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the performance of their respective duties: Provided, however, That after one year of regular active service in said departments, any such member thereof may be required by such city to furnish and maintain all of his uniform, clothing, arms and equipment upon the payment to such member by such city of an annual cash allowance of not less than one hundred dollars; provided however, that in cities of the fifth class, such allowance shall be not less than fifty dollars (\$50.00) per year."

Upon study I have no reason to doubt the validity of this legislation. It clearly requires all cities to furnish uniforms, clothing, arms, and equipment necessary for members of regularly organized Fire Departments to perform their duties. This requirement, that any uniforms or equipment necessary be furnished, would of course, be performed by the Department without providing any uniforms or equipment if none were necessary.

This duty may be avoided in cities of the first through the fourth classes, after an officer's first year, by payment of \$100.00 in lieu of furnishing uniforms, clothing, arms and equipment. This alternative is at the option of the city in its sound discretion and as long as the city furnished all uniforms, arms and equipment, if any, that are necessary the city could not be required to pay this annual allowance.

NJB:man

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## OFFICIAL OPINION NO. 84

September 12, 1949.

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

Dear Sir:

This will acknowledge receipt of your letter of August 19, 1949, requesting an official opinion. Your letter is as follows:

"Some months ago a Joseph A. Douglas an employee of the Indiana State Soldiers' Home, West Lafayette, Indiana, also a member of the Home as a Veteran, filed application for participation in the retirement fund. March 13, 1948, Mark W. Rhoads, Deputy Attorney General, rendered an unofficial opinion which sets out that it—'is my opinion that the payment to a member of the home of a nominal sum for services rendered does not constitute such member an employee under the provisions of the Act.'

"Joseph A. Douglas is at the present time an employee of the Central State Hospital and has again requested participation in the Public Employes' Retirement Fund which is granted since he is now 58 years of age and being a full time employee of the hospital as required by the Act. On July 27th, Mr. Douglas stated his case in full and requested a resurvey as to his credit for his prior service.

"I have verified the information set out in his letter, a copy of which is attached and I am requesting that you give us an official opinion as to the status of a person who is a member of the home and also an employee.

"For your guidance in this matter it was discussed with Mr. Lewis of your office some time ago."

Also attached to your letter is a letter to you from the petitioner which forms the basis of your letter. It appears that the only question presented is whether or not the petitioner had the status of an employee while a member of the Indiana State Soldiers' Home where he rendered certain stated services to the Home for which he was paid a stated amount, so that he could be entitled to credit for such services within the meaning of the Public Employes' Retirement Fund. The Retirement Fund provides as follows:

"Any person who is an employee of the state of Indiana \* \* \* shall become a member of the fund \* \* \*."

Burns' Indiana Statutes, Supplement, Section 60-1605.

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An employee is defined by the Retirement Act as follows:

“ ‘Employee’ shall mean any person in the employ of the state whose compensation is paid out of funds of the state, including employees in the classified service and employees of any department, institution, board, commission, office, court, agency, institution of higher education, or any division of the state government receiving state appropriations and having power to certify pay rolls authorizing payments of salary or wages against such appropriations or against trust funds held by the treasurer of state or by any department as herein defined, or any person in the employ of a municipality or in any institution, broad, commission, office, bureau or any other agency maintained by a municipality, or any person in the employ of the board of trustees herein created, but shall not include the following: (a) members of the general assembly; (b) officials elected by vote of the people; (c) employees occupying positions normally requiring performance of duty of less than eight hundred (800) hours during a year; (d) independent contractors or officers and employees paid wholly on a fee basis; (e) employees who are members of other pension or retirement funds or plans maintained in whole or in part by appropriations by the state or municipality, or who are presently eligible for membership, or who by reason of their employment will become eligible for membership, in such other pension or retirement funds or plans.” (Our emphasis.)

Burns' Indiana Statutes, Supplement, Section 60-1604.

The State Personnel Act distinguishes between certain classes of employees—Burns' Indiana Statutes, Section 60-1308 provides in part as follows:

“The state service as defined in this act is hereby divided into the unclassified service and the classified service as follows:

"(a) The unclassified part of said state service shall consist of the following:

"(1) All inmate help in all state penal, charitable, correctional, and benevolent institutions.

"(2) \* \* \*

The Personnel Department has no jurisdiction or control over employees in the "unclassified" group. Therefore, the petitioner as an "unclassified" employee, could establish no status as an employee under the Personnel Act. Any services rendered by him as a member of the Home would not come by any authority of the Personnel Act, but by the authority of the Soldiers' Home Act. And it would seem that his status as an employee would be determined from a consideration of the Soldiers' Home Act and the Public Employes' Retirement Fund Act.

It is noted that the Soldiers' Home Act provides that, as a condition of membership in the Home, and in accordance with the rules and regulations of the Home, as adopted by the Board of Trustees, the members are subject to the rendition of suitable services. Burns' Indiana Statutes, Section 22-2212 provides as follows:

"The commandant, under the orders, rules and regulations made by the trustees, shall have the immediate charge and management of said institution, and shall direct and control the resident officers and employees and shall superintend the care and management of the members therein. He shall, subject to the approval of said board, appoint and employ a matron, who shall be the widow, wife, mother or daughter of a soldier, sailor or marine of the Civil, Spanish-American or World War, and such assistant matrons, attendants and laborers as may be necessary for properly conducting said institution: Provided, That such rules shall require those of the members who are able to render assistance in carrying on said home, and that no more outside help shall be employed than is absolutely necessary."

Thereby indicating that the members of the Home are expected and required to render services that they are cap-

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able of rendering as a condition of membership. It is noted generally throughout the Soldiers' Home Act that "Employees of the Home" are not confused with "members of the Home."

We see from the letter written to you by the petitioner that he was a member of the Home. As such member it is assumed that he received a pension, compensation or gratuity from the United States, which, as a condition of his membership in the Home he might be required by the Act to pay into a special fund for the welfare of the members generally. Burns' Indiana Statutes, Section 22-2211 reads in part as follows:

"\* \* \* that in making regulations governing the admission, maintenance and discharge of members of said soldiers' home, it shall be lawful for said board of trustees to make it a condition for the admission to said home that all soldiers, unmarried, receiving a pension, compensation or gratuity from the United States exceeding sixteen dollars (\$16.00) per month; all soldiers, married, receiving a pension, compensation or gratuity from the United States exceeding twenty-five dollars (\$25.00) per month; and all widows and nurses admitted thereto receiving a pension, compensation or gratuity exceeding sixteen dollars (\$16.00) per month, from the United States, shall pay such excess into a fund to be used by the board of trustees in any manner that will add to the comfort and welfare of the members of said institution; \* \* \*."

Again referring to the Public Employes' Retirement Act, and to the definition of "employee" it is noted that the term excludes certain classified persons. The Act provides in part as follows:

"‘Employee’ shall mean any person in the employ of the state \* \* \* but shall not include the following:  
(a) \* \* \* (b) \* \* \* (c) \* \* \* (d) \* \* \* (e) employees who are members of other *pension* or retirement funds \* \* \*." (Our emphasis.)

Burns' Indiana Statutes, Section 60-1604.

There appears to be no dispute but that the petitioner was a member of a pension fund of the United States. If so, he

does not fall clearly within the definition of an employee of the State of Indiana. It is true that the law required him to pay most of his pension into a fund of the Home, but it is equally true that others were required to do likewise and that he should have received the benefits of the fund as a member of the Home.

We find that an unofficial opinion from the Attorney General's office was issued on March 13, 1948, in which the following conclusion was reached:

"It is my opinion that the payment to a member of the home of a nominal sum for services rendered does not constitute such member an employee under the provisions of the Act. His status is that of a ward of the state and he is not eligible for membership in the Public Employes' Retirement Fund. Such a member could withdraw his membership in the Home and upon being appointed as an employee he would be eligible to membership in the Public Employes' Retirement Fund but would not be entitled to a prior service credit."

In view of what has been said I am of the opinion that the petitioner was not an employee of the State of Indiana during the time he was a member of the Indiana State Soldiers' Home, so as to entitle him to credit for such prior service within the meaning of the Public Employes' Retirement Fund law. To conclude otherwise it would follow that the Legislature intended that a member of the Home, in time, could retire under the Retirement Fund Act and receive, at the same time, the benefits of the Home and the pension provisions of the Retirement Fund Act. I do not believe that was the intent of the Legislature.

WOL:vb