

OFFICIAL OPINION NO. 40

June 4, 1952.

Mr. Ross Teckemeyer, Executive Secretary,  
Public Employes' Retirement Fund,  
707 Board of Trade Building,  
Indianapolis 4, Indiana.

Dear Mr. Teckemeyer:

I have your request for an official opinion which reads as follows:

“Employe X was employed by the State of Indiana from December 1, 1930 to December 1, 1947. On or before January 1, 1946, X filed, on the prescribed form a notice to waive all present and prospective rights and benefits which he would otherwise have as a member. (Sec. 5, Chapter 340, Acts 1945, as amended by Ch. 64, Acts of 1951.)

“December 1, 1948, employe X again became an employe of the State and after one month of employment began participation in the Public Employes' Retirement Fund, as provided by Sub. sec. (b) of Sec. 5 of the above referred to Act.

“Sec. 6 of the above referred to Act, second paragraph reads as follows:

“‘Any person who was employed by the State, a municipality or a participating unit of a municipality which has elected participation in the plan and who was prior to the effective date of this Act, or the effective date of the Resolution or Ordinance providing for participation in this Act was in a position now covered by this Act or a Resolution passed by the governing body of the municipality who has re-entered or shall hereafter re-enter services with the State, municipality or participating unit of a municipality where he has served previously, shall upon completion of three years of membership service be entitled to the same creditable service he would have received had he been an employe on the effective date

## OPINION 40

of this Act or the Resolution or Ordinance electing participation by the governing body of a municipality.'

"In your official opinion would employe X be entitled to credit for his service from December 1, 1930 to December 31, 1945, on January 1, 1952 after three years of participation as provided for in Sec. 6, second paragraph?

"Could employe X receive credit for the period January 1, 1946 to December 1, 1947 by depositing with the Fund an amount equal to the amount that he would have contributed if he had been a member, plus interest?"

It is my understanding that when employee X re-entered State employment on December 1, 1948, that he began participation in the Fund of his own free choice under provisions of Section 5(a) of the Act. (Burns' 60-1605(a).)

In order to answer your first question the pertinent part of Section 6 of the Act (Burns' 60-1606) is set out below:

"Any person who was employed by the State, \* \* \* and who was prior to the effective date of this Act, \* \* \* in a position now covered by this Act \* \* \* who has re-entered or shall hereafter re-enter services with the State \* \* \* shall upon completion of three years of *membership service* be entitled to the same creditable service he would have received had he been an employee on the effective date of this Act. \* \* \*"  
(Our emphasis.)

The above Section sets up three (3) requirements for a person to be entitled to its advantages:

(1) The person must have been employed by the State prior to January 1, 1946, in a position that is now covered by this Act.

(2) The person must have re-entered State service.

(3) The person must have completed three (3) years of membership service before he is entitled to take credit for any prior service.

Applying the above three requirements to the facts of employee X's situation it is easily seen that he meets all requirements, though there might be some question because X actually was an employee on the effective date of the Act. In this connection, however, I am of the opinion that the phrase "be entitled to the same creditable service he would have received *had he been an employee on the effective date of this Act \* \* \**" (our emphasis) does not preclude X from taking advantage of the provisions of Section 6 of the Act because in fact he was an employee on the effective date (January 1, 1946). This phrase is used merely to show the "creditable service" that X can now receive, and such creditable service would have been the same if X had elected before January 1, 1946, to become a member of the Fund.

As to your second question, I am of the opinion that it must be answered in the negative.

Section 5 of the Act states:

"\* \* \* Any employee who elects not to become a member may nevertheless thereafter apply for and be admitted to membership at any future time, but without credit for service rendered prior to the time he became a member. \* \* \*"

This part of the statute would prevent X from claiming creditable service for service prior to January 1, 1946, if it were not for the language in Section 6 which has been discussed in your first question. However, the plain meaning of that portion of Section 5 quoted above does prevent X from claiming as "Creditable Service" that part of his employment from the effective date, January 1, 1946, up to the time that he applied for and was admitted to membership, which was January 1, 1949. Following Section 5 of the Act there is no language that could possibly be construed to permit X to claim any service between January 1, 1946, and January 1, 1949, as "Creditable Service" even though he would pay into the Fund an amount equal to the amount he would have paid if a member during this period. If X had not signed a waiver before January 1, 1946, the answer might be different.