

in a given subject. However, if a textbook is used in a given grade and subject, and one has been adopted for that grade and subject, the adopted textbook must be used.

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OFFICIAL OPINION NO. 20

May 7, 1947.

Hon. Forrest V. Carmichael,  
Executive Secretary,  
Indiana State Teachers' Retirement Fund,  
336 State House,  
Indianapolis 4, Indiana.

Dear Sir:

Your letter has been received requesting an official opinion on the following:

"1. Does the man still in military service have the right to transfer to the provision of the 1945 law at any time upon his return to active teaching status?

"2. May a teacher, who has incurred disability while in the service of the United States Army or Navy and who is still disabled, have the right of transfer of membership beyond the period of sixty days after discharge, from former status to provision of the 1945 law?

"3. May a teacher, who has incurred disability while in the service of the United States Army or Navy and who is unable to teach, because of such disability, have the right to receive disability benefit from the Indiana State Teachers' Retirement Fund, following separation from the United States Army or Navy?"

Section 28-4511, Burns' 1945 Supp., same being Section 3, Chapter 328, Acts of 1945, and being a section of the Teachers' Retirement Act, provides in part as follows:

"\* \* \* (k) Disability Benefit—Rate. Any teacher in the service of 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: \* \* \* (m) 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 (1) year in seven (7), 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 shall not be subject to the limitations of this provision. \* \* \* (n) Any teacher whose contractual rights had vested in the fund prior to July 1, 1945, may elect prior to December 31, 1946, to accept the benefits of this act as amended in 1945 and thereafter. \* \* \*

The statute governing teachers in military service is Section 28-4322, *et. seq.*, Burns' 1945 Supplement, same being Chapter 97, Acts 1941. Section 1 of said Act provides as follows:

"Inasmuch as Congress has decreed that it is imperative to increase and train the personnel of the armed forces of the United States, this act shall provide protection by the state of Indiana for its public school teachers whom the necessity of war or a state of emergency has called to leave their positions and employments as public school teachers to defend the nation; that this act shall preserve the status and contract rights held under the laws of the state to any public school teacher who enters the military or naval

service of the United States, or any allied or auxiliary war service, such as the Red Cross, Salvation Army and similar services connected with the armed forces of the country all of which services are hereinafter referred to as defense service; this act shall place those teachers in such a position that *said defense service shall not operate as an interruption of teaching service* but that all contract rights held as a teacher at the time of entering such defense service shall be preserved during absence in the country's defense the same as if they had not entered therein."

Section 5 of said Acts, same being Section 28-4326, Burns' 1945 Supplement, provides as follows:

"It shall be the duty of any such teacher on leave of absence for defense service, within sixty (60) days after honorable discharge or release, including medical, from active participation in such service, to present himself for reinstatement, and he shall thereupon be reinstated by the school corporation. The status of such teacher shall then be the same as at the time of entering upon defense service, except that all rights to changes of salary or position shall accrue the same as if no interruption had occurred, unless otherwise specifically provided by this act."

Section 6 of said Act, same being Section 28-4327, Burns' 1945 Supplement, reads as follows:

"Any teacher who enters the defense service on a full time basis, through volunteer or statutory selection, shall retain his contractual rights in any teachers' retirement fund of which he may be a member under the laws of the state of Indiana. Contributions and payments into such retirement fund shall be made as is now provided in the event that a member of such fund is granted a leave of absence under existing law pertaining to such fund or funds. Such teacher shall be deemed to have been granted a leave of absence for the duration of such service."

In construing the above statutes, it is necessary to consider the general purpose and scope of the statutes in order to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567;

State *ex rel.* Bailey v. Webb (1939), 215 Ind. 609, 612.

It is likewise true that in ascertaining the legislative intent as to a statute, the courts may take into consideration other acts in *pari materia*, either passed before or after the act in question.

Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 498.

1. In answer to your first question, it is apparent that under Section 28-4511, clause (m), *supra*, the legislative intent was that a teacher on leave of absence be regarded as a teacher and entitled to the benefits of the Teachers' Retirement Act, providing *for or during* such absence he shall pay or continue to pay into such fund the amount of assessment payable by such teacher under said act. This necessarily contemplates that such payments could be made by such teacher after return from such leave of absence.

It is to be further considered that under the foregoing statute covering teachers in military service, same being Section 28-4322, Burns' 1945 Supp., *supra*, such a teacher in such defense service or military service shall be deemed to be on "leave of absence" and "said defense service shall not operate as an interruption of teaching service". Section 5 of said act being Section 28-4326, Burns' 1945 Supp., *supra*, requires such teacher on leave of absence for such service to present himself for reinstatement as a teacher "within sixty (60) days after honorable discharge or release, including medical, from active participation in said service." It also provides that "all rights to changes of salary or position shall accrue the same as if no interruption had occurred".

Therefore in answer to your first question, it is clear a teacher in military service has the right of transfer to the provisions of the 1945 law while in service and for a period

of sixty days after honorable discharge or release, including medical, from active participation in such service.

2. Your second question has been answered by the answer to Question No. 1. However, it is pertinent to point out that Section 28-4328, Burns' 1945 Supp., same being Section 7 of Chapter 97 of the Acts of 1941, concerning teachers in military service, provides in part as follows:

“\* \* \* If such teacher be unable to present himself for reinstatement because of any reason arising *from mental or physical disability* within the sixty-day period following discharge, he shall have sixty (60) days from date of removal of such disability within which to apply for reinstatement.”  
(Our Emphasis).

Such teacher in such fund would have sixty days after the removal of such disability following discharge from such service in which to present himself for such reinstatement as a teacher with a corresponding right of election of membership in the Teachers' Retirement Fund during such period of time.

3. In answer to your third question, it is to be observed that under clause (m) of Section 28-4511, Burns' 1945 Supp., *supra*, a teacher on such leave of absence is regarded as a *teacher* and entitled to the benefit of the Teachers' Retirement Act. In such event such teacher would be considered to be “in the service of the public school”, which is one of the requirements for retirement on disability under clause (k) of said section of said act. This is further emphasized under Section 1 of said act governing teachers in military service, same being Section 28-4322, Burns' 1945 Supp., *supra*, which provides “said defense service shall not operate as an interruption of teaching service”.

In answer to your third question, I am therefore of the opinion a teacher who has incurred disability while in the military service, and who is unable to teach because of such disability has the right to receive disability benefits from the Indiana State Teachers' Retirement Fund, from the date of such disability, providing he meets the other requirements of said act.