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OFFICIAL OPINION NO. 2

January 6, 1953.

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

Dear Sir:

Your letter has been received and reads as follows:

"The State Teachers' Retirement Fund Law amended in 1951, Chapter 112, Acts of 1951, Section 2, subsection (j), provides that teachers retiring with more than 20 years of service but less than 30 years of service, must be 50 years of age before an annuity may be received.

"In the 1951 Amendments, a proviso, relating to joint survivorship annuities, was added to subsection (i), Section 2, reading as follows:

"'Provided, that any teacher who shall have completed twenty-five 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 Retirement Fund has before it at the present time the case of a teacher who died after 29 years of service at age 46, after having designated her brother as annuity-survivor. She had not retired and was in active teaching service at the time of her death.

"The question is raised as to whether the joint-survivor shall receive an annuity immediately; or whether such survivorship annuity shall become effective at the time that the teacher would have been 50

years old, at which time she would first have been eligible for annuity had she herself retired.”

The above referred to statute is 28-4511 Burns', 1951 Supp., Clause (i) which reads in part as follows:

“* * * 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 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: * * *.” (Our emphasis)

Clause (j) of said statute reads as follows:

“Any person who shall have attained the age of fifty (50) years and who shall have taught twenty (20) years or more in the public schools and who ceases to be in the employ of the public schools of the state, or in the lieu of any other benefit be entitled to an annuity payable as above of such amount as the then present value of the annuity which would otherwise have ultimately been available after thirty (30) years of service computed on the actuarial basis provided for, will purchase at such teacher's years of service, and if more than thirty (30) years shall have been served then also said additional years of service shall be taken into consideration, based upon actuarial tables and rules and regulations adopted by the board of trustees.”

It is, therefore, clear that under said statute the teacher who has made such election for joint survivorship annuity, referred

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to in your letter, in case of his voluntary retirement with 29 years of service and at the age of 46 years could not have received retirement benefits from said fund until reaching the age of 50 years. However, the statute provides that a teacher with 25 years of service may provide an annuity for a dependent "in case of the death of said teacher during the remainder of his period of active service." There are no words limiting the taking effect of such annuity and in the absence of any such words of limitation none should be furnished by construction. Any such limitation should be left to the Legislature.

I am, therefore, of the opinion the joint-survivor is entitled to receive an annuity effective on the death of the teacher "based upon the annuity that would be available had such teacher retired at the time of his death adjusted to the actuarial of such annuity, taking into consideration the ages of the teacher and the dependent."

OFFICIAL OPINION NO. 3

January 6, 1953.

Mr. Samuel C. Hadden, Chairman,
State Highway Commission of Indiana,
State House Annex,
Indianapolis, Indiana.

Dear Sir:

I have your request for an Official Opinion which reads as follows:

"May we respectfully request an opinion as to the extent of the legal authority of the State Highway Commission, by its Chairman, for expenditure of highway funds conferred by Chapter 217, Sec. 2c, of the Acts of 1951. The question of authority is asked in so far as it relates to the powers of the Chairman of the State Highway Commission to extend such funds under the provisions of Chapter 281, Sec. 20, Acts of 1951. The question refers to the expenditure of such monies, appropriated to the State Highway Commission of Indiana, as may be necessary for the study of any toll road