form of the discharge on one (1) page of said record, and each book shall be provided with an alphabetical index.

"It shall be and is hereby made the duty of the recorders of the several counties of the state of Indiana, and as a part of their official duties, to record all discharges from service in any war in which the United States has been engaged, of soldiers, sailors, marines or members of any other branch of the service, without charge, and no fee shall be assessed or collected by the counties or recorders thereof for such recording." (Our emphasis)

Unless expression of an intention to the contrary, statutes are treated as intended to operate prospectively and not retrospectively.

Chadwick v. City of Crawfordsville (1939), 216 Ind. 399, 24 N. E. (2d) 937.

It is to be noted that Chapter 131, supra, does not contain any limitation as to what types of discharges are to be recorded. It is therefore my opinion, that any and all papers evidencing their contents as discharge papers should be recorded by the County Recorder free of charge.

OFFICIAL OPINION NO. 14

March 5, 1954

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

Dear Sir:

Your letter has been received and reads as follows:

"We request your official opinion relative to the following situation arising under the 1953 amendment to the teachers' retirement fund law (Chapter 149, Acts of 1953)."
"In subsection (e) of Section 2 of this act it is provided:

'In the event of the death of a married teacher who is a member of the fund and who has not designated a beneficiary, the death benefit shall be paid to said teacher's husband or wife or may be converted in accordance with sub-section (i) of this section at the option of such husband or wife.'

"In the case before us, the husband had designated his wife as beneficiary under one of the preceding laws (the 1945 law); but had transferred to the 1953 law and had not made such designation under the 1953 law.

"Does this prior beneficiary designation defeat the wife's right to select the option provided under subsection (i) of Section 2 of the 1953 law, namely, a cash settlement, or a survivorship annuity?

"This matter is of great importance to married members of the teachers' retirement fund, where the right of the surviving spouse to a survivorship annuity may be defeated by the fact that a beneficiary notice had been filed under a preceding law. Many members are now cancelling previously filed beneficiary notices, believing that such action is necessary to leave the choice of options to the surviving spouse.

"Does the right of selection given to the married teacher under the 1953 law supersede the designation of beneficiary filed under a preceding law, when the member has transferred to and accepted the provisions of the 1953 law?"

The Acts of 1953, Ch. 149, Sec. 2, subsection (e), supra, being Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-4511 provides as follows:

"(e) As soon as practicable after the passage of this act the secretary of the fund shall secure from each teacher a designation of beneficiary, and the death benefit payable to such beneficiary or to the estate if no such designation is made shall be computed by applying three per cent (3%) interest compounded annually on
the total assessments and payments made by the teacher to the date of death or separation from active service, whichever is earlier: Provided, That in the event of such death while drawing disability benefits, all payments made to such teacher under the disability provisions of this act shall be deducted from such sum; and in the event of such death while on regular retirement annuity, there shall be deducted from such sum the portion of annuity payments made from contributions of such teacher, made in conformity with the provisions of this act, if application therefor be made within three (3) years after the death of such teacher, but not otherwise. In the event of the death of a married teacher who is a member of the fund and who has not designated a beneficiary, the death benefit shall be paid to said teacher's husband or wife or may be converted in accordance with sub-section (i) of this section at the option of such husband or wife."

It, therefore, becomes necessary to determine the legislative intent in adding to said section of the statute that part of sub-section (e) quoted in your request, which is new language appearing by the 1953 amendment.

In ascertaining the legislative intent as to a statute, it is a cardinal rule of construction that Courts may take into consideration other acts in para materia, whether passed before or after the Act in question.

Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 498, 13 N. E. (2d) 568.

It is also well-recognized that the contemporaneous construction of a statute by those charged with the administration of it is entitled to great weight, and that this is particularly true where the legislature by inaction has indicated satisfaction with that construction.

Gross Income Tax Division v. Colpaert Realty Corp. (1952), 231 Ind. 463, 478, 479, 109 N. E. (2d) 415;

Department of Insurance of Indiana et al. v. Merchants Fire Insurance Co. of Indiana (1944), 222 Ind. 611, 57 N. E. (2d) 62.
In applying the above authorities to the history of this legislation, it is found that at practically each session of the Legislature said Act has been amended, and it has been the consistent interpretation of this office that persons are a member of the fund under the particular Act in which they elect membership. (1951 O. A. G., page 76, No. 29). In the earlier amendments to the statute, a designation of beneficiary was primarily concerned with the lump sum settlement payable on the death of a teacher. In recent years the amendments have brought into being additional advantages under the Act such as provisions for annuity funds and the establishment of a co-annuity fund which could be paid the designated beneficiary on the death of a teacher. Prior to the 1953 amendment above referred to, a wife might be named as a co-survivor of an annuity but she did not have the benefit of the right of election to take either the lump sum death benefit or to convert it under subsection (i) of said section of the statute, and in view of the legislation at that time it was held by this office in 1952 O. A. G., page 108, No. 27, that where a co-annuity survivor was designated by a member of the fund under the 1949 Retirement Law, on such teacher’s transfer to the 1951 Retirement Fund without any designation of co-annuity survivor, that the designation so made under the 1949 Law would carry over and prevail. This construction was made upon the premise that it was common knowledge that many teachers had transferred under the new law to the new fund, in the firm belief that no further designation of beneficiary was necessary and that since such matters were highly technical and of great benefit to the teachers and their annuity-survivor, that such a construction was required under the law.

