

1952 O. A. G.

appointee to the office of treasurer holds only until his successor is elected and qualified, and that his successor is entitled to take office January 1st immediately following his election.

I received a request on similar facts in 1950, and I held (1950 O. A. G. 283), as had the previous Attorney General, that an appointee to the Treasurer's office holds only until January 1st after the successor is elected and that the successor may take office January 1st after his election.

On the basis of these opinions, it is my opinion that the Treasurer-elect of Shelby County is entitled to assume the duties of that office on January 1, 1953.

OFFICIAL OPINION NO. 75

December 18, 1952.

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

Dear Sir:

Your letter of November 12, 1952, has been received and reads as follows:

"We have before us the case of a teacher who filed a notice of election of joint survivorship annuity under the terms of the 1951 Teachers' Retirement Fund Law (Chapter 142, Acts of 1951) on April 28, 1952. He was a teacher in active service continuously up to October 24, 1952, when his death occurred.

"Rule 25 of the Board of Trustees of the Teachers' Retirement Fund, as amended, contains the following limitation.

"The requirement that the election or revocation of the option shall have been at least nine (9) months prior to the date the annuity begins to accrue shall be waived for all teachers retir-

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ing under the 1951 law until June 30, 1952, and notice of election of the annuity survivor option under the 1951 law if filed on or before June 30, 1952, shall be effective for teachers retiring during or at the end of the school year 1951-1952.'

"We respectfully ask your official opinion upon two points in connection with this clause and case such as that before us.

"1. Would this waiver of the 9 months period apply to all teachers retiring under the 1951 law whether or not they retired at the end of the school year 1951-1952? That is, if the notice of election was filed before June 30, 1952, and the teacher thereafter continued in active service into the school year 1952-1953 but retired voluntarily or by death before 9 months had expired from the date of filing, is the joint survivorship in effect, because of the waiver contained in the rule cited above?

"2. Does the 9 months restriction contained in Rule 25 apply in case of death in active service under the provisions of Subsection (i), Section 2 of Chapter 142, Acts of 1951, in the same way that it applies where the teacher retires by voluntary action? Rule 25 was amended to cover death in active service by the addition of Section C of such rule. A copy of the amended rule is attached hereto."

In answer to your first question it is pointed out that the waiver contained in Rule 25, *supra*, waives the 9 months notice requirement "for all teachers retiring under the 1951 law until June 30, 1952." It is further provided "notice of election of the annuity-survivor option of the 1951 law, if filed on or before June 30, 1952, shall be effective for teachers returning during or at the end of the school year 1951-52."

In my opinion the above waiver was intended to be available for the persons exercising an election or revocation of that option of joint-survivorship annuity from the time of the passing of the rule up to and including June 30, 1952,

so that in the event of that retirement during the 1951-52 school year, such an option could be effected. Where such an election was made at such time by a teacher who continued teaching into the next school year and died in active service on November 24, 1952, I am of the opinion the exercise of the option was effective even though he did not retire at the end of the 1951-52 school year. Certainly the fund had more notice of the teachers election than of the one that retired at the end of the previous school year. Also to deny to this teacher under these circumstances the benefit of the exercise of such option would, in my opinion, be discriminatory where such a corresponding right was given to teachers who had given less notice prior to retirement.

As a matter of fact I am of the opinion that the later part of the waiver merely pin points the fact that a teacher having elected such option would be protected even should he retire at the end of the 1951-52 school year. For this reason I am of the opinion that question No. 1 should be answered in the affirmative.

Section C of Rule 25, *supra*, reads as follows:

“Teachers holding membership under the 1951 amendment to the Indiana State Teachers’ Retirement Fund Law (Chapter 142, Acts of 1951), and having credit thereunder for 25 years or more of service, shall have the right, while in active service, by filing a duly acknowledged written notice in accordance with the terms and conditions provided for in Section A of this rule, to designate an annuity-survivor to receive benefits in accordance with Section 2, subsection (i) of said act if death of the teacher occurs during the remainder of his period of active service.”

Since Section C of the above rules makes available to a teacher qualifying thereunder the benefits of an option to designate an annuity survivor where the teacher thereafter dies during the remainder of his period of active service, if filed “in accordance with the terms and conditions provided in Section A of this rule.” The above referred to waiver is a part of Section A of said rule. Therefore, it would receive the same construction given in answer to your question No. 1

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and such waiver provision of the 9 months restriction contained in Rule 25 applies in case of death of a teacher in active service covered by Section C of said rule.

OFFICIAL OPINION NO. 76

December 19, 1952.

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

Dear Sir:

Your letter has been received and reads as follows:

"The Indiana State Teachers' Retirement Fund has before it an application for annuity from a teacher who has retired under the 1949 law July 10, 1950, under a joint survivorship annuity agreement and drew his reduced annuity under such arrangement until January 2, 1952.

"He then returned to teaching and transferred to the 1951 law, but did not file a new designation of annuity survivor, or withdraw the one previously filed under the 1949 law. He is now again retiring as of July 10, 1952.

"You have previously held (Opinion No. 27, March 2, 1952) that when a teacher continues in active service, a designation of co-annuitant under the 1949 law carries over and is effective under the 1951 law.

"We respectfully request your official opinion as to whether the co-annuitant arrangement was cancelled by his return to active teaching; or whether it continues in force when he again retires, if not withdrawn by positive action of the teacher."

It has consistently been held that teacher's rights in the Indiana State Teachers' Retirement Fund are governed solely