

1953 O. A. G.

OFFICIAL OPINION NO. 64

August 3, 1953.

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

Dear Sir:

Your letter has been received requesting an official opinion and reads as follows:

"We request your official opinion as to whether or not payments of disability pension made to a member of the Indiana State Teachers' Retirement Fund prior to the time that she transferred from disability pension status to a retirement annuity status, shall be deducted from the value of her estate, she now being deceased.

"The teacher drew disability pension under the 1921 and 1945 laws, under which disability pension payments would not be deducted from her estate if she had returned to teaching, or transferred to retirement annuity, prior to her death.

"In 1950, she was employed briefly and while active, transferred to the 1949 law which provides that disability payments shall be deducted from the death value of her account, even though she has returned to active teaching or transferred to retirement annuity.

"However, in this case, after the teacher had made her transfer to the 1949 law with 27½ years of accredited service, she claimed and received credit for 2½ years on her annuity service record covering a period when she had received disability pension. This was under the provisions of subsection (k) of Section 2 of Chapter 130, Acts of 1949 which read as follows:

"Provided further, That both disability pensions under this Act and service credit may be granted by the Board during the two and one-half (2½) years next preceding the completion of 30 years of service credit.'

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“Our question is: Did the fact that she incorporated this service in her record under the 1949 law as additional service credit make the disability pension received for the 21½ years subject to deduction when she died under retirement under the 1949 law, in the same way that such payments would have been deductible had they been paid to her while she was actually a member of the 1949 law.”

The statute involved is Section 2 (k), Chapter 130, Acts of 1949 which in part reads as follows:

“That both disability benefits under this act and service credit may be granted by the board during the two and one-half years next preceding the completion of thirty years of service credit; and Provided further, That in the event of the death of any teacher who hereafter enters the service or who shall have accepted the provisions of this act as amended in 1937 or thereafter, while such teacher is drawing disability, then the total of such disability payments shall be deducted from any funds which otherwise would be payable to the estate or designated beneficiary of such deceased teacher, and in the event that said teacher ceases to be on disability and transfers to regular retirement annuity or returns to active teaching, the amount of disability benefits received shall reduce the amount of any death benefit that may thereafter be payable to said teacher’s estate or designated beneficiary, but no reduction shall be made in any retirement benefits that may thereafter be payable to said teacher because of disability benefits previously received.”

The above statute prior to amendment was Section 2, Chapter 353 of the Acts of 1947, same being Section 28-4511, Burns’ Indiana Statutes Annotated (1948 Repl.). A comparison of clause (k) of each of said statutes, as far as the present question is concerned, reveals that in the 1949 amendment the legislature added the language “That both disability benefits under this act and service credit may be granted by the board during the two and one-half years next preceding the completion of thirty years of service credit” and added the language “in the event that said teacher ceases to be on disability and

transfers to regular retirement annuity or returns to active teaching, the amount of disability benefits received shall reduce the amount of any death benefit that may thereafter be payable to said teacher's estate or designated beneficiary, but no reduction shall be made in any retirement benefits that may thereafter be payable to said teacher because of disability benefits previously received."

That portion of the amendment of 1949 referring to the allowance of disability benefits and service credit during the two and one-half years next preceding the completion of thirty years service credit was the subject of an official opinion of this office, Indiana O. A. G. 1950, page 268, Official Opinion No. 67. Said opinion did not settle the question here presented but does decide that a person joining the 1949 Teachers' Retirement Fund may avail themselves of a beneficial provision of that portion of the statute.

An examination of the history of this legislation shows that each session of the legislature has made some pertinent changes in said Retirement statute. Each of these sessions of the legislature has given teachers the option of electing whether or not they will remain in the fund in which they then hold membership or whether they shall elect to become members of the new fund so created by such legislature. In view of this fact it has been consistently held by this office that a teacher's rights as well as her liabilities and obligations in said fund are to be determined solely by the provision of the statute in existence at the time she became a member of that particular fund. On this question see Indiana O. A. G. 1950, page 49, Official Opinion No. 16 and Indiana O. A. G. 1949, page 428, Official Opinion No. 112, which latter opinion contains references to Official Opinions of this office from 1938 to and including 1948.

Under the foregoing Official Opinions a teacher joining a new Retirement Fund, such as the teacher did in this case when she joined the 1949 Teachers' Retirement Fund, would be entitled to the new beneficial provisions of said 1949 statute, but also was subject to any disadvantages or obligations prescribed by said 1949 statute.

It is therefore to be seen that this teacher, in becoming a member of the 1949 Teachers' Retirement Fund, was given

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credit for two and one-half years of credit service in order to make her credit service the equivalent of thirty years, and she then went on retirement with a status of a teacher having thirty years of service credit. This was a benefit realized by the teacher while on retirement. On the other hand the statute provides, beginning with the 1949 statute, that if a teacher ceases to be on disability and transfers to regular retirement annuity, "or returns to active teaching, the amount of disability benefits received shall reduce the amount of any death benefit that may thereafter be payable to said teacher's estate or designated beneficiary."

By voluntarily becoming a member of the 1949 Teachers' Retirement Fund, said teacher elected to be governed by such provision regarding deductions from any death benefits so payable.

I am therefore of the opinion that the disability pension payments paid to said teacher during the two and one-half years for which she claimed additional service credit are deductible from any death benefits payable to said teacher's estate or designated beneficiary.

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July 30, 1953.

Mr. R. R. Wickersham, State Examiner,
State Board of Accounts,
304 State House
Indianapolis, Indiana.

Dear Mr. Wickersham:

Your letter of July 23, 1953 has been received and reads as follows:

"A question has arisen in Henry County regarding the consolidation of Junior and Senior High Schools in two townships in that county.

"Greensboro School Township, in Henry County, Indiana, maintains two schools, one serving the first six elementary grades and one serving all elementary and high school grades. Harrison School Township, in