

"2. For money advanced from personal funds by the regular prosecutor to an out of state chemical engineer employed and ordered by the prosecutor and grand jury to make certain tests of materials used in building the highways and the appearance of said engineer before the grand jury.

"3. For two days court testimony and consultation by the chemical engineer.

"4. For services rendered to the deputy prosecutor by an out of state attorney in securing information pertaining to the grand jury investigation."

Being of the opinion that it was beyond the power of the court, prosecuting attorney, or grand jury to bind the county or create a liability against it for such expenses without existing appropriations therefor; it would follow that it is not *mandatory* upon the county council to make additional appropriations upon request for the payment of such services which have already been rendered. However, you do not ask and I express no opinion concerning the power of the council to appropriate money, and the board of county commissioners to approve payment, for such services rendered the county in good faith.

OFFICIAL OPINION NO. 66

November 7, 1947.

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

Dear Mr. Carmichael:

Your letter of September 25th has been received relative to Section 3, Chapter 353 of the Acts of 1947, which provides for increased pensions to teachers receiving annuities at the time of the passage of said act and which provides further an annual appropriation of \$300,000 from the general fund

of the State to be used for the purpose of paying said increased annuities.

Said section provided that teachers retired under the 1915, 1921, and 1939 Acts were to have their pensions increased by the difference between four-sevenths (the state's share) of the benefits of the 1945 Act to which their service would entitle them if they had been members of the fund under said Act and the state financed share of their original pension.

You explain that your office each month prepared two checks for each annuitant. One such check is for the amount the annuitant was formerly entitled to under the 1945 Act and the other check is for the amount his pension was increased under the provisions of Section 3 of Chapter 353 of the Acts of 1947 and which increased amount is paid from the said \$300,000 appropriation from the General Fund of the State. This causes double work in your office and necessitates a separate accounting on each individual check for the former amount paid to the annuitant under the 1945 Act and also for the increased amount paid under the Act as amended by the General Assembly of 1947.

Your question in effect is as follows:

"May the Auditor of State legally pay over, merge and transfer said annual \$300,000 appropriation for increased pensions with the other funds of the Teachers' Retirement Fund?"

The applicable portion of Section 3, Chapter 353 of the Acts of 1947 is quoted as follows:

"Sec. 3. Any teacher receiving annuity at the time of the passage of this Act under the provisions of Chapter 182 of the Acts of 1915 or any Acts amendatory of or supplementary thereto enacted prior to January first, Nineteen Hundred Forty-Seven shall be eligible to receive the state's proportionate share of any annuities provided by the terms of Chapter 328 of the Acts of 1945, which Act shall be deemed to continue in full force and effect for all persons not accepting the provisions of this Act up to a maximum of six hundred eighty-five dollars (\$685.00) per year by making application therefor in writing to the Board at any time hereafter, said annuity to begin upon the

tenth of the month following receipt and acknowledgment of such application. Such retired teacher shall be entitled to all privileges of this Act including, but not restricted to, the privilege of paying arrearages on such teacher's active service credit. There is hereby appropriated from the general fund of the State the amount of three hundred thousand dollars (\$300,000.00) annually to pay the increased annuities provided in this section. * * *"

The office of the State Board of Accounts has given your problem considerable study and has submitted to you a written memorandum giving an opinion that the merger of said annual \$300,000.00 appropriation from the general fund of the State with the other funds of the Teachers' Retirement Fund would not be contrary to proper accounting practices.

Additional facts on this question can be contributed. The additional pension benefits payable under the provisions of said Section 3 have been computed and amount to approximately \$29,000.00 per month, which means that a deficit will exist in this fund in the fiscal year ending June 30, 1948. It is reasonable to expect that the same situation will exist in the fiscal year ending June 30, 1949.

There is no express provision in Section 3 to the effect that the \$300,000.00 therein appropriated becomes a part of the Teachers' Retirement Fund and I see nothing in that section from which we can imply that the money becomes a part of the Fund. The plain language indicates that the appropriation is for the purpose of covering the additional payments, in which event the conclusion is inevitable that if the \$300,000.00 should be more than is required, any balance should revert to the General Fund as in the case of other general appropriations. There is no indication that the appropriation becomes a part of the Pension Reserve Account as set forth in Section 13, Chapter 182, page 658 of the Acts of 1915, as amended. (Section 28-4510, Burns' 1933, R. S.)

It follows then that the answer to your question must be in the negative. In other words, the \$300,000 appropriation may not be merged into the Teachers' Retirement Fund. However, as a matter of accounting and bookkeeping practice, I see no objection to writing one check to those annui-

tants who participate in the additional funds. This may be done by one of two systems: (1) the full amount of the check could be paid from the Teachers' Retirement Fund and that Fund reimbursed by voucher upon the Auditor of State monthly for the amounts chargeable to the \$300,000.00 fund, or (2) the Executive Secretary of the Indiana State Teachers' Retirement Fund could obtain special disbursing authority from the Auditor for the expenditure of the entire Fund as required.

Either one of those methods, however, will require an accurate record of the amounts used from the additional appropriation in order to determine whether any portion thereof should revert to the General Fund.

The provisions for appointment of special disbursing officers are found in Section 22 of Chapter 279 of the Acts of 1947.

OFFICIAL OPINION NO. 67

November 13, 1947.

Colonel Ben Herr,
Assistant Adjutant General,
212 State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of November 10, 1947, which is as follows:

"Your opinion is respectfully requested on whether it would be permissible for the Governor to pay out of his Military Contingent Fund a bonus of \$2.00 to members of the Indiana National Guard for each new enlistment secured through their individual efforts."

I call your attention to the rather lengthy opinion of the Attorney General dated September 25, 1944, which contains a full discussion of the use of military funds.

In 1915 the question was submitted to the then Attorney General relative to the right to use military funds to purchase a moving picture film to be used in giving publicity