OFFICIAL OPINION NO. 100

October 18, 1949.

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

Dear Mr. Hougham:

Your letter has been received requesting an official opinion as to whether or not you are justified in construing the word "state" to mean the teacher's "estate," as found in Clause (e) of Section 2, Chapter 130, Acts of 1949.

The above statute is the amendment of the State Teachers' Pension Act and it is considered pertinent to point out that while this statute has been amended many times, throughout its legislative history, the basic principle followed has been a percentage contribution of the money necessary to establish an annuity for teachers who are members of the fund, such contributions being made by both the state and the teachers through deductions from their salaries. In every instance prior to the 1949 amendment provision was made for payment to the retired teacher during her lifetime and thereafter any balance due being payable to her estate or some beneficiary dsignated by her. The last prior expression of the legislature on that question was Clause (e), of Section 2, Chapter 353, Acts of 1947.

Clause (e), Chapter 130, Acts of 1949 is in part as follows:

> "As soon as practicable after the passage of this act the secretary of the fund shall secure from each teacher a designation of beneficiary, and the death benefit payable to such beneficiary or to the state if no such designation is made shall be computed by applying three per cent interest compounded annually on the total assessments and payments made by the teacher to the date of death or separation from active service, whichever is earlier: * * *"

While the 1949 Act has rearranged the wording of the prior 1947 statute above referred to, on the question herein involved, the meaning of the two provisions are substantially identical except the 1947 Act, as well as all previous acts provides that where no beneficiary is designated, the money due the teacher is payable to her estate, while the 1949 law provids it is payable to the state.

It is to be noted that under Clause (k) of Section 2, of Chapter 130 of the Acts of 1949, it is provided in part as follows:

> "* * * That in the event of the death of any teacher who hereafter enters the service or who shall have accepted the provisions of this act as amended in 1937 or thereafter, while such teacher is drawing disability, then the total of such disability payments shall be deducted from any funds *which otherwise would be payable to the estate or designated beneficiary of such deceased teacher,* and in the event that said teacher ceases to be on disability and transfers to regular retirement annuity or returns to active teaching, the amount of disability benefits received shall reduce the amount of any death benefit that may thereafter be payable to *said teacher's estate or designated beneficiary,* * * *." (Our emphasis.)

The latter provision clearly indicates the legislature did not have in mind a reversion of such funds to the state but that its intention in the enactment of the new amendatory section of the statute was to give to the estate of such deceased teacher any money due her under the act where she did not have a designated beneficiary. As a matter of fact there is somewhat of a conflict between Clause (k) and Clause (e) of Section 2 of the 1949 statute, thereby requiring construction of the legislative intent in their enactment in order to remove any ambiguity.

In the case of Storms v. Stevens (1885), 104 Ind. 46 at page 50, the court announces the following rule:

> "In the construction of statutes, the prime object is to ascertain and carry out the purpose and intent of the Legislature. To do this, the words used in the

> statute should be first considered in their literal and ordinary signification. But if by giving them such a signification the meaning of the whole statute is rendered doubtful, or is made to lead to contradictions or absurd results, the whole statute must be looked to, and the intent as collected therefrom must prevail over the literal import of terms and detached clauses and phrases. Mayor, etc., v. Weems, 5 Ind. 547; Smith v. Moore, 90 Ind. 294, 304, and cases there cited."

In the case of State, *ex rel.* 1625 E. Washington Realty Co. v. Markey, Judge (1936), 212 Ind. 59 at pp. 65 and 66, the court adopted and followed the following rule as announced in 25 R. C. L. Sec. 227, p. 978 that:

> " 'Legislative enactments are not more than any other writings to be defeated on account of mistakes, errors or omissions, provided the intention of the legislature can be collected from the whole statute. Where one word has been erroneously used for another, or a word ommitted, and the context affords the means of correction, the proper word will be deemed substituted or supplied. This is but making the strict letter of the statute yield to the obvious intent.' 25 R. C. L. Sec. 227, p. 978; Gustavel v. State (1899), 153 Ind. 613, 54 N. E. 123."

On page 66 of the opinion the court in the last referred to case also approves the statement made by the court in the case of State v. Brodigan (1914), 37 Nev. 245, 141 Pac. 988:

> " 'Where, from a reading of the entire act, certain words necessary to give it complete sense have manifestly been omitted, courts, under well-established rules of construction, are permitted to read the same into the act in order that the law may express the true legislative intent.' "

Also see Zoercher v. Indiana Associated Telephone Corporation (1937), 211 Ind. 447, 454.

In determining the legislative intent courts may take into

consideration other statutes in *pari materia,* either passed before or after the act in question.

> Sherfey v. City of Brazil (1937), 213 Ind. 493, 497.

When the provisions of Clause (e) of Section 2 of Chapter 130 of the Acts of 1949 are considered in connection with the provisions of Clause (k) of said Section of said Act, and said act is also considered in connection with the obvious intentions and purposes of the legislature in its enactment, and when we consider the statute's legislative history, it is clear that the legislature intended any money due and payable a teacher and a member of said fund, on her death to be paid to her designated beneficiary and where none was designated that such money be paid to her estate.

I am therefore of the opinion Clause (e) of Section 2 of Chapter 130 of the Acts of 1949 must be construed so that the word "state" as used therein should be "estate." It is apparent that the letter "e" was inadvertently omitted from the beginning of the word "estate" and is merely a typographical error.

TLW:ar

OFFICIAL OPINION NO. 101

October 20, 1949.

Mr. Deane E. Walker
State Superintendent of Public Instruction
State House
Indianapolis, Indiana

Dear Sir:

Your letter of September 29, 1949, has been received requesting an official opinion on the following questions:

> "1. Does the teachers' minimum salary law apply to an attendance officer?
>
> "2. If a school city employs an attendance officer for a term of twelve (12) months on the teachers'