effects to be taken into consideration all necessary acts should be done in order to bring that election in compliance with the classification resulting from the 1950 census and that if it is subsequently made official that the present officers and officers nominated without consideration of the change so far as their duties are substantially the same as the new officers would hold over and that any vacancies occurring should be filled in the manner provided by law.

OFFICIAL OPINION NO. 29.

March 29, 1951.

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

Dear Sir:

Your letter of 19 March 1951 has been received requesting an official opinion on the legal effect of the 1951 amendment to the Teachers’ Retirement law. Your specific questions being as follows:

1. If a member of the 1951 law attains age 68 before August 1, 1951, may she be employed to teach in the school year 1951-52?

2. If a teacher attains age 68 at any time after August 1, 1951, and before July 31, may she be employed for, and teach throughout, the school year 1951-52?

3. Does the 1951 amendment to the retirement fund law in any way affect the requirement theretofore existing, that members under the 1939, 1945, 1947 and 1949 laws cannot be employed after reaching age 66?”

Chapter 142, Section 1, Clause (d) provides as follows:

“(d) No teacher who has received credit under this act for the maximum years of service, as pro-
vided herein, shall be further assessed. Every teacher who is employed to teach in the public schools of this state and who avails himself of and accepts the provisions and privileges of this act or any act of which this act is amendatory, shall, by virtue of such acceptance, agree that (1) when such teacher shall have attained the full age of sixty-six years, he shall not be employed to teach and shall not be eligible to continue to teach in any of the public schools of any school corporation of this State, and (2) that such teacher will be ineligible to enter any contract with any school corporation to teach in any of the public schools thereof. If any person who is employed to teach in the public schools of any school corporation shall attain such age prior to the expiration of any period August 1 to July 31 in which he is employed, such person shall be eligible to complete such school year notwithstanding the fact that he has attained the full age of sixty-six years prior to the expiration of such school year: Provided, however, that a school corporation may offer to employ and may so employ such teacher at its own discretion during the period of two years following the attainment of such age if said teacher provides satisfactory evidence of physical and mental ability to teach as evidenced by a certificate furnished by a duly licensed physician licensed to practice in the State of Indiana."

Before specifically answering your questions, it is to be observed that it has been consistently held that teachers’ rights in the Retirement Fund is governed solely by the provisions of the law under which she claims membership therein. (1949 Ind. O. A. G., Page 428, Official Opinion 112.)

1. In answering your first question, it is to be observed the above sub-section provides “If any person who is employed to teach in the public schools of any school corporation shall attain such age prior to the expiration of any period
August 1 to July 31, in which he is employed, such person shall be eligible to complete such school year notwithstanding the fact that he has attained the full age of sixty-six years prior to the expiration of such school year.” By these provisions, the Legislature has seen fit to settle by special dates, the period during which a teacher, a member of the Fund, can attain the age of 66 years and continue to the end of such year. It is to be noted the dates indicated are in fact, the beginning and ending of the school year in all school corporations of the State except the City of Indianapolis.

A person who attains the age of 68 years before 1 August 1951, would attain such age within the indicated period for the 1950-51 school year, and would not be eligible to teach in the school year 1951-52, if a member of the 1951 Retirement Fund.

2. In answer to your second question, it is clear that such a teacher who attains the age of 68 after 1 August 1951 and before 31 July 1952, could continue to teach throughout the 1951-52 school year under the express language of that portion of the statute quoted in the preceding answer.

3. In answering your third question, it must be observed that the status and rights of teachers of the various classes and members of the various Retirement Funds, were fully considered in a prior opinion of this office, same being 1950 Indiana O. A. G. Official Opinion No. 1.

In view of the very recent holding of the Supreme Court of Indiana, in the case of State of Indiana on relation of Thelma Tittle v. Covington Community Consolidated Schools, etc., et al. — Ind. —, (Decided 2 February 1951) it is clear that tenure teachers’ rights are not affected by subsequent legislation, to which they have not in some manner assented, such as becoming a member of some new Retirement Fund.

As to your third question, I am therefore of the opinion the 1951 amendment does not in any way affect the requirements theretofore existing, for members under the 1939, 1945, 1947 and 1949 laws as to employment after reaching the age of 66 years. However, since the 1951 law provides that it applies to teachers of this fund, as well as, all other funds of which it is amendatory, the provisions permitting the employment of teachers for two (2) additional years, being of a benefit to the teacher, would be available to all of them at the election of the school corporations.