

of section 49-2673, Burns' 1951 Supplement, relating to matters other than the salary of the prosecuting attorney of said county.

OFFICIAL OPINION NO. 3

January 10, 1952.

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

Dear Mr. Hougham:

Your letter has been received requesting an official opinion and reads as follows:

"Beginning with Acts 1945, Chapter 328, amendments to the Indiana State Teachers' Retirement Fund Law have contained the language, 'no interest shall be charged for time not credited to the teacher,' with reference to amounts withdrawn from the fund, or amounts due for 'deferred payment or adjusted accounts.'

"Under date of March 31, 1950, you rendered an opinion to this board, to the effect that if a member had transferred from a prior law, to one of the later amendments containing this waiver-of-interest clause, he was not chargeable with interest on arrearages for time not credited to the teacher; and that interest charges on his arrearages are governed by terms of the law under which he holds membership.

"We request your official opinion as to whether the construction of law given in your opinion of March 31, 1950, may be applied also to another class of debts owed by teachers to the fund, namely, deficits for non-payment of assessments or parts of assessments, for prior years. These arise from four principal sources:

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“(1) Failure of trustees in earlier years to collect assessments from the teachers.

“(2) Collection of assessments at insufficient rates, due to errors on the part of trustee, or teacher, or retirement fund office.

“(3) Assessments due for prior years added to the account, such as years of leave-of-absence for study or illness; or years of out-of-state teaching.

“(4) Deficits due to change of beginning age of the teacher, when the service record has been changed.

“At this time, the retirement fund is, and has been, collecting interest over the entire period of elapsed time on such accounts. This frequently results in an interest charge that seems excessive, and beyond the intent of the law.

“In your opinion, is the retirement fund justified in collecting interest on those charges over periods of elapsed time during which no increased credit is given the teacher on his annuity record account?”

Section 28-4511 (h), Burns' 1951 Supp., same being § 2 (h), ch. 142, Acts 1951, provides in part as follows:

“(h) Teachers coming under the provisions of this act shall be privileged to pay an amount equal to the amount which would have accumulated from their contributions with compound interest had they been members under this act for the number of years which they claim for prior service, provided that a teacher may waive his rights to any previous years of service, but such waiver may be made only at time of transfer to the fund. These payments may be made in cash the first year or in a series of installments according to the rules and regulations of the board of trustees of the Indiana state teachers' retirement fund with interest compounded to the date of payment. No interest shall be charged for time not credited to the teacher and no interest shall be credited to the teacher's account for more than the maximum of forty years of service or until age sixty whichever is later. * * *”

1952 O. A. G.

In the above referred to official opinion, same being 1950 Ind. O. A. G., Official Opinion No. 16, it was held that a member of a previous retirement fund who transfers her membership into the 1945, 1947 or 1949, Teachers' Retirement Fund is not chargeable with interest on his or her arrearages for time not credited to the teacher and that interest charges on such arrearages are governed by the provisions of the statute setting up the fund, in which he or she last claims membership.

The above ruling would be equally applicable to the class of arrearage referred to in your letter as to each of the classes enumerated, provided, of course, the waiver of interest is only for that period of time not credited to the teacher.

I understand from the wording of the last paragraph of your request for an opinion that you are mainly concerned with the question whether or not interest on the types of arrearages referred to in your letter is waived under periods of elapsed time during which no increased credit is given the teacher on his annuity record account. An illustration of this might be where a teacher may have been on leave-of-absence from active teaching service and then actively comes back into the retirement fund under circumstances where she would not be entitled to service credit for the years on leave-of-absence. Under such circumstances, where no service credit is claimed, the statute waives the interest charged during such periods on each of the classes of arrearages set out in your written request for an opinion.

OFFICIAL OPINION NO. 4

January 11, 1952.

Mr. Otto K. Jensen,
State Board of Accounts,
Room 304 State House,
Indianapolis, Indiana.

Dear Sir:

Your request for an official opinion reads as follows:

"A deputy clerk of a circuit court swore an affiant to a criminal affidavit and affixed the signature of the