

agent pursuant to Sec. 22 of said act and in that respect it supersedes the 1905 act as amended. However, the 1935 act does not cover the situation where there is no requisition by the governor, extradition having been waived. In the latter case the procedure would be under the 1905 act as amended and the judge may designate an agent to return the criminal upon the request of the prosecuting attorney. This is in harmony with O. A. G. 1943, p. 199, referred to in your letter.

It must be kept in mind, however, that the 1905 act and subsequent amendments deal only with felony cases and do not apply to misdemeanors. (O. A. G. 1943, page 199.)

OFFICIAL OPINION NO. 8

February 9, 1953.

Mr. Robert B. Hougham,
Executive Secretary,
Indiana State Teachers' Retirement Fund,
336 State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of January 13, 1953, has been received and reads as follows:

"Paul Addison, a member of the Indiana State Teachers' Retirement Fund under the provisions of Chapter 142, Acts of 1951, filed with the Fund on October 1, 1951, a verified notice of election of the annuity survivor option in said law, naming his wife as annuity survivor.

"At that time the provisions of Rule 25 governing said annuity survivor relationship had not been completed. When notified of the provisions of said rule, he wrote the Fund as follows October 11, 1951.

"'After receiving your kind letter explaining the provisions of the co-annuitant part of the retirement law, I would like to withdraw my recent request.'

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“Upon receipt of this notification the Fund cancelled Mr. Addison’s annuity survivorship application and so notified him on October 15, 1951.

“He continued in active membership in the Fund and under date of August 16, 1952, he wrote the Fund as follows:

“ ‘About one year ago I filed an application for the co-annuitant feature of the Indiana State Teachers’ Retirement Fund. At that time the law had not been sent out explaining the various parts of the law and so on October 2, 1951, you sent me a letter stating that I might withdraw my application. I believe I did that at that time.

“ ‘After studying the plan over, I would like to definitely renew my original plan of signing up for the plan. Will I have to make another application or will my first application be enough.’

“At that time an application blank was sent to Mr. Addison and he was advised to again file for the annuity survivorship privilege; and the completed application form was signed by him and filed in the Retirement Fund Office September 8, 1952.

“Mr. Addison died October 15, 1952, while still in active service of the schools. His widow now requests payment to her of the survivorship annuity. This raises two questions upon which we request your opinion:

“1. Did Mr. Addison have power to ‘renew’ an election of the survivorship option, which he had cancelled, thus establishing the date of election as more than nine months before the annuity accrual date, as required in published Rule 25?

“2. If the second application filed September 8, 1952, was not actually a renewal, but was a second original application, was such application ineffective because it was not filed 9 months before the teacher’s death in active service?

“In other words, after expiration of the waiver date of June 30, 1952, embodied in Rule 25, does the 9

months restriction apply alike to survivorship annuities after retirement, and to survivorship annuities arising after death in active service?"

Rule No. 25 duly enacted by the Board and filed with the Secretary of State on December 4, 1951, in part reads as follows:

"Section A—*Election of Joint and Survivor Annuity*: Any teacher who will be eligible for retirement under the provisions of Section 2, subsections (i) or (j) of the 1947 or 1949 or 1951 laws may elect, while in active service, by filing a duly acknowledged written notice with the Board of Trustees at least nine months prior to the date from which the annuity begins to accrue to the teacher following retirement, but in no event prior to the completion of 18 years of teaching service, to convert all benefits otherwise payable on his *basic annuity* account after retirement under any of said subsections (i) or (j) into a retirement allowance of equivalent actuarial value, in accordance with the Optional Form described below. * * *" (Our emphasis)

Section B of said rule provides the procedure to be followed by beneficiary of a teacher who has accumulated funds under the additional annuity fund where the teacher dies prior to retirement.

Section C of said rule provides that:

"Section C. Teachers holding membership under the 1951 amendment to the Indiana State Teachers' Retirement Fund Law (Chapter 142, Acts of 1951) and having credit thereunder for 25 years or more of service, shall have the right, while in active service, by filing a duly acknowledged written notice in accordance with the terms and conditions provided for in Section A of this rule, to designate an annuity-survivor to receive benefits in accordance with Section 2, subsection (i) of said act if death of the teacher occurs during the remainder of his period of active service."

The pertinent provisions of the statute involved in the question presented, and referred to in the above rule, is clause (i),

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Section 2, Chapter 142, Acts 1951, same being Section 28-4511, Burns' 1951 Supplement.

