of Social Security coverage for participating state units January 1, 1955 if so designated in the modified Federal Agreement?

2. Would the effective date of coverage in the Supplemental System be the date on which the modification of the state agreement is approved by the Federal Social Security Administration and the State Agency?

3. With reference to Section 13 (f), does the sentence, "The amount of a member's additional annuity contribution during any period shall not exceed his contribution for the corresponding period required pursuant to subsection (a) of this Section 13," refer to periods following the effective date of this act or "any period" during which a member of an existing system has held such membership and made contributions thereunder?

4. In construing Section 14 (c) and Section 27

A. Are all the rights and privileges of the existing members not specifically repealed or denied in Chapter 329 reserved and retained for such existing members e.g.:

1. The privilege of paying arrearages and deficits.
2. The privilege of naming a co-survivor (not a spouse) to be effective upon death while actively teaching.

3. The guarantee that the formula for retirement benefits in the existing law plus the amounts of additional annuity that any increased payments to the state or Social Security System would purchase under the terms of the existing fund shall become the minimum benefits payable to existing members.

With respect to your Question No. 1, be advised that Public Law 761 of the 83rd Congress amended Section 218 (f) of the Federal Social Security Act; such amended Section, as found in 42 U. S. C. A. (1954 Supp.), Section 418 (f), reads as follows:

* * *

“(f) Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that—

“(1) in the case of an agreement or modification agreed to prior to 1954, such date may not be earlier than December 31, 1950;

“(2) in the case of an agreement or modification agreed to after 1954 but prior to 1958, such date may not be earlier than December 31, 1954; and

“(3) in the case of an agreement or modification agreed to during 1954 or after 1957, such date may not be earlier than the last day of the calendar year preceding the year in which such agreement or modification, as the case may be, is agreed to by the Secretary of Health, Education, and Welfare and the State.”

Consequently, in the case of a modification of the Federal-State Agreement for Old Age and Survivors’ Insurance, the
modification may provide for coverage as of January 1, 1955, provided said modification is agreed to in 1955, 1956 or 1957.

With respect to your Question No. 2, the Acts of 1955, Ch. 329, Sections 12 and 13, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Sections 60-1923 and 60-1924, demonstrate an intent to make the supplemental system effective as of the time a modification of the Federal-State Agreement is entered into. Therefore, as to those employees who become covered by O. A. S. I. (Old Age and Survivors' Insurance) pursuant to the Federal Social Security Act and the Acts of 1955, Ch. 329, the effective date of their coverage under the supplemental system will be the date on which the modification of the Federal-State Agreement is agreed to and approved by the necessary parties.

Question No. 3 concerns the amount of additional annuity contributions which a teacher may make, if and when the Teachers' Retirement Fund becomes subject to the Acts of 1955, Ch. 329, supra.

Additional annuity contributions to the supplemental benefit system are authorized by the Acts of 1955, Ch. 329, Sec. 13 (f), as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1924 (f), which reads, in part, as follows:

* * *

"(f) A member may elect to make additional annuity contributions. The amount of a member's additional annuity contribution during any period shall not exceed his contribution for the corresponding period required pursuant to subsection (a) of this section 13 [this section]. * * *"

Subsection (a) of Sec. 13 requires employees, subject to the provisions of the Acts of 1955, Ch. 329, supra, to contribute four per cent [4%] of their compensation in excess of twelve hundred dollars [$1200.00] and not in excess of seventy-two hundred dollars [$7200.00] per annum in addition to their contribution for Social Security. It is therefore my opinion that an employee's additional annuity contributions to a retirement system during any annual period after said retirement system has become subject to the provisions of the Acts of
1955, Ch. 329, *supra*, may not exceed the amount which said employee was required to contribute to said retirement system and to Social Security for said corresponding annual period.

Your fourth question deals very generally with the nature of the Teachers' Retirement Fund and the status of its members, their rights and obligations, after said Fund has become subject to the Acts of 1955, Ch. 329, *supra*. The question is so broad that I cannot give an unqualified answer thereto since I am not aware of all of the factual situations existing at the present time concerning members of the Teachers' Retirement Fund, which facts must be taken into consideration in determining status, rights and obligations. However, I am of the following opinion concerning the specific examples which you set forth in Question No. 4.

1. *The privilege of paying arrearages and deficits.* Teachers who become members of the Teachers' Retirement Fund after it has become subject to the provisions of the Acts of 1955, Ch. 329, *supra*, will have only such rights and privileges, if any, concerning arrearages and deficits as are specifically granted under the provisions of said Chapter 329. Teachers who are now members of the Teachers' Retirement Fund will retain the privilege of paying arrearages and deficits, after the Teachers' Retirement Fund has become subject to the provisions of the Acts of 1955, Ch. 329, *supra*, only where the privilege of making such payments has become a vested contractual right under the provisions of the Teachers' Retirement Fund prior to the time said Fund became subject to the provisions of Chapter 329. Whether such right is a vested contractual right is, of course, a question of fact in each case; for instance, arrearages and deficits accrued due to years of prior service credits claimed by members of the Teachers' Retirement Fund at the time it becomes subject to the provisions of the Acts of 1955, Ch. 329, *supra*, are retained. Prior service credits not claimed at the time the Teachers' Retirement Fund becomes subject to the Acts of 1955, Ch. 329, *supra*, cannot thereafter be the basis for any further arrearages or deficits if no provision therefor is made in the supplemental retirement benefit system created by said Chapter 329.

