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Ind. 402, 196 N. E. 234; State ex rel. Coffing v. Abolt (1934), 206 Ind. 218, 189 N. E. 131. See also Note, 53 A. L. R. 595 as to distinction between office and employment.”

For the foregoing reason, I am of the opinion that the chief investigator for the prosecuting attorney of Lake County, Indiana, does not hold an “elective or appointive office” within the meaning of the provisions of Burns’ Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-1710, supra, and, therefore, each of your questions are answered in the affirmative.

OFFICIAL OPINION NO. 17

March 8, 1954

Colonel John W. McConnell
Assistant Adjutant General
212 State House
Indianapolis, Indiana

Dear Colonel McConnell:

This is in reply to your inquiry in which you request the following information:

May the employees of the Adjutant General’s office who are paid from federal funds, withdraw from the Public Employes’ Retirement Fund in order that they may participate under the Social Security plan of the Federal Government?

The Acts of 1945, Ch. 340, Sec. 5, as amended, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1605, provides in part as follows:

“(b) Any person under fifty-nine (59) years of age who becomes an employe on or after the effective date of this act may elect upon the completion of one (1) month and not more than twelve (12) months of continuous service, uninterrupted by a break of more than two (2) months, to become a member of the fund. In the event such person shall not elect to become a member after one (1) month of continuous service, such
person shall after twelve (12) months of continuous service, uninterrupted by a break of more than two (2) months, become a member of the fund as a condition of employment.” (Our emphasis)

Employee is defined as “any person in the employ of the state whose compensation is paid * * * by any department as herein defined, * * *.”

Acts of 1945, Ch. 340, Sec. 4, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1604.

Section 4, supra, further provides in part as follows:

“Department’ shall mean any department, institution, board, commission, office, court, agency, institution of higher education, or any division of the state government receiving state appropriations and having power to certify payrolls authorizing payment of salary or wages against appropriations made by the general assembly from any state fund, or against trust funds held by the treasurer of the state including any departments receiving salaries or wages from state appropriations, or any board including the office of the State Adjutant General in the operation of all branches of the National Guard authorized by law to operate a state property independently of appropriations or funds held and disbursed by the state treasurer.” (Our emphasis)

The only method of withdrawal is by severance of employment or death.

Acts of 1945, Ch. 340, Sec. 12, as found in Burns’ Indiana Statutes (1951 Repl.), Section 60-1612.

It is therefore my opinion that employees of the State Adjutant General’s office who are paid from federal funds may not withdraw from the Public Employees’ Retirement Fund to participate in the Federal Program of Social Security.