“(i) Any person coming under the provisions of this act who shall have met the regular payments and obligations of this act, and who for any cause ceases to be in the employ of the public schools of the state or any state institution in which service credit is granted herein shall be entitled to a basic annuity as provided in sub-section (h) hereof in addition to such annuity as may have accrued to such teacher from assessments and interest accumulations on his account prior to retirement, as well as from additional payments to the fund hereby authorized to be made by such teacher or his employer compounded on a three per cent (3%) basis for the purpose of providing an annuity for such teacher and such dependent as may be recognized by the board, which additional annuity shall be provided by resolution of the board which shall also determine the extent to which the privileges of the additional annuity fund may be enjoyed by the members thereof. Annuity payments shall be payable monthly terminating with the last payment prorated to the death of the annuitant. Such teacher may elect to accept annuities less than otherwise receivable under this act in consideration of annuity protection for not more than one (1) dependent as shall be recognized by the board, or greater than otherwise receivable in consideration of a waiver of death benefit by the teacher; Provided, That any teacher who shall have completed twenty-five (25) or more years of service may elect to provide annuity survivor benefits for such dependent in case of the death of said teacher during the remainder of his period of active service, based upon the annuity that would be available had such teacher retired at the time of his death adjusted to the actuarial equivalency of such annuity, taking into consideration the ages of the teacher and the dependent. The board shall make necessary rules and regulations for the proper administration of this provision: * * *.”

In Official Opinion No. 27, issued March 20, 1952, it was pointed out that the proviso in the foregoing statute making

provision for annuity-survivorship in the case of the death of a teacher while in active service who has twenty-five years of credit, was first provided for in said 1951 retirement law. Prior to that time under the former retirement acts such annuity-survivorship plans were not effective excepting after the teacher's retirement. Since the amendment of 1951 of said statute the then existing rule, which was almost identical, was amended by this board and Section C, aforesaid, was added to such rule.

It is a well recognized rule of construction that the same rules of construction applicable to statutes apply to rules and regulations of administrative boards.

42 Am. Jur., Public Administrative Law, Sec. 101,
p. 431;

Miller v. U. S. (1935), 294 U. S. 435, 439, 55 S. Ct.
440, 79 Law. Ed. 977.

In considering the rules applicable to the construction of statutes it is well settled that statutes must be considered as a whole in order to determine the legislative intent.

Snyder v. State *ex rel.* Leap (1934), 206 Ind. 474,
478, 190 N. E. 178;

State v. Ritter's Estate (1943), 221 Ind. 456, 469,
470, 48 N. E. (2d) 993.

It has also been held that courts will look to the general purpose and scope of a statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555,
567, 24 N. E. (2d) 776;

State *ex rel.* Bailey v. Webb (1939), 215 Ind. 609, 612,
21 N. E. (2d) 421.

When the history of the above statute as above detailed has been considered in connection with Rule No. 25 of the state board, it is apparent that under Section A of said rule it was applicable only to teachers whose annuity accrued to them *following retirement*. A consideration of the statutes involved

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show that these annuity benefits were all conditioned after retirement. For the first time in 1951 a provision had been made for teachers who die in active service. The provision above mentioned seems to contemplate a right to exist in a teacher who has completed 25 or more years of service to make an election to provide annuity survivorship benefits for a dependent in case of the death of said teacher "during the remainder of his period of active service." While it is true the same provision authorizes the board to make necessary rules and regulations for the proper administrative provision of that program, no express authority seems to be thereby given to limit the right of a teacher in active service to make such an election.

It is further submitted Section C of said rule does not seem to contemplate that such election of a right for annuity survivor benefits by such teacher with 25 years of service and who is still in active service should necessarily comply with such 9 months limitation prescribed in Section A of said statute, but instead seems to contemplate a recognition of the creation of this new class entitled to such benefits and intends to provide a manner of procedure for the exercise of such right.

The above conclusion of such rule seems to be in harmony with the apparent intention of the legislature from the language the legislature used in referring to the right of election of those teachers with 25 years or more service and who die in active service.

1. In answer to your first question I am of the opinion it is very questionable that the decedent had the power to renew an election of the survivorship option which he had previously cancelled. However, this is not necessary to answer in view of the answer to your second question.

2. From the foregoing and in answer to your second question, I am of the opinion the 9 months restriction contained in Rule 25 of your board does not apply to an election for annuity survivor benefits for a dependent in case of death of a teacher while in active service, which election was made by a teacher who was a member of the 1951 Retirement Fund and who had 25 or more years of service at the time of making such election.