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would have the power to prescribe reasonable office procedures for real estate firms.

Therefore, my answer to your second question is in the affirmative.

OFFICIAL OPINION NO. 67

October 3, 1951.

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

Dear Mr. Teckemeyer:

Your request for an official opinion in substance is as follows:

A state employee, retired at age of 61, under the provisions of Chap. 340, Acts of 1945, on September 1, 1946, with more than 16 years’ service. The retirement benefit was determined according to the provisions of Section 8, which reads in part as follows:

“If the total creditable service of such member shall be less than twenty years, such member shall receive the full member’s annuity and proportionate parts of both the employer’s annuity and the prior service annuity determined in accordance with subsection (b) of this section to the extent of twenty per cent of such annuities for each completed year of service above fifteen years to a maximum of one hundred per cent thereof.”

The benefit was determined to be fifty-eight dollars and sixty-two cents ($58.62) per year.

In the year 1947, the 1945 Act was amended and the above quoted language was omitted. By computing the retirement benefit under the 1947 Act with the foregoing language deleted, the benefit would amount to three hundred thirty-nine dollars and fifty-one cents ($339.51). Your question is: “Can
the Board of Trustees authorize an adjustment of the benefits paid to ———.

It is noted that the retirement benefits are referred to throughout the Acts as “annuities”. We note the following comment from 40 Am. Jur. “Pensions” Section 3, as follows:

“There is no material distinction between the words ‘pension’ and ‘annuity’ as used in a statute establishing a teacher’s retirement plan, where the legislature has used the words interchangeably as having the same connotation in the statute in question and other statutes dealing with the same general subject matter.”

Also Section 24 reads as follows:

“The fact that a statute providing for periodical payment to be made to a designated class of public employees on retirement refers to such payments as ‘annuities’ and not as ‘pensions’ does not change the general nature of the statute or establish any contractual status between the parties so as to create any vested rights in the payments therein provided for, where, the act in question and a long series of similar acts, the legislature used the words interchangeably and as signifying a pension only.”


The question appears to be whether or not the status of the employee under the retirement provisions of the 1945 Act become fixed, so that the employee was not affected by the 1947 Act. That is to say, after the employee accepted the provisions of the 1945 Act by contributing to the fund, and, when the employee retired under the 1945 Act and before the 1947 Act came into existence, can such employee lawfully participate in the retirement benefits created by the 1947 Act?

The general rule is that the pensioner acquires no vested right and that there is no contractual relationship involved. 40 Am. Jur. “Pensions” Section 33 in part reads:

“It is the general rule, subject to certain exceptions, as stated above, that there is no vested right to a pension and that it is within the power of the legis-
lature to modify or abolish it at will, even though the pension fund is maintained in part by the contributions of the beneficiaries thereof."

This has been confirmed by the Supreme Court of Indiana in Board of Trustees of the Firemen’s Pension Fund v. State ex rel. Furguson (1933), 205 Ind. 557, 559, which reads as follows:

"It is clear that relator’s resignation from the fire department was voluntary and complete, and that he was not removed from, or divested of, his employment. After an absence of six years he applied for appointment as a fireman, and was appointed; the latter appointment having no relation to his former employment. In its generally accepted sense, reinstatement refers to a restoration to a state from which one has been removed, and it may be more correctly said that the relator was re-employed. When the relator resigned his position his connection with the fire department was completely severed, and he retained no right to the position or to any of its rights, benefits or emoluments, and no basis remained upon which he could demand reinstatement or re-employment as a matter of right or justice. It may be conceded that, if one is removed from a fire force against his will, or over his protest, or if he is granted a leave of absence, he may retain some right which may be the basis of a reinstatement, which would give him the same status as though he had continued as a member of the force, but, on appointment to the force after a resignation, he must be deemed to enter the force upon the same basis as any employee who had not theretofore any connection with the department."

There appears to be a division of opinions as to the effect and validity of statutes increasing pension benefits after retirement.

We note the following comment from 40 Am. Jur. “Pensions” Section 33, as follows:

“Subject to restrictions upon interference with vested rights and other constitutional limitations, the
legislature, has power to increase the amount of pensions. Questions as to the validity and operation of such an increase frequently arise where the pension rate is based on the pay rate of the rank or grade held by the pensioner's retirement. The courts are divided as to the validity of an increase so effectuated, some jurisdictions sustaining its validity, while other jurisdictions forbid it. In a case directly involving only pensions to widows of deceased firemen, it has been held competent for the legislature to amend an existing pension statute by expressly increasing the pensions of widows already on the pension rolls as well as those widows thereafter acquiring a pensionable status, and that such statute is not limited to those who may thereafter acquire a pensionable status by the fact that the amendatory statute doubles the assessment upon firemen's salaries by which, together with the proceeds of a tax, the pension fund is maintained. To give the increased pensions provided by an amendatory statute to existing pensioners on a firemen's pension fund is not to give a retroactive effect to such statute; nor does it impair the vested rights either of those who have or those who have not acquired a pensionable status. The same principles have been applied in some jurisdictions in upholding a statutory increase to retired teachers where the pension fund was made up, partially at least, from optional voluntary contributions by the teachers. It has been held, however, that a statute expressly increasing the pensions of retired policemen who are on the pension roll is invalid as granting a mere gift or gratuity; also that a statute increasing firemen's pensions is an unconstitutional grant of extra compensation to public officers or servants, as to retired firemen who were on the pension roll and rendered no services after the enactment of the statutory increase."

See 118 A. L. R. Annotation page 992.

I find no specific authorization by the 1947 Act to the effect that benefits provided by the 1947 Act shall apply to employees who were retired prior to the enactment of the 1947 Act.
The 1947 Act at Section 22, provides in part as follows:

"Any retirement benefit provided by this Act shall be paid in equal monthly installments, and shall not be increased, decreased, revoked or repealed, except for error, or except where specifically otherwise provided by this Act."

The same provision appeared in the 1945 Act. There appears to be no claim of error by the employee in question and no specific provision by either Act that would grant the relief asked for by the employee.

Therefore, in view of the foregoing, it is my opinion that your board would be without authority of the Legislature to make the adjustment suggested.

OFFICIAL OPINION NO. 68
August 13, 1951.

Hon. Alfred P. Dowd,
Warden,
Indiana State Prison,
P. O. Box 41,
Michigan City, Indiana.

Dear Warden Dowd:

I have your request for an official opinion which asks the following questions:

1. In transferring inmates from the Indiana State Prison and the Indiana Reformatory to the Indiana Hospital for Insane Criminals, and back to the Prison or Reformatory after restoration to sanity, which department of State Government must give the final authorization for such transfers?

2. In the event an inmate, so transferred to the Indiana Hospital for Insane Criminals, has served beyond his maximum sentence of imprisonment before being declared sane, what procedure should be followed in effecting the final discharge of the inmate?

3. In the past it has been the procedure of the Indiana State Prison, when the necessity for a Lunacy Commission has arisen, to convene such commission pursuant to an