“Sec. 7. COMPETENCY OF WITNESS.—No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.”

OFFICIAL OPINION NO. 42

May 11, 1948.

Mr. Forrest V. Carmichael,
Executive Secretary,
Indiana State Teachers' Retirement Fund,
Indianapolis, Indiana.

Dear Mr. Carmichael:

I have received your request for an opinion, as follows:

"May disability retirement benefits be paid and leave of absence service credit granted concurrently prior to 30 years of service credit?"

Sub-section (k) of Section 2 of Chapter 353 of the Acts of 1947, provides as follows:

"Any teacher, while actually teaching in the public schools of the state, may be temporarily or permanently retired for disability on a benefit in accordance with this act after he shall have served as such teacher according to the provisions of this act for a period of ten (10) years or more; and, provided, further, That when a teacher is retired for any disability, such retirement shall continue only until such disability is relieved or removed, and no disability benefit shall be paid to such teacher after medical examination made on demand of the board of trustees of the Indiana state teachers' retirement fund and by a physician approved by the said board and made at the expense of said teacher shall establish to the satisfaction of the board that such disability is removed. No benefit for disability continuing for less than one-half (1/2) of a school year shall be paid. The disability benefits paid shall be at the rate of six hundred dollars ($600) per annum: Provided, however, That no disability benefit will be paid at a greater rate than five-eights (5/8)
of the contract salary of the year in which the disa-

bility occurred; and, 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."

Sub-section (m) of said above Section and Act also provides
as follows:

"Any teacher may be given a leave of absence for
study, professional improvement, temporary disability,
or for United States military, naval or allied service,
not exceeding one-seventh (1/7) of the years of service
claimed for retirement, and in such instances and for
exchange teaching and other educational employment
as defined and approved in each case by the Board
such teacher shall be regarded as a teacher and entitled
to the benefits of this act, provided that for or during
such absence he shall pay or continue to pay into such
fund the amount of assessment payable by such teacher
as provided by this act: Provided, however, That
military, naval, or allied service for the duration of
hostilities or active service of the teacher therein and
necessary demobilization time thereafter and other
educational employment as referred to above shall not
be subject to the limitations of this provision provided
by the one-seventh (1/7) rule. Credit shall be given
under this act for all years of service rendered under
its provisions, before, as well as after, the taking
effect of this act. Not less than one hundred twenty
(120) days of service, whether under contract or not,
shall be required for one year of service credit. No
teacher shall be granted more than a year of credit
for service rendered during any one calendar year
or fiscal year."
The Attorney General in the Opinions of 1930, at Page 704, touched on this subject. In that opinion it was found that a teacher who had made an application for a leave of absence for temporary disability and also made an application after the leave of absence period had passed for disability benefits to run concurrently with the leave, could not do so without withdrawing the first application. It was held that the effect of the application for a leave of absence and the granting of the same was to preserve the teacher’s status as such if he, in the meantime, made the required contributions to the teachers’ retirement fund.

It is to be noted that Sub-section (k) of Section 3 of Chapter 328 of the Acts of 1945, is identical with the said Subsection (k) of Section 2 of Chapter 353 of the Acts of 1947 except the additional clause in the 1945 Act as follows, to-wit:

“And providing also that any teacher who after thirty (30) years of service shall be disabled, as described herein, shall be privileged, in lieu of other benefits, to pay his otherwise regular assessments into the fund up to thirty-five (35) years and thereafter be eligible for full annuity.”

Both the 1945 and 1947 Acts provided that in case any such teacher shall not elect to accept such benefits conferred by the said amendatory Acts, he shall continue in prior contractual rights in the fund.

It is to be noted that the 1947 Act repealed the last above-quoted clause of the 1945 Act as to those teachers who chose to accept the benefits of the Act as amended in Nineteen Hundred Forty-Seven.

Since your question is limited to teachers having less than thirty (30) years of credit it is not necessary to consider the status of those teachers having thirty (30) or more years of credit.

I am of the opinion a teacher on becoming disabled has an election of retiring under Sub-section (k) of Section 2 of the Act or of taking a leave of absence under Sub-section (m) of the Act. That “retirement on disability” and “leave of absence for disability” are not synonymous. Such a construction gives full effect to each of said sub-sections of the statutes.
I am further of the opinion that when a teacher retires on temporary or permanent disability it is not necessary for her to continue payments of assessments during such retirement. However, if she becomes temporarily disabled she can elect not to retire but only take a leave of absence, and if she pays her assessments into the fund during such leave of absence for temporary disability she can claim service credit in the fund for such period of time.

It is, therefore, clear that in no event may disability benefits be paid and leave of absence service credits be granted concurrently for teachers having less than thirty (30) years of service credit.

OFFICIAL OPINION NO. 43

May 24, 1948.

Mr. F. W. Quackenbush,
State Chemist and Seed Commissioner,
Agriculture Experiment Station,
Purdue University,
Lafayette, Indiana.

Dear Mr. Quackenbush:

Your letter of April 13, 1948, has been received in which you desire to know if we wish to supplement our opinion to you of December 2, 1947, same being 1947 Ind. O. A. G., Official Opinion No. 71, in view of the 1939 Federal Seed Act. You specifically desire to know if the seizure provisions of the Indiana Seed Act (Section 15-801, et seq. Burns' 1933) may be used to enforce the labeling requirements of seed laws against mail order seed houses which are shipping seeds into this State direct to the consumer without the attachment of official Indiana labels.

This opinion is intended to supplement the foregoing official opinion of December 2, 1947.

In writing the foregoing opinion the 1939 Federal Seed Act was not taken into consideration and therefore should be considered superseded to the extent of any conflict as contained in this supplemental opinion.

Article 1, Section 8 of the Constitution of the United States, Clause 3, empowers Congress "to regulate commerce with