

Freyermuth v. State (1936), 210 Ind. 235, 244, 2 N. E. (2d) 399;

State *ex rel.* Wickens v. Clark (1935), 208 Ind. 402, 405, 196 N. E. 234;

Bishop v. State *ex rel.* Grimes (1897), 149 Ind. 223, 48 N. E. 1038;

Foltz v. Kerlin (1885), 105 Ind. 221, 5 N. E. 672;

Chambers v. State *ex rel.* Barnard (1891), 127 Ind. 365, 26 N. E. 893;

Howard v. Shoemaker (1871), 35 Ind. 111;

Kerr v. Jones (1862), 19 Ind. 351;

Creighton v. Piper (1860), 14 Ind. 182;

State v. Nattkemper (1927), 86 Ind. App. 85, 88, 156 N. E. 168.

It is therefore my opinion that the position of civilian aide to the Secretary of the Army for the State of Indiana is neither an "office" nor is it lucrative as the word is used in Article II, Section 9 of the Constitution of Indiana and therefore the fact that you are a member of the House of Representatives will not prohibit you from the taking of the position aforementioned.

OFFICIAL OPINION NO. 70

August 24, 1953.

Frank A. Jessup, Superintendent,
Indiana State Police,
Stout Field,
Indianapolis 21, Indiana.

Dear Sir:

This is in reply to your letter of July 9, 1953, in which you inquire as to the following:

"(1) Does the Indiana State Police Advisory Board have the authority to amend the trust agreement such

OPINION 70

as was done by the amendment of January 25, 1947, if the amendment is printed and distributed for vote to all the Indiana State Police Pension Fund members and is voted by more than seventy-five percent (75%) in the affirmative?

“(2) If the Indiana State Police Pension Advisory Board has the authority to amend the trust agreement, as outlined in No. 1, has such amendment met the requirements of all Indiana laws pertaining to such matters?”

The amendment in question is as follows:

“AMENDMENT—January 25, 1947

TO: ALL EMPLOYEES OF THE INDIANA
STATE POLICE DEPARTMENT.

FROM: PENSION ADVISORY BOARD.

SUBJECT: Amendment to Pension Trust Agreement.

“1. After January 15, 1947 if a former employee beneficiary who has been receiving a monthly pension from the Indiana State Police Retirement Plan should be rehired by the State Police Department, the total monthly pension checks received by such former employee beneficiary must be repaid to the Trustee of the Indiana State Police Pension Fund in a lump sum before the former employee beneficiary may be reinstated under the retirement plan.

“2. Any employee beneficiary receiving a pension check must assign the checks to the Trustee of the Indiana State Police Pension Fund for deposit into the Pension Fund while the employee beneficiary is on the payroll of the Indiana State Police Department, and in this way when he leaves the Department again for retirement or for any other reason, the pension checks will again go to him direct, but the total of these checks in any event shall not exceed his pension classification.

“3. There are several employee beneficiaries who have left and returned to the Indiana State Police Department for reasons other than leave of absence.

When they left the Police Department they were given a lump sum payment because they did not have sufficient number of years of service to receive a pension. When they came back to the State Police Department they came back as new employee beneficiaries, and they are now asking to have the privilege of repaying the lump sum they received and receiving credit for their former years of service. The Pension Advisory Board is desirous of clearing up all such cases on some practical basis. The suggestion is that if any former employee beneficiary who has received a lump sum payment and is now employed by the State Police would like to receive credit for such former service, he may receive three-fourths of the past service if he is willing to return the total of the lump sum paid him, plus interest. In other words, he would lose 25% credit of his past service for leaving the service of the Department. In order for all such cases to receive definite assurance that credit as outlined above would be given them, the Pension Advisory Board is of the opinion that each and every employee beneficiary of the State Police who thinks he is entitled to any past service credit for former employment would have the opportunity to write to the Pension Advisory Board explaining his case prior to March 1, 1947, and then at the next Pension Advisory Board meeting each case would be discussed and decided on the above basis and a letter from the Pension Advisory Board would be sent to the employee beneficiary stating the years of service credit he is entitled to and a copy of the letter be sent to the Bookkeeping Department and McCreedy Pension Engineers, Inc. so that the record would be definitely established.

“4. Effective January 1, 1947, dependents of employees who die in line of duty shall be paid \$100.00 per month instead of the present equivalent of their pension classification or \$100.00, whichever is the smaller amount.”