2. *The privilege of naming a co-survivor (not a spouse) to be effective upon death while actively teaching.* This privilege
is granted under the Acts of 1955, Ch. 275, Sec. 2 (i), as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-4511 (i); other provisions relating to beneficiaries and survivors may be found in the Acts of 1955, Ch. 275, Secs. 1 (c) and 2 (e), as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-4506 (c) and Section 28-4511 (e). 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 otherwise, would have acquired a vested contractual right to have such death or retirement benefits paid in accordance with the statute under which the contributions were made to the Fund and the contractual rights therein created. These rights are retained.

3. The guarantee that the formula for retirement benefits in the existing law plus the amounts of additional annuity that any increased payments to the state or Social Security System would purchase under the terms of the existing Fund, shall become the minimum benefits payable to existing members. As I understand it, this question relates to the method to be used in determining the amount which would equal the benefit to which a member of the Teachers' Retirement System would have become entitled had said system not become subject to the Acts of 1955, Ch. 329, supra, for the purpose of determining his minimum guarantee under the supplemental benefit system as provided in the Acts of 1955, Ch. 329, Sec. 14 (c), as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1925 (c), which provides, in part, as follows:

* * *

“(c) Notwithstanding any provision of this act every member of an existing retirement system which becomes subject to social security shall be entitled to receive as a normal retirement benefit at least an amount, which, when added to the primary social security benefit to which he may become entitled under the Federal Social Security Act, would equal the normal retirement benefit to which he would have been entitled under the provisions of said system in effect at the
effective date of this act if he had continued contributions, for the period during which contributions shall have been made under this act, at the amount then required by such provisions or at the total amount required under this act if in excess of said amount. * * *"

The above quoted language guarantees members of the Teachers' Retirement Fund that the minimum benefits which they will receive under the supplemental benefit system plus the benefits which they receive from Social Security will equal the benefits to which the teacher would have become entitled had the Teachers' Retirement Fund not become subject to said Chapter 329 and said teacher had continued in the Teachers' Retirement Fund and made the contributions required under the law as it existed at the time the Teachers' Retirement Fund became subject to Chapter 329 for the period during which contributions were made under said Chapter 329.

The Acts of 1955, Ch. 329, Sec. 14 (c) (2), as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1925 (c) (2), provides as follows:

"(2) The benefit to which a member would have become entitled under an existing retirement system shall be determined on the assumption that his contributions subsequent to the date on which such system becomes subject to federal social security shall have been made on the minimum basis required by such existing retirement system, or on the basis of his contributions actually made to the supplemental retirement benefit system and to federal social security, whichever is the greater."

Therefore, in calculating the amount to which a teacher would become entitled under the Teachers' Retirement System as it existed at the time said system became subject to the Acts of 1955, Ch. 329, supra, it is to be assumed that his contributions to the Teachers' Retirement Fund after it became subject to Social Security would have been made on the minimum basis required by said system except where the teachers' contributions actually made to Social Security and the supple-
mental retirement benefit system, under and pursuant to the
Acts of 1955, Ch. 329, *supra*, are in excess of the minimum
contributions required under the old teachers' retirement
system, in which case, the contributions actually made under
Chapter 329 would form the basis for determining what the
teacher would have been entitled to had the Teachers' Retire-
ment Fund not become subject to Chapter 329.

Of course, the opinions above expressed will not answer all
of the questions which will arise in this matter, however, I do
hope that they will provide a guide for you to follow in the
administration of the Teachers' Retirement Fund on related
matters affecting pre-existing members of the Fund, if it
becomes subject to the Acts of 1955, Ch. 329, *supra*.

OFFICIAL OPINION NO. 39

September 28, 1955

Mr. Harvey B. Stout
State Service Officer
Veterans' State Service Department
431 North Meridian Street
Indianapolis, Indiana

Dear Mr. Stout:

In reply to your letters requesting an Official Opinion on
the following questions, I am combining the questions pre-
ented into one Official Opinion, for the sake of expediency.

1. As far as the Indiana Courts are concerned, is the
Soldiers' and Sailors' Civil Relief Act still in full force
and effect?

2. May the wife of a man now in the service of the
United States Armed Forces file suit for divorce against
her husband and obtain service on the potential de-
fendant by publication, having the Prosecuting Attor-
ney duly appear as in other defaults?

The Soldiers' and Sailors' Civil Relief Act of 1940, as
amended, as found in 50 U. S. C. A., Section 520 provides that
the procedure for default judgment is: