tional institutions who devote their entire time to teaching in such institutions are eligible to receive disability benefits from the Teachers' Retrement Fund upon sufficient proof. Conversely, since disability retirement is available only to active teachers, one employed in a state charitable, benevolent or penal institution other than a full time teaching capacity is ineligible for disability benefits.

OFFICIAL OPINION NO. 48
July 13, 1948.

Colonel Robert Rossow,
Superintendent, Indiana State Police,
Stout Field,
Indianapolis, Indiana.

Dear Sir:

I have your inquiry of June 18, 1948, in which you request my opinion concerning the following factual situation:

"* * * Many employees of the Quartermaster Depot at Jeffersonville maintain their home residence in Louisville; however, five days of each week they reside in Indiana where they have sleeping quarters. Is it necessary that they have Indiana license plates and Indiana drivers' license?"

Let us first consider the question of license plates or motor vehicle registration. There is a blanket motor vehicle registration requirement contained in Section 24, Chapter 304, p. 1308 of the Acts of 1945 (Sec. 47-2601, Burns' 1947 Pocket Supp.) that, except as otherwise provided before any motor vehicle shall be operated on a public highway, owners shall register the same. Presumably, the requirement covers every motor vehicle irrespective of the residence or domicile of the owner.

Section 43 of the same act, which is Section 47-2620, Burns' 1947 Pocket Supp., contains provisions which permit non-resident owners, who are registered in their own state, to operate motor vehicles on Indiana highways on a reciprocal basis. Sub-section (b) of Section 47-2620 of Burns, is as follows:
"A nonresident owner, except as otherwise provided in this section, owning any vehicle, required to be registered under this act, and which has been duly registered for the current calendar year in the state, district or country of which the owner is a resident, and which, at all times when operated in this state, has displayed upon it the registration plate or plates issued for such vehicle in the state, district or country of residence of such other, may operate or permit the operation of such vehicle within this state, without registering such vehicle or paying any fees to this state: Provided, That any exemption, granted in this section to nonresidents, shall apply to such vehicles owned by such nonresidents, only to the extent that the laws of the state, district or country in which such owner resides, give and provide like exemptions and privileges to such vehicles, owned or operated by residents of Indiana in such state, district or country, * * *

The problem, then, is to determine who is a non-resident within the reciprocal arrangement, and who is exempted from registration in Indiana. Sub-section (a) of that section provides that "a nonresident within the meaning of this section, shall be held and defined to mean a person residing in another state, district or country and temporarily residing or sojourning within this state for a period of sixty (60) days or less, in any one year."

Thus, to come within the exemption from registration in this state, it is not only necessary that the owner of the vehicle be a nonresident, but also that he shall not have temporarily resided or sojourned in this state for a period of more than sixty days in any one year. The test then becomes a double test in order to be exempted from the registration requirement. The owner of a vehicle must show: (1) that he is in fact a nonresident of Indiana; and (2) that he has not temporarily resided or sojourned within the state for more than sixty days.

In considering the first test, i. e., whether or not he is in fact a nonresident, matters of fact as well as of law are involved. No hard and fast rule can be applied to determine residence in each particular case, but there are rules of inter-
pretation. Firstly, it is a well-established proposition of law that a man can have but one place of residence; and to lose his residence in one place, he must acquire a residence in a second place. See: Green v. Lemon et al. (1897), 70 Ind. App. 360. This involves the abandonment of intent to return to a place which has been regarded by the individual as his home, place of voting, and rearing of children. It also depends upon the establishment at a new location, his permanent home, with the intent of remaining there, rearing his family and assuming the obligation of citizenship in that particular community. See: French v. Lightly (1857), 9 Ind. 475, at page 478, where the court said:

"To gain a domicile in this state, the citizen of another state must remove, locate, and intend permanently to remain here. * * * Thus, also, a residence in a county for any length of time, on business, on a visit, for pleasure, or for any temporary purpose, with intention to return to a domicile elsewhere, or without intention to remain for an indefinite time at least, is no abandonment of the former domicile, and gives no domicile in the county where such temporary sojourn is made. * * *" (Our emphasis.)

Upon the information which you have given me, I am inclined to think those persons who make their homes in Louisville and come into Indiana to work for five days are probably residents of Kentucky. This fact brings us to the second test which is whether the sixty-days period during which a nonresident may drive his car in Indiana without registration and upon a reciprocal basis is cumulative for various periods over the year or whether it must be continuous.

Sub-section (a) of Section 47-2620 of Burns, supra, standing alone, is not clear as to whether the period of days which an individual may spend in this state and still retain an exemption from motor vehicle registration as a nonresident may be cumulative or must be continuous within a year.

The state of Massachusetts had a similar provision to the one here under discussion, prior to its amendment. In the case of English v. Blacker (1937), 297 Mass. 76, 8 N. E. (2d) 343, the court said that a period of more than thirty days in the year meant an aggregate of thirty days within the year, and an exemption could not be granted merely because a nonresi-
dent did not spend any thirty consecutive days within the
year.

In the case of Morse v. Lash Motor Co. (1927), 107 Conn.
137, 139 Atl. 637, the court, in speaking of such a statute as
ours, said:

"The period limited was fifteen (15) days, not neces-
sarily consecutive, in the calendar year. This section
of the act applied to non-residents who were within
the state only temporarily or occasionally. * * * For
the purposes pertaining to registration of motor ve-
hicles a person may be a resident of more than one
state.* * *" (Our emphasis.)

It is apparent in view of the foregoing cases concerning
statutes which have language similar to ours that the In-
diana statute should be construed to mean presence in the
state by a nonresident for any period in the aggregate of
sixty days within a year imposes a condition requiring the
nonresident to register his motor vehicle with the state of
Indiana. I am, therefore, of the opinion that the particular
people to whom you refer in your letter who reside within
this state temporarily for a period of sixty days, either in
the aggregate or continuously within one year, must register
motor vehicles owned by them and operated within this state,
and obtain license plates therefor.

It has been well-settled law for some time that a state has
power to regulate the use of its highways by nonresidents
as well as by residents.

Wuchter v. Pizzutti (1938), 276 U. S. 13, 48
S. Ct. 259.

As to your second inquiry concerning operators' licenses, we
must inquire into the meaning of Section 47-2707 of Burns'
1947 Pocket Supp., the same being Acts of 1945, Chapter 304,
Section 50, p. 1308; Acts of 1947, Chapter 347, Section 4, p.
1401. It should be noted at this point that Sub-section (a) of
Section 47-2620 of Burns, supra, is a definition which controls
not only the matter of motor vehicle licensing and registra-
tion, but also which controls the matter of operators' license
requirements. Therefore, in answer to the question concerning
operators' licenses, the same rules apply as in the registration
and license plate requirements for motor vehicles.