establish a fund to be known as the General Ditch Improvement Fund, of not to exceed one hundred thousand dollars, which shall be used as a fund to pay for the construction of ditches and their maintenance. Such fund shall consist of all funds in any ditch fund not otherwise appropriated at the time this act takes effect, or any taxes then or thereafter levied or collected for ditch purposes, the proceeds of all bonds issued and sold for the construction of specifically named ditches and from the collection of all special payments and benefits to property as provided in this act for the construction, repair or enlargement of ditches and such other funds as by law are or may hereafter be provided to be paid therein.

It is, therefore, my opinion that all moneys hereafter collected for ditch improvements, which improvements were made prior to the effective date of the above Act, should be paid into the General Ditch Improvement Fund. However, a sufficient amount of said moneys should be earmarked for payment to the general fund of the county from which moneys had for said improvements were originally appropriated. Expressly, the general ditch improvement fund would then serve as a medium for a proper reimbursement to the general fund of the county and same could not then be used for any contemplated new ditch improvements.

OFFICIAL OPINION NO. 119
December 7, 1949.

Mr. Arthur M. Thurston
Superintendent, Indiana State Police
Stout Field
Indianapolis, Indiana

Dear Sir:

I have your letter with enclosures requesting my opinion concerning the number of years service which should be credited to Mr. Risher for pension purposes. Your letter
states that one Rex Risher was appointed a State Police officer on December 1, 1930. The letter then proceeds with the following statement: On March 10, 1933, our records show that Risher resigned and accepted a position with the South Bend City Police Department; the subject then later accepted a position in the Indiana Excise Department; next was made Director of the Indiana State Accident Prevention Bureau and on July 1, 1938, was transferred back to the Indiana State Police Department. You further state that on May 20, 1938, in an application for the State Police Training School Risher gave as his reason for leaving the Department on March 10, 1938, "Change in personnel."

You inform me that on July 1, 1937, the Indiana State Police Department adopted a pension trust agreement under authority of Chapter 54, Acts of 1937 (Burns' 47-835 et seq.) and that said trust agreement provides that "full credit will be given for all service in the department prior to July 1, 1937." Your question is whether or not Mr. Risher actually resigned from State Police service on March 10, 1933, and was re-appointed on July 1, 1938, or whether he was on a leave of absence from the State Police Department during those years. You state that since the inception of your pension program your department has ruled that a leave of absence from the Department did not militate against seniority because the Department can revoke a leave of absence at any time and for that reason one on leave continues his status as a police officer of your Department.

It seems to me that you have a question of factual determination rather than one of legal interpretation. I have examined carefully the personnel records attached to your letter and it is my opinion that they have no probative value in determining your question.

The other evidence attached to your letter consists of two photostatic copies of letters, one by Mr. Matt Leach, who I understand was Superintendent of your Department in March, 1933, and the other by Mr. Don F. Stivers, who I understand was Superintendent of your Department at the time Risher returned as an active officer. In the first letter Mr. Leach definitely stated that Riser was granted a leave of absence in March, 1933, and the letter mentions a request for leave (of which Mr. Leach had knowledge) but of which
there is no apparent record. The second letter states that Risher was on official leave of absence and was in that status when Mr. Stiver "reinstated him" as an active officer.

The above evidence then is all you have on which to determine the question as to whether or not Mr. Risher was on official leave of absence during the period in question. I wish to state again that this seems to be a question of fact that should be determined by your pension board, but since you have formally requested my opinion in this situation it is my belief that the great weight of the above evidence shows that Mr. Riser was on an official leave of absence during the period in question. Thus, it is my opinion that pursuant to the long standing administrative ruling he should be given full credit toward his pension for the years in question.

HWW:vb