The Acts of the General Assembly of 1937, Chapter 54, as amended by the Acts of the General Assembly of 1953, Chap-

OPINION 70

ter 212 as found in Burns' Indiana Statutes Annotated, Sections 47-835 to 47-846 created a Police Pension Fund and provides in part as follows:

"(g) The term 'pension engineers' means any person, firm, or corporation of technical consultants competent and qualified to supervise and assist in the establishment, maintenance and operation of a pension trust on an actuarially sound basis.

"(h) The term 'pension trust' means the agreement between the department and the trustee under the terms of which an actuarially sound retirement pension plan is established and operated for the exclusive benefit of the employee beneficiaries subject to the following limitations:

* * *

"(6) In the event a person ceases to be an employee beneficiary because of death, disability, unemployment, retirement, or any other reason he, his beneficiary or his estate shall receive at least the net amount paid into the trust fund from his wages, either in a lump sum or monthly installments not less than his pension amount."

The Department of State Police Pension Trust Agreement, as adopted, provides in part as follows:

"3. The term 'Employee' as used in this Trust Agreement means any person regularly employed and on the payroll of the Department.

* * *

"6. In the event that any Employee Beneficiary prior to the time when he has attained the age of 55 years shall cease to be an employee, he shall likewise cease to be an Employee Beneficiary as soon as he has received the benefits or refunds to which he is entitled under the terms of this agreement.

* * *

"8. * * * When any person under the age of 55 years shall cease to be an Employee for any reason other than death or prior retirement on pension there

shall be paid to such Employee Beneficiary an amount equal to the net amount paid into the Pension Fund from the wages of the Employee Beneficiary, if any.

* * *

"22. There shall be a Pension Advisory Board consisting of the Director of Public Safety (Chairman), a member of Police Board, a representative of Engineers, and three Employee Beneficiaries who shall be elected by the Employee Beneficiaries on or before July first of each year. The duties of this board shall be to adjust compensation, approve pensions, formulate policies, and assist in the administration of this program. Meetings shall be held at least semi-annually, and more frequently if necessary, to consider problems which may arise.

"23. At any time prior to January 1, 1938, this Trust Agreement may be changed, altered, or amended in any particular by the Department with the consent of the Engineers.

"At any time after January 1, 1938, the Trust Agreement may be changed, altered, or amended in any particular by the Department with the consent of the Engineers, and a majority of all the Employee Beneficiaries, except that if such change, alteration or amendment shall modify or change the relative rights under the respective pension classifications, the consent shall be required thereto of a majority of the Employee Beneficiaries of each pension classification so affected.

"Any amendment made prior to January 1, 1938 shall become effective immediately upon giving notice to the Trustee and Engineers. Any such amendment made after January 1, 1938, shall become effective forty days after a copy is filed with the Trustee and the Engineers."

Sections 22 and 23 of the Department of State Police Pension Trust Agreement, *supra*, provides that the trust agreement may be amended by the Department with the consent of the Engineers and majority of all the Employee Beneficiaries or if the amendment modifies or changes the relative rights of

OPINION 71

any class of Employee Beneficiaries the consent required shall be a majority of the Employees so affected.

The amendment does not provide a compulsory feature but rather provides an election or "option" to the Employee Beneficiary upon return to the Indiana State Police Department who is desirous of again participating in the Indiana State Police Pension Trust Agreement and if the Employee Beneficiary so elects he is bound by the amendments to the Pension Trust Agreement.

It is therefore my opinion :

1. The Department of State Police Pension Trust Agreement may be amended such as was done by the amendment of January 15, 1947 if the amendment is distributed for vote to all the Indiana State Police Pension Fund members and is voted in the affirmative by more than the majority of all the Employee Beneficiaries except if such change or amendment shall modify or change the relative rights under the respective pension classifications, then the consent required shall be a majority of the Employee Beneficiaries of each pension classification so affected. In either of the aforementioned instances the consent of the Pension Engineers must be secured.

2. The amendment providing "optional" rather than compulsory features has met the requirements of all Indiana laws pertaining to such matters.

OFFICIAL OPINION NO. 71

August 26, 1953.

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

Dear Mr. Wickersham:

I have your request for an official opinion upon the following:

"Is the county auditor authorized to draw a warrant in payment of a claim for compensation of a clerical