

OPINION 76

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.

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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was cancelled by his return to active teaching; or whether it continues in force when he again retires, if not withdrawn by positive action of the teacher."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

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by the provisions of the law under which she claims membership. (1951 O. A. G., p. 76, Official Opinion No. 29.) This means a teacher's rights are controlled by the fund to which she belongs and that she remains a member of that fund until the time she becomes a member of a later retirement fund. In 1952 O. A. G., Official Opinion No. 27, addressed to you, concerned the status of a person who, in January, 1951, established a joint survivorship and, thereafter, in April, 1951, filed a transfer of membership to the 1951 fund, without filing a new election of the joint-survivorship option, and who thereafter died in active service. It was there 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). \* \* \*”

I do not think that the fact that the teacher returned to active service and then transferred to the new fund, without again designating an annuity-survivorship would change the legal status of such person from that contained in the foregoing opinion, for the reason this person was a member of the 1949 fund up to the time he changed to the 1951 fund and he would be entitled to the same benefits of the construction of the statute.

I am, therefore, of the opinion the co-annuitant arrangement under the 1949 retirement fund was not cancelled by the teachers returning to active teaching, and continued upon the teacher becoming a member of the 1951 retirement fund, unless the same was withdrawn by positive action of the teacher.