It is clear that the word “beneficiary” as used in that part of the statute now under construction is broad enough to include a beneficiary designated for receiving a lump sum death benefit as well as a person who is the beneficiary by reason of being named as a co-annuity survivor. This is necessarily true for under subsection (i) of said Act such a joint annuity contemplated utilizing, in the computation of the annuity, those funds which otherwise would comprise the lump sum death benefit. This is particularly required by the Rules and Regulations of your board as set out in Rule 25 adopted
Therefore, at the time of the insertion of the provision now under construction of the 1953 amendment to the law, it was the opinion of this office, and a matter of administrative procedure by your board, that prior designations of beneficiaries by members of previous retirement funds, including designated co-annuity survivors, would prevail on a transfer by such member to a new retirement fund where no designation of such beneficiary was in any way indicated. This was the status of the legislation, as interpreted and administered, at the time this amendment of the statute was passed by the Legislature, and under the above authorities the Legislature would be charged with the knowledge of such construction and to have added this new legislative amendment consistent with such construction.

The new provision of the statute only gives such right of election to a husband or wife who has not been designated a beneficiary under the present law or any prior retirement fund, either by way of lump sum death benefit or for the purpose of co-annuity survivor.

I am, therefore, of the opinion the Legislature, in using such language, intended to make such right of option available to a husband or wife where a definite beneficiary had not been established with the board under that fund or a previous fund in order to avoid any conflict between such beneficial provision so given and the rights of a person specifically named as beneficiary by the teacher. If the husband or wife was the beneficiary specifically named, and the additional advantage was given her by the statute of such right of election, no great conflict could result. However, if the designated beneficiary was someone other than the husband or wife, and the statute now gives the option to the husband or wife of an election, considerable conflict would result. I am, therefore, of the opinion that the Legislature had this in mind in the language used in this amendment and intended that if a person was named as beneficiary, who was not the husband or wife, that such designation would prevail, and that if the husband or wife was named as beneficiary, or no beneficiary whatever was named, that the husband or wife would have the right of
option provided in that part of the statute referred to for construction in your question.

The above construction is made for the reason that I do not believe the Legislature intended to grant to a husband or wife, where no beneficiary was named, the right to the option of election referred to in subsection (e), supra, and to deny that privilege to a husband or wife who had also previously been designated as a beneficiary, but was intended to distinguish such a right as existing where a beneficiary other than the husband or wife had been so designated by the teacher.

In reaching the above construction, we are somewhat influenced by the rule that statutes of a beneficial nature should be so construed as to give the benefit of the statute to those coming within its purview. On this question see 1952 O. A. G., page 108, No. 27, and 1951 O. A. G., page 76, No. 29. It has also been said that 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.

In answer to your question, I am, therefore, of the opinion that the right of election given to the married teacher by the Acts of 1953, Ch. 149, Sec. 2, subsection (e), does not supersede the designation of beneficiary filed under a preceding law, when the member has transferred to and accepted the provisions of the 1953 law without further designation of beneficiary, except in the case of the husband or wife being the previously designated beneficiary. In the latter case, he or she would have the right of election or option of taking the death benefit payments, or of converting the sum into an annuity, in accordance with subsection (i) of said section of the statute.

The last-mentioned exception in favor of a husband or wife would not apply in either of the two following instances: (1) Where the teacher dies while on retirement, since by that time his annuity would be fixed and in operation; and (2) it would not apply where a teacher dying in service has in fact by clear language in his designation of beneficiary specifically desig-
nated his surviving spouse as a lump sum beneficiary, or as an annuity survivor beneficiary, as I am of the opinion the teacher still has this right of election under the statute.

Since the changes in the statute, and as interpreted in this opinion, have broadened the word “beneficiary” to include one entitled to either a lump sum settlement or an annuity survivorship, it is highly recommended that all participants in the Teachers’ Retirement Fund clarify their designations of beneficiaries in the records of the Indiana State Teachers’ Retirement Board.

OFFICIAL OPINION NO. 15
March 5, 1954

Mr. B. W. Johnson
Executive Secretary
Indiana State Teachers’ Retirement Fund
336 State House
Indianapolis, Indiana

Dear Sir:

Your letter has been received and reads as follows:

“Charles R. Helper, a member of the state teachers’ retirement fund holding membership under the 1951 law, died July 1, 1953, while in active teaching service. He had named his wife as beneficiary, but had made no designation of her as an annuity survivor.

“An attorney representing Mrs. Helper has requested that we secure an opinion as to whether she had any right of option to such survivorship annuity. Mr. Helper had not transferred to the 1953 retirement fund law amendments.

“We respectfully request your opinion in this matter.”

In an Official Opinion of this office, requested by you concurrently with this request for an opinion, same being 1954 O. A. G., No. 14, it was held: