OFFICIAL OPINION NO. 56

September 2, 1948.

Hon. C. E. Ruston,
State Board of Accounts,
304 State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter to which is attached the request of Emil E. Muchler, Clerk-Treasurer of the city of Sullivan, Indiana, requesting an opinion relating to the Firemen's Pension Fund. The question is as follows:

"Are firemen in cities which established a firemen's pension fund under the provisions of Chapter 31 of the Acts of 1937, the same being Sections 48-6518—48-6539, Burns' Indiana Statutes, 1947 Supplement, required to pay pension fund assessments for the years which they served on the fire force prior to the time such city established a pension fund?"

Section 15 of the Acts of 1937, same being Section 48-6532, Burns' Indiana Statutes, 1947 Supplement, provides in part as follows:

"No person who is over the age of thirty-five (35) years or who fails to pass the physical examination required by the board of trustees shall be appointed, reappointed or reinstated as a member of the fire force of any city contemplated in this act. Every member of the fire force of any such city who is in active service at the time of the taking effect of this act, who is a member of the firemen's pension fund of such city and who has had previous service in the fire department of such city, but who was over the age of thirty-five (35) years at the time of his reinstatement or reappointment shall be entitled to all of the benefits of the firemen's pension fund of such city and all of the years of active service of such fireman on the fire force of such city shall be counted in determining his eligibility for retirement. Every member of the fire force of any such city who is in active service at
the time of the taking effect of this act, but who is not a member of the firemen's pension fund of such city, shall, upon the taking effect of this act, be conclusively deemed to be a member of the firemen's pension fund of such city and shall pay, as unpaid assessments, in addition to his current assessments, the same amount into the pension fund as he would have paid as assessments if he had been a member of the pension fund during all of the years of his service. * * *” (Our emphasis.)

In considering the question propounded it appears necessary to delve into the history and background of the legislation enacted relative to the pensioning of members of the fire forces of the municipalities of the state. The original legislation relating to the subject was enacted as Chapter 20 of the Acts of 1895. This act was superseded and repealed by the Old Towns and Cities Act, same being Sections 182-194 of Chapter 129 of the Acts of 1905, Sections 48-6501—48-6513 of Burns 1933.

It will be noted that the above cited Towns and Cities Act, Section 185, Section 48-6504 of Burns' 1933, provided for an assessment on the salary of every member of the fire force, but such provision was not retroactive and no assessments for former years of service were required although Section 188 of said act (48-6507) permitted retirement on pension after a fireman had served twenty-five years, but without regard to the number of years that he had paid assessments into the pension fund.

Hence it is clear that under the provisions of Chapter 129 of the Acts of 1905, all men in active service at the time a pension fund was organized were automatically taken into the firemen's pension fund without any obligation to pay pension fund assessments for their former years of service although they were permitted to count such former years in determining eligibility for retirement.

Section 187 of the 1905 Act (48-6506) provided that no person over the age of thirty-five years, or who failed to pass the medical examination required by the Board of Trustees of the Pension Fund, should be eligible to pension fund benefits, and that no assessment on the salary of such person should be made, but it also specifically provided as follows:
"* * * Provided, however, That this provision shall in no way apply to the present members of the pension fund nor shall it in any way limit the power of the board of safety to employ men for the fire department over the aforesaid age or who fail to pass the required examination. * * *." (Our emphasis.)

Because of the above quoted provision of the law, many municipalities had firemen in active service who were not members of the pension fund of such municipalities either because they were over thirty-five years of age when appointed or because they failed to pass the required physical examination.

At and before the time of the passage of Chapter 31 of the Acts of 1937 some of the larger cities of the state were having deficits in their pension funds because the statutory tax levy provided by Section 185 of the Acts of 1905, as amended, (48-6504) was not sufficient to meet expenditures and the said 1937 Act was made mandatory on all cities with a population of 114,500 or more in order to save the pension funds of the large cities which were unable to pay pension benefits with the income derived from the tax levy provided by the said Act of 1905, as amended; the Act also provided that the council of any city of lesser population could adopt its provisions if the city council elected so to do.

The fact that the act was made mandatory in the larger cities is important when considering the provisions of Section 15 of Chapter 31 of the Acts of 1937 (48-6532) since the act was obviously designed to meet conditions existing in the pension funds of those cities, and hence was drafted with those situations primarily in mind.

It is obvious that the framers of Chapter 31 of the Acts of 1937 had the provisions of Section 187 of Chapter 129 of the Acts of 1905, as amended, (48-6506) in mind in drafting Section 15 of the 1937 Act as it related to the eligibility of firemen for employment.

It is believed that in consideration of the history and background of firemen’s pension fund legislation, as hereinbefore mentioned, that the language above in Section 15 of Chapter 31 of the Acts of 1937 (48-6532),

"* * * Every member of the fire force of any such city who is in active service * * * but who is not a
member of the firemen's pension fund of such city, * * * .”

clearly contemplates and includes only firemen in a city which had a pension fund in operation and that the language of the section cannot be construed to include firemen in a city which never had a pension fund. It was designed only to cover those situations where a pension fund was in existence, but all members of the fire force did not belong.

It is my opinion, therefore, that firemen in municipalities which never established a pension fund until the city council adopted the provisions of Chapter 31 of the Acts of 1937 cannot be required to pay pension fund assessments for the years in which they served on the fire force prior to the time a pension fund was organized.

OFFICIAL OPINION NO. 57

September 8, 1948.

Mr. Ross P. Freeman,
Director of the Budget,
302 State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of August 12, 1948, has been received, in which you request an official opinion on the following questions:

"1. Is Chapter 254, Acts of 1947, an act for 'raising revenue' within the meaning of that term as used in Article 4, Paragraph 17, of the Constitution of the State of Indiana?

"2. Is it proper to consider compensation and expenses of investigators employed by the State Board of Medical Registration and Examination as operating expenses of said board under the provisions of Section 2, Chapter 254, Acts of 1947?"

1. The first question is occasioned by the fact that Chapter 254 of the Acts of 1947 originated in the Senate (Senate Bill 213) and, therefore, your question concerns whether it