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.

---

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

Retirement Fund law shall apply to Mr. Fordyce under these circumstances. In general practice, the Board has followed the precedent of many years in allowing disability compensation only where disability arose while the teacher was in a contractual status with the school, as for instance during or before the conclusion of a year of teaching.

"We request your opinion as to whether or not the signing of the contract for the ensuing year gave Mr. Fordyce the protection of the law in this case."

Section 2, Chapter 149 of the Acts of the General Assembly of 1953, same being Section 28-4511, Burns' Indiana Statutes Annotated (1953 Supp.), sub-section (k) provides in part as follows:

"(k) Any teacher, while actually teaching in the public schools of the State, may be temporarily or permanently retired for disability on a benefit in accordance with this Act after he shall have served as such teacher in Indiana according to the provision of this Act for a period of ten years or more: * * *."

There is no requirement in the above statute as to how or when the disability must occur so the fact that the person in question received his disability in July is of no importance. "While actually teaching" in the statute refers to the time the teacher may be retired for disability.

Said statute has been in the same form as far as the above quoted provision is concerned since the amendment of the original statute by Section 2, Chapter 353 of the Acts of 1947, sub-section (k). This last referred to statute inserted the words "while actually teaching in." Prior to that time the statute read "in the service of" the public schools. The 1945 provision was the subject of an Official Opinion of this office found in 1947 O. A. G., page 85, No. 20 where it was held that teachers on leave of absence and in military service were considered "in the service of" public schools. Since that time the statute in this particular has not been construed by this office.

It has been held that a statute must be considered as a whole in order to determine the legislative intent.

Snider v. State *ex rel.* Leap (1934), 206 Ind. 474, 478, 190 N. E. (2d) 178.

It has been also held that courts will look to the general provisions 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.

Under the former language teachers on leave of absence for professional improvement, military service, *et cetera*, were considered as "in the service of" the public schools. The new language "actually teaching in" the public schools would restrict the application of the act to those under contract to teach, for in such latter event, such teacher has the classification as a teacher in such school.

There is nothing in the act which warrants a construction that only includes teachers from the first day of actual teaching until the last day of school. The only logical conclusion that can be reached in construing such language in the light of the other provisions of said statute is that it applies to teachers under contract to teach for that school year.

In considering other provisions of the statute it is clear that sub-section (a) of the above section of the statute defines the members and beneficiaries of the fund to "include any legally qualified and regularly employed teacher." This teacher was regularly employed, under regular contract.

Under sub-section (n) of the statute provision is made for such teachers to apply for membership in the new fund created by the 1953 statute, otherwise they will remain on contractual relationship in the fund under their prior written elections, previously made under like provisions of prior amendments to the statute. Such teacher's status is governed by the elections for the particular funds so made.

1949 O. A. G., page 428, No. 112;

1952 O. A. G., page 108, No. 27.

The last referred to Official Opinion also clearly shows that said statute being of a beneficial nature, should be given a liberal construction.

From the foregoing, I am of the opinion that a teacher, a member of the Teachers' Retirement Fund, who is under contract to teach for the succeeding school year and who sustains an injury resulting in disability prior to the start of the school year, is entitled to disability benefits under the provisions of the statutes governing said fund providing said teacher has ten (10) or more years of service credits under the provisions of said act.

---

## OFFICIAL OPINION NO. 92

October 15, 1953.

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

Dear Mr. Jessup:

This is in reply to your letter of August 20, 1953 in which you inquired as to the following with reference to Chapter 183 of the Acts of the General Assembly of 1953:

> "1. Does the main law mean that persons operating a motor vehicle which is overweight less than 1,000 pounds are guilty of a misdemeanor and subject to the $5.00 fine and costs provided in the act?
>
> "2. Is it constitutional for the legislature of the State of Indiana to provide for the assessment of a civil penalty in a criminal action?
>
> "3. What should be the form of judgment?
>
> "4. How can the judgment be collected?
>
> "5. When the defendant has paid his fine, what action is pending?"

Your questions relate to Sections 8 and 8A of the Acts of the General Assembly of 1931, Chapter 83, as amended by Chapter 183 of the Acts of the General Assembly of 1953, as found in Burns' Indiana Statutes Annotated (1952 Repl., 1953 Supp.), Sections 47-536, 47-536a which read in part as follows: