January 1, 1948 as the effective date with regard to Smith, Smith’s time for compulsory retirement under the law was July 1, 1949. The Rules and Regulations of the Board of Trustees of the Public Employees’ Retirement Fund cannot advance the time of compulsory retirement as established by the Act. Under Section 14 of the Act, as amended, supra, the same being Burns’ Indiana Statutes (1951 Repl.), Section 60-1614, the Board of Trustees may establish Rules and Regulations for the administration of the fund and for the transaction of its business consistent with law as it deems necessary to carry out the Act. Consequently, a Rule and Regulation is not valid which either advances or extends the time for compulsory retirement except as specifically provided by the Act. It is therefore suggested that you modify Rule No. 1 of your Rules and Regulations so that the same will read, in substance, as follows:

“Beginning July 1, 1947, in the case of an employee of a department, or beginning July 1 of the year next following the effective date as defined in the Act in the case of an employee of a municipality or participating unit of a municipality, all members * * *” et seq.

OFFICIAL OPINION NO. 21

March 18, 1954

Mr. Horace E. Abbott, Member
Board of Trustees
Public Employees’ Retirement Fund
707 Board of Trade Building
Indianapolis 4, Indiana

Dear Mr. Abbott:

Your letter has been received in which you request an Official Opinion and reads as follows:

“Pursuant to Rule 32 adopted by the Teachers’ Training and Licensing Commission of the Indiana State Board of Education, Secretaries to Boards of Education and personal secretaries to Superintendents of Schools in school cities have been made eligible for par-
participation in the Indiana State Teachers' Retirement Fund and are now requesting a refund of their contributions made to the Public Employes' Retirement Fund.

"School Corporations of Cities of the First and Second Class, except Muncie, elected to participate in the Public Employes' Retirement Fund prior to January 1st, 1951 by adopting the required ordinance or resolution which in part reads as follows:

"'Section 2—The following employees are hereby designated as those who are to become members of the Fund. All employees in positions not covered by an existing retirement plan.'

"Such coverage included all School Employees except Licensed Teachers who were eligible for the Indiana State Teachers Fund.

"September 1st, 1953, an application for a refund was received from Frances M. Patton, Secretary to Superintendent of Schools in Terre Haute, Indiana, who was a member of the Public Employes' Retirement Fund since July 1, 1946, stating that she was joining the Teachers Pension plan. Mrs. Patton has contributed $630.00 to this Fund.

"The Executive Secretary to the Public Employes' Retirement Fund has been informed that these secretaries will receive credit for all prior service rendered to the school corporation without any immediate payment of arrearages. This matter has been referred to the Board of Trustees of the Public Employes' Retirement Fund and they have requested that your official opinion be rendered on the following questions:

"1. Can the refund requested be approved and paid since the employee making the request is not withdrawing from public service as provided by Section 12 of the Public Employes' Retirement Act?

"2. If the withdrawal from this fund and entering Teachers Retirement Fund is authorized may the deposit of the employee be transferred from this fund to the Teachers Retirement Fund to apply on the accrued
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arrearages in the same manner as is now provided for by Chapter 313 of the Acts of 1951 authorizing transfer of creditable service from the Teachers Retirement Fund to the Public Employees' Retirement Fund?

"There is one other situation involved and that concerns the position of Clerk or Secretary in Cities now participating in the Federal OASI program (Federal Social Security). Many of the 2nd and lower classification city schools are participating in Social Security and through election they covered all positions not covered by an existing retirement plan which covered the position of secretary who was not at that time covered by the Teachers Retirement Fund.

"In Knightstown, Indiana, the Secretary to the Superintendent is now participating in the Teachers Retirement Fund and also in the Social Security program since the Federal law prohibits the deletion from any position from coverage.

"3. In your opinion can a school secretary who is participating in Social Security also participate in the Teachers Retirement Fund Act under Rule 32 referred to above?"

The Acts of 1953, Ch. 149, Sec. 2, as found in Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-4511, makes provision for persons who are required to be members of the Teachers' Retirement Fund. Among other things, it provides:

"The members and beneficiaries of this fund include any legally qualified and regularly employed * * * teacher-clerk, * * * legally qualified and regularly employed as such in any of the public schools of this State * * *.”

Rule No. 32 of the Teacher Training and Licensing Commission of the Indiana State Board of Education, above referred to, does not make application for a license as teacher-clerk mandatory, but said Rule is permissive as to such license. Under said Rule a person applying for and receiving such license as a teacher-clerk, would then become qualified for membership in said Teachers' Retirement Fund and then have
the same classification as a teacher for the purpose of retirement.

Under the Public Employes' Retirement Act, Burns' Indiana Statutes (1951 Repl.), Section 60-1601 et seq., or said Teachers' Retirement Act, supra, no provision is made authorizing the transfer of accumulated funds from the Public Employes' Retirement Fund to the Teachers' Retirement Fund on a teacher leaving the first Fund for membership in the latter Fund. For this reason, your second question should be answered in the negative, as there is no authority for you to transfer to the Teachers' Retirement Fund any moneys remaining in your office to the credit of the person qualifying by licensure as a teacher-clerk, upon her obtaining membership in the Teachers' Retirement Fund.

It is therefore necessary to discuss the right of said teacher-clerk, who, for the purpose of retirement, has the same classification on licensure as a teacher, to withdraw such accumulated funds from the Public Employes' Retirement Fund upon becoming a member of the Teachers' Retirement Fund. In this connection, it is pertinent to note that said statutes do not authorize such a person to be an active member of each of said funds at the same time. Each of said statutes require a person holding the classifications therein defined to be a member of one or the other of such funds, as a person's classifications may require. It is clear that the Public Employes' Retirement Act exempts teachers who are members of the Teachers' Retirement Fund from membership in said Public Employes' Retirement Fund. (See definition "Employee" Burns' Indiana Statutes [1951 Repl.], Section 60-1604.)

From the foregoing, and in answer to your question number 1, I am of the opinion that a teacher-clerk, upon becoming licensed under said Rule 32, supra, ceases to be in a classification subject to membership in the Public Employes' Retirement Fund, and is required to be a member of the Teachers' Retirement Fund; that while it is true the provision made for a right to withdraw accumulated funds from the Public Employes' Retirement Fund is set out in Section 12 of said Act, same being Burns' Indiana Statutes (1951 Repl.), Section 60-1612, the basis of the withdrawal of such funds being "withdrawal from service," I am of the opinion that when
such a teacher-clerk so changes her classification as to ineligibility for further participation as an active member of the Public Employes' Retirement Fund, that she would be entitled to consider herself "withdrawn from service" as used in the Public Employes' Retirement statute for the purpose of making a withdrawal of accumulated funds from the Public Employes' Retirement Fund.

In answer to your second question, there is no authority for the transfer to the Teachers' Retirement Fund of moneys deposited by the employee under the Public Employes' Retirement Fund.

Your third question is directed to whether or not a person, whose only employment consists of being a teacher-clerk, who prior to licensure by the State Board of Education held membership in the Federal Social Security, could continue in such membership after becoming a member of the Teachers' Retirement Fund. I find nothing in the Teachers' Retirement Fund statute prohibiting such dual membership. However, the Acts of 1951, Ch. 313, Sec. 10, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1910, provides as follows:

"Any employee of the state or a political subdivision thereof who is now or who may hereafter become a participant in a state-wide or local tax supported retirement plan, shall be eligible to participate in the Old Age and Survivors Insurance Program provided by the Social Security Act (9A, F. C. A., tit. 42, §§ 301-1305) whenever such act permits said participation by such employees. Whenever the Social Security Act permits the participation of such employees in the Old Age and Survivors Insurance Program this act (§§ 60-1901—60-1910) shall become effective immediately as to such employees as soon as an agreement is entered into by the state agency with the Federal Security Administrator for the coverage of such employees: Provided, however, That the provisions of this act shall not apply to any policeman or fireman who is a member of an organized police or fire department, and a member of the pension fund plan of such police or fire department: Provided further, That the provisions of this act shall not apply to any person who is a teacher as the term
teacher is defined by Chapter 182 of the Acts of 1915 (§§ 28-4501—28-4511) and all acts amendatory thereof and supplemental thereto.”

The last-referred to statute is the one which authorizes the extension to the employees of this state and its political subdivisions of the benefits of the Social Security Act.

The foregoing statute would, in my opinion, disqualify such teacher-clerk from such membership in the Federal Social Security through her employment as such qualified and certified teacher-clerk.

OFFICIAL OPINION NO. 22
March 18, 1954

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

Dear Mr. Johnson:

Your letter requesting an Official Opinion has been received and reads as follows:

"The Board of Trustees of the Indiana State Teachers’ Retirement Fund has under consideration a plan to place all of its securities in the hands of a bank or trust company as custodian, said bank to exercise the powers of safekeeping such securities and also clipping coupons, surrendering matured issues for collection, and receiving the proceeds of all collections for the account of the Fund.

"We request your official opinion as to whether such action is possible under the provisions of the State Teachers’ Retirement Fund Law as it now stands. Section 11 of Chapter 182, Acts of 1915, as amended in 1945 (Section 4, Chapter 328, Acts of 1945) gives the Board of Trustees of the Fund greatly increased power as to the control and handling of the securities in its possession; and authorizes the Board to employ