OFFICIAL OPINION NO. 56

September 15, 1947.

Mr. Ross Teckemeyer,
Executive Secretary,
Public Employes' Retirement Fund,
307 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Mr. Teckemeyer:

I am in receipt of your letter of recent date in which you ask for an opinion upon the following facts:

Chapter 340 of the Acts of the Indiana General Assembly for the year 1945 established a Public Employees' Retirement Fund of Indiana for state employees which Fund was to consist of contributions by said employees and the State of Indiana as their employer. In Section 8 (a) of said Act it was provided that any member of the Fund whose withdrawal from service occurred upon or after the attainment of age sixty-five (65) and who has completed at least fifteen (15) years of creditable service would be entitled to a retirement benefit consisting of (1) a member's annuity which should consist of the accumulated contributions of a member, (2) an employer's annuity, contributed by the State, and (3) a prior service annuity. In regard to the employer's annuity said Section specifically provided as follows:

> "The annual amount of the normal retirement benefit shall consist of:
>
> "* * *
>
> "(2) An employer's annuity equal to one per cent of the employe's average compensation for each completed year of membership service not to exceed thirty-five years, plus the sum of one hundred fifty dollars; and"
>
> * * *

The foregoing Section 8 (a) (2) was amended by Section 8, Chapter 6 of the 85th General Assembly to read as follows:

> "(2) An employer's membership pension equal to one per cent of the employee's average compensation

for each completed year of membership service, plus the sum of Ten Dollars for each year of creditable service not in excess of fifteen; and"

Based upon the foregoing facts you ask whether the amendment by the 1947 Legislature changing the amount of the employer's pension, contributed by the State unlawfully deprives any pensioner of any vested rights.

It is the established rule in this State as well as the other States that a pension granted by public authority is not a contractual obligation but a gratuitous allowance on the conditions of which the pensioner has no vested right, but that it may be changed or terminated at will by the authority bestowing it.

Kearn, Mayor v. State ex rel. Bess (1927), 212 Ind. 611;

Johnson v. State Employees' Retirement Association (1940), 208 Minn. 111, 292 N. W. 767, 137 A. L. R. 251;

United States v. Teller (1882), 107 U. S. 64, 68;

Frisbie v. United States (1895), 157 U. S. 160;

In re. Hoag (1915), 227 Fed. 478;

Pennie v. Reis (1889), 132 U. S. 464;

Ann., 137 A. L. R. 249;

40 Am. Jur., page 981.

In the case of Kearn, Mayor v. State ex rel. Bess, *supra*, the Indiana Supreme Court stated the rule as follows:

"* * * The pension fund is accumulated by taxation, by contributions and awards of various sorts, and by enforced contribution by members of the police force. It is established by the great weight of authority in other jurisdictions, including the Supreme Court of the United States, that such pensions are gratuities; that they involve no agreement of the parties and create no vested rights, notwithstanding compulsory contributions by the parties in the form of allotted sums retained out of the member's pay. * * *."

Also, in the case of Johnson v. State Employee's Retirement Association, *supra*, the question was directly raised as to whether the Legislature had authority to reduce the payments made by the State which had been provided for by a former statute without unlawfully impairing the rights of those persons who were already receiving pensions under the State Retirement Pension Fund. The Pension Fund by statute was made up of contributions by the State and by the employees. The plaintiff in that case retired under the State Retirement Fund in 1937 on an annuity of $110.05 per month. In 1939 the statute was amended to provide that no one should receive in excess of $100.00 per month. It was contended that the plaintiff was already on retirement when the amendment was made and had acquired a vested right to receive $110.05 per month which could not be reduced by subsequent legislation.

In holding the amendment valid the court stated that the whole pension set-up was statutory and that a statute may be repealed or altered as the Legislature deems just and proper, and that the whole pension system might be abrogated without a violation of the Constitution. Many other cases from the various jurisdictions are reported and discussed at length in that case and in an annotation in 137 A. L. R. 249 and indicate clearly that a pensioner under a retirement fund of a public authority has no vested interest in those amounts which are contributed by the public authority as the employer.

I am, therefore, of the opinion that Section 8 of Chapter 6 of the Acts of 1947 is valid and destroys no rights which have vested.