OFFICIAL OPINION NO. 115

November 25, 1949.

Mr. Robert B. Hougham
Executive Secretary
Indiana State Teachers' Retirement Fund
336 State House
Indianapolis 4, Indiana

Dear Sir:

Your letter of September 30, 1949, has been received and reads as follows:

"Under the Teachers' Retirement Fund Act of 1945 as amended 1921, Chapter 256, Section 8, Page 760, death withdrawals for teachers receiving disability benefits were allowed in full with interest at 4 percent to date of death. This provision remained practically the same until the amendment of 1939, Chapter 28, Section 3, paragraph k, page 77.

"The question has been raised by the examiners of the State Board of Accounts as to whether such death withdrawal claims of disabiltants should bear interest beyond the date on which disability payment began."

Under official opinions No. 112 dated November 17, 1949, addressed to you it was pointed out that teachers, who are members of the Indiana State Teachers' Retirement Fund, are governed in their rights by the particular provisions of the statute under which they retain membership.

The above act has been amended on numerous occasions beginning in 1921 and including the years 1937, 1939, 1945, 1947 and 1949. It is common for the teachers to be referred to as members of the retirement fund of 1937, 1939, etc.

It is pertinent to note that under the provisions of subsection (2) Section 8, Chapter 256 of the Acts of 1921 Chapter 763, disability benefits are authorized without any provision being made requiring a deduction therefor to be made in case a teacher is entitled to death withdrawals under a statute. Such withdrawal under that act is an amount equal to the contribution of the teacher with interest thereon com-
pounded annually at 4 percent, (page 760) where such a teacher has not retired on annuity.

It is therefore, clear that a teacher under the 1921 Act who has retained membership under such act would be governed by its provisions.

There is a different provision in the 1939 Act above referred to (clause k, section 3, Chapter 28 of the Acts of 1939), which provides in part as follows:

"Provided, Further, 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, but no further penalty, deduction, or payment shall be suffered by said teacher or said teacher's estate because of the disability payments paid during the time of such disability."

It is to be noted the above provision states that the total of the disability payments shall be deducted from the funds, otherwise payable to the estate or to the designated beneficiary of deceased teacher and it further provides that no further penalty, deduction or payment shall be suffered by said teacher or his estate because of the payment of such amounts for disability. The latter language would exclude any further penalty regarding such disability payments under the 1939 law and would not authorize a computation of interest only to date of disability.

TLW:man