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It is therefore my opinion :

1. A teacher may receive service credit for one-half of a year as provided in Chapter 149, *supra*, and also receive an annuity for the other portion of the year.

2. In the converse to the answer to Question No. 1, a teacher may be paid annuity for a portion of a year when she has received service credit for part of the same year.

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OFFICIAL OPINION NO. 90

October 8, 1953.

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

Dear Sir :

Your letter of September 3, 1953 has been received and reads as follows :

“Your official opinion is requested as to whether a teacher not now active in a teaching service in Indiana may receive an annuity based upon a record of service in which the final year, or years, were taught in another state. This question arises under the final provision of Section 2, sub-section (j) of Chapter 149, Acts of 1953, which reads as follows :

“ ‘Provided, That the provisions of this Act shall be applicable to all persons who shall have completed twenty years or more of teaching service as defined herein whether or not they have heretofore qualified for same, but no annuity payment shall be made pursuant to this Act for time in retired status prior to July 10, 1953, or final filing of service record, whichever is later.’

“Under this provision of the law, the Indiana State Teachers' Retirement Fund is accepting applications for annuity from teachers who at some previous time

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had completed more than 20 years of service in Indiana but for various reasons had failed to, or had been unable to, claim an annuity at the time such service ceased. In a number of cases, these teachers have moved from the state and have taught additional years outside the state; and are now including these final years of out-of-state service as a part of the record for which they wish annuity credit.

“We would be pleased to have you advise us whether or not, in your opinion, the building up of this annuity service record may continue when the teacher has left Indiana service, without having returned to this state as a teacher after such out-of-state years.

“Under sub-section (l) of Section 2 of said law, the ‘board of trustees may include service as a public school teacher rendered outside of the state up to eight years for such outside service or years in the ratio of one year in four, whichever is greater.’ In the administration of the Fund, this has heretofore been construed as covering years of out-of-state teaching prior to a final year, or years, of teaching in Indiana.”

The above quoted provisions in your request for an opinion are part of Chapter 149 of the Acts of 1953, same being Section 28-4511, Burns' Indiana Statutes Annotated (1953 Supp.). As pointed out in your letter, sub-section (l) of Section 2 of said Act makes provision for service credit in the Teachers' Retirement Fund for service rendered outside of this state. The above proviso quoted in your request is a part of sub-section (j) of Section 2 of said Act, which in its entirety reads as follows:

“(j) Any person who shall have attained the age of fifty years and who shall have taught twenty years or more in the public schools and *who ceases* to be in the employ of the public schools of the State, or in any State institution wherein service credit is granted, for any cause, may in lieu of any other benefit be entitled to an annuity of such amount as the *then* present value of the annuity which would otherwise have ultimately been available after thirty years of service from the

contributions of the teacher and the state, computed on the actuarial basis provided for, will purchase *at such teacher's years of service*; and if more than thirty 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; Provided, That the provisions of this Act shall be applicable to all persons who shall have completed twenty years or more of teaching service as defined herein whether or not they have heretofore qualified for same, but no annuity payment shall be made pursuant to this Act for time in retired status prior to July 10, 1953, or final filing of service record, whichever is later." (Our emphasis.)

An examination of the history of said statute shows that for many years credit for out-of-state teaching service has been permitted, in varying amounts, under the older amendments to the statute. So far as I can ascertain, such statutes and the administration thereof have only been acted upon to allow service credit for out-of-state teaching by a teacher who returns to Indiana for further teaching service in this state.

An analysis of sub-section (j) of said Act, *supra*, shows that it permits persons meeting certain classification as to age and teaching service in the public "schools *who cease* to be in the employ of the public schools of the state \* \* \* may \* \* \* be entitled to an annuity of such amount as the *then* present value of the annuity \* \* \* will purchase *at such teacher's years of service* \* \* \*." Thereafter follows the proviso, above referred to in your letter for which you seek a construction to be made.

I am of the opinion that the foregoing clearly indicates the intention of the legislature to provide annuity for such class of persons, the value and manner of computation to be fixed as of the status of such teacher at the time "he ceases" to be an employee in the public school system of Indiana. This is clearly reflected by the provision referring to the "then" present value of annuity which could be purchased from the contributions of the teacher and the State computed on an actuarial basis provided for, and which can be purchased "at such teacher's years of service."

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What possible benefit could the State of Indiana receive by the continuity of a teacher's service in some other state, after she has left teaching service in this state? The clear intent of the statute is to attract teachers from other states to teach in this state by giving them some benefit for prior teaching service outside of this state. The policy of the law seems to be, to make attractive to the teachers a long continuation of service in the public schools of this state, in the interest of free education in Indiana.

Such retirement statutes have been upheld as to legality and constitutionality to the use of public funds of the state in the assistance of such program, on the basis of benefits to education in the public schools of the particular state.

In 40 Am. Jur., page 973, Section 17, "Pensions" it is said:

"\* \* \* The statutes vary materially in many respects, but it seems, as has been said, that they have as their common basis not charity or benevolence, but compensation for faithful, long-continued, valuable, public service. \* \* \*"

*Busser v. Snyder* (1925), 282 Pa. 440, 128 A. 80, 37 A. L. R. 1515.

It has been held, in determining the validity of the Oregon Teachers' Retirement statute that it was enacted in the interest and for the public good.

*School District v. Teachers' Retirement Fund Association* (1939), 163 Ore. 103, 95 P. (2d) 720, 96 P. (2d) 419, 125 A. L. R. 720.

It is a cardinal rule of statutory construction that the legislature intends its laws to be so construed as to be compatible with the Constitution, and that the validity of such retirement laws are based upon the public good and the benefits to be received by the free system of public schools of the state of their enactment. It is clear that the legislature could not have intended by the foregoing language of the Indiana statute to authorize teachers to quit teaching in the Indiana public schools and then go to another state and thereafter carry on their teaching, without returning to the Indiana schools, and to obtain retirement benefits and service credits for teaching

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service in such foreign state; it would mitigate against any benefits to the common school system of Indiana, and would violate the very terms on which said statutes are held constitutional.

I am therefore of the opinion that teachers returning to active service in the Indiana schools are authorized to claim the foregoing service credits for out-of-state teaching service, but that teachers who have ceased teaching in the Indiana schools cannot claim service credits for out-of-state teaching service.

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OFFICIAL OPINION NO. 91

October 15, 1953.

Mr. B. W. Johnson, Executive Secretary,  
Ind. State Teachers' Retirement Fund,  
336 State House,  
Indianapolis 4, Indiana.

Dear Mr. Johnson:

Your letter of September 21, 1953 has been received and in part reads as follows:

"The Board of Trustees of the Indiana State Teachers' Retirement Fund has received a petition for the granting of disability pension to Mr. James T. Fordyce of New Castle, Indiana, who suffered a broken back in an accident which occurred July 18, 1951.

"Mr. Fordyce is a member of the Fund and taught during the school year 1949-50, but was in other employment and did not teach during the school year 1950-51.

"On June 30, 1951, he entered into a contract with the Trustees of Union Township, Randolph County, to teach during the school year 1951-52. Subsequent to the making of that contract and before teaching began, he was injured as heretofore stated, the accident occurring July 18, 1951.

"The Board of Trustees of the Retirement Fund is not certain as to whether the disability provision of the