

## OPINION 27

An examination of Section 28-4511, Burns' 1951 Supplement, shows that throughout this section of the statute, the Retirement Board is repeatedly given authority to make rules and regulations facilitating the carrying out of the intents and purposes of the statute and it is therefore considered advisable that the board promulgate rules and regulations regarding the procedure for making an election by a teacher for the above benefits.

In the absence of such regulations, and in answer to your first question, I am of the opinion, since both of the provisions are beneficial to the teacher, that a single declaration of election under the 1951 law would cover an election of an annuity survivorship in the event of the death of a teacher after retirement and an annuity survivorship election in the event of the death of a teacher while in active teaching service.

In answer to your second question, the teacher would certainly have the right to select either option to the exclusion of the other, but such an election of one of the benefits would, in my opinion, be required to be specific and to exclude consideration of the other beneficial survivorship option.

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### OFFICIAL OPINION NO. 27

March 20, 1952.

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

Dear Mr. Hougham:

Your letter of February 8, 1952, reads as follows:

"The State Teachers' Retirement Fund has before it the case of a teacher who, on January 26, 1951, filed an election under Acts 1949, Chapter 130, Section 2, subsection i, establishing a joint-survivorship to be effective in event of death after his retirement.

"He, thereafter, on April 4, 1951, filed a transfer of membership to the new 1951 amendments (Acts

1951, Chapter 142), but did not file a new election of the joint-survivorship option thereunder. He died in January, 1952, while still in active service.

“The 1951 amendment to the Teachers’ Retirement Fund law (section 2, subsection i), contains a provision for survivorship-annuity in case of death in active service; the 1949 law did not contain such provision.

“Your opinion is requested upon the following questions:

“(a) Does a designation of joint-survivorship under the 1949 law carry over and remain effective when a member has transferred to the 1951 law, but has not re-affirmed or repudiated such designation?

“(b) If the answer to (a) is in the affirmative, does such continuing designation apply also in case of death in active service, a contingency for which a joint-survivorship annuity was not provided under the 1949 law?”

In Official Opinion No. 26 of this office dated March 20, 1952, it was held that a single declaration of an annuity-survivorship would cover an election for such survivorship in the event of the death of the teacher after retirement and also in event of the death of the teacher while in active teaching service where she has twenty-five years of service credit. This was based upon the fact that such provisions are considered of great benefit to the teachers and that their acceptance would be presumed where they had made a single election of an annuity-survivorship option. (Grant Trust, etc., Co. v. Tucker (1912), 49 Ind. App. 345, 354, 96 N. E. 487.)

As pointed out in your letter, under the 1949 statute creating the 1949 Teachers’ Retirement Fund, as well as previous statutes, joint survivorship was not effective, except in event of death after the retirement of a teacher. The provision for annuity-survivorship in the case of the death of a teacher while in active service, who has twenty-five years of credit, was first provided for by Chapter 142 of the Acts of 1951, Section 28-4511, Burns’ 1951 Supplement, clause (i).

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While this office has consistently ruled that a teacher's rights to benefits in a particular retirement fund are governed by the benefits afforded by the particular teachers' retirement fund of which she is a member, it must not be overlooked that the annuity-survivorship provisions of the 1951 law are substantially beneficial to the teacher. While the act contemplates that a specific written election be filed with the Teachers' Retirement Board of the exercise of the option of annuity-survivorship, and while it must be conceded the better form and practice would be to insist upon a written election being made on transfer from one fund to another, we must also take cognizance of the fact that, as a matter of practice, such matter of reelection is highly technical and in many instances teachers having once made an annuity-survivorship election might readily assume such election would carry over to the new fund.

The above referred to teacher made such an election for all such benefits available to the teacher while a member of the 1949 fund. He transferred to the 1951 fund, which contained additional annuity-survivorship benefits, without anything being done toward a redesignation of the annuity-survivor. This fact escaped not only the attention of the deceased teacher, but also the administrative officials of the fund. Within approximately nine months of becoming a member of the 1951 fund this teacher died.

In view of the above facts and presumptions arising from the beneficial provisions of said statutes, I am of the opinion that, if this matter was presented to a court for a decision, it would hold such election under the 1949 law would be sufficient as a designation of annuity-survivorship applicable to both of the annuity-survivorship provisions of the 1951 retirement statute and therefore would apply in the case of death in active service of a teacher who had more than twenty-five years of active service credit in the fund.

It is suggested that, under the rule-making power given the Retirement Board under the above referred to statutes, rules and regulations should be adopted for the purpose of clarifying and implementing the making of elections under the annuity-survivorship option provisions of said statute.