claim may be allowed in a sum not to exceed $25.00, which reduces the ceiling allowable to the undertaker by whatever amount is allowed for such burial place. The only additional allowance over and above the maximum of $100.00 is the proviso by which the county may make a further allowance of $8.00 for the setting of a marker if such marker is furnished by the Federal Government. By this statute, the intent of the Legislature is clear that in no event may the claim for services rendered and material furnished by the undertaker and for furnishing a burial place plus the setting of a marker, if furnished by the Federal Government, aggregate in excess of $108.00.

OFFICIAL OPINION NO. 33

May 12, 1954

Mr. Cecil Bolinger

Executive Secretary

Public Employes' Retirement Fund

707 Board of Trade Building

Indianapolis, Indiana

Dear Mr. Bolinger:

This is in reply to your request for an Official Opinion concerning the rights of a member of the Public Employes' Retirement Fund who leaves the service of one employer and enters the service of another employer, both such employers being participants in the Public Employes' Retirement Fund.

Your first question is as follows:

"1. John Smith is an employee of Municipality A which is participating under the Public Employes' Retirement Fund Law. On March 1, 1954 without withdrawing his contributions he leaves the employment of A and enters immediately the employment of B. B is also a participating municipality under the Public Employes' Retirement Fund.

"Can John Smith keep his credit for work performed for Municipality A and must Municipalities A and B share the cost of John Smith's retirement as provided in Section 24?"
“Would the case be any different if John Smith leaves the employment of A and does not enter the employment of B immediately but leaves his contributions with the Retirement Fund all the time he is not employed by either A or B? Would the length of time between leaving A and entering the employment of B in any way affect John Smith’s rights?”

For the reasons hereinafter stated it is important to note that John Smith has not withdrawn his contributions under this fact pattern. The Acts of 1945, Ch. 340, Sec. 24, as amended, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1624, provides in part as follows:

“* * * Where a member has left or leaves the employ of an employer which is included in the fund and enter the employ of another employer included in the fund, his service credit shall remain unimpaired, but in such a case the unliquidated liability for prior service shall be prorated by the board between the employers concerned in a basis determined by the board. * * *”

This section of the statute answers your first question completely, bearing in mind the two important requisites: 1. That both employers be participants in the fund; and 2. That such employee has not withdrawn his contributions to the fund paid under his first employment. The circumstance that John Smith does not enter his second employment immediately is not material. It is a matter of common knowledge, of which the Legislature was presumably aware, that changes in administration occasion changes in personnel. There is no authority to read into the Act any time limitation as to the interim between said two employments, so long as the employers are both participants of the fund and the employee does not withdraw his contributions to the fund paid under his prior employment.

Your second and third questions are as follows:

“2. John Smith leaves the employment of A and withdraws his contributions from the Public Employes’ Retirement Fund as provided in Section 12. He immediately secures employment with B and repays his contributions to the Public Employes’ Retirement Fund.
"May Smith have credit for the time he worked for A and must A participate in the cost of Smith's retirement as provided in Section 24?

"3. John Smith leaves the employment of municipality A and withdraws his contributions from the Public Employes' Retirement Fund. Ten years later, Smith enters the employment of Municipality B. He tenders to the Public Employes' Retirement Fund the amount he withdrew with compound interest at 2½% for the time he had it.

"Must the Public Employes' Retirement Fund give Smith credit for the time he was employed by Municipality A and must Municipalities A and B share in the cost of his retirement as provided in Section 24?"

These questions present substantially the same fact pattern as question number one, except for the vital difference that John Smith withdrew his contributions to the fund upon termination of his first employment and tendered the amount withdrawn, plus interest, upon acceptance of his second employment. Acts of 1945, Ch. 340, Sec. 12, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1612, provides in part as follows:

"* * * Any such member who withdraws his contributions as herein provided shall thereby ipso facto forfeit, waive and relinquish all accrued rights in the fund including all accrued creditable service. * * *"

This is further emphasized by the provisions of the Acts of 1945, Ch. 340, Sec. 6, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1606, concerning the issuance of prior service certificates, which states, in part:

"* * * Such certificate * * * shall be cancelled automatically upon withdrawal by a member of his accumulated contributions and may be reinstated only under the conditions specified in section 12 hereof * * *." (Our emphasis)

The "only" conditions specified in Section 12 relative to reinstatement are those as found in the Acts of 1945, Ch. 340,
Sec. 12, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1612 which provides in part as follows:

"* * * Any such member who has withdrawn his contribution and returns to the service of such previous employer and becomes a member of the fund after one (1) year of service may by repaying the amount previously received by him as a refund together with regular interest at the rate of two and one-half (2 1/2) per cent from the date of refund to the date of repayment, again receive credit for the period of creditable service which was forfeited upon withdrawal * * *." (Our emphasis)

Since withdrawal of the member's contributions to the fund works an automatic forfeiture of all rights in the fund including all accrued creditable service and since the only means for reinstatement by which those rights may be revived requires that the ex-member return to the service of his previous employer, pursuant to Burns' Indiana Statutes (1951 Repl.), Section 60-1612, supra, it follows that John Smith may not have credit for past service under the facts in either question two or three, because his second employment is not with the same employer under which he formerly worked.

In conclusion, therefore, it is my opinion:

1. That the transfer of employment from one municipality to another does not destroy such employee's earned creditable service so long as both employers are participants in the fund and such employee does not withdraw his contributions to the fund upon termination of his first employment, the length of time between such employments being immaterial.

2. The withdrawal of contributions paid into the fund under one employment does work a forfeiture of earned creditable service which may be revived only in case the ex-member returns to the service of the same employer and becomes a member of the Fund within one year and repays to the fund the amount previously withdrawn by him together with regular interest at the rate of 2 1/2 per cent.