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OFFICIAL OPINION NO. 47

May 16, 1946.

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

Dear Sir:

Your letter of March 27, 1946, received requesting an official opinion on the following questions:

"1. Is a teacher who entered service in the schools of the state prior to July 1, 1921 and who failed to elect membership in the Indiana State Teachers’ Retirement Fund prior to December 31, 1942 and who now elects to receive membership in such fund as provided in the Acts of 1945, entitled to disability benefit payments without the payment of all arrearages for prior service claimed?

"2. Likewise; Is a teacher who entered service in the schools of the state prior to July 1, 1921 and who failed to elect membership in the Indiana State Teachers’ Retirement Fund, prior to December 31, 1936, but who elected to receive membership in such fund under the Acts of 1939, entitled to disability benefit payments without the payment of all arrearages for prior service claimed?"

Clause (k) of Section 28-4511 Burns’ 1945 Supplement, Section 3, Chapter 328, Acts 1945, provides in part as follows:

“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: * * * Provided, further, That in the event of the death of any teacher who hereafter enters the service or who shall have accepted the provisions of this act as amended in 1937 or thereafter, while such teacher is drawing disability, then the total
of such disability payments shall be deducted from any funds which otherwise would be payable to the estate or designated beneficiary of such deceased teacher, but no further penalty, deduction, or payment shall be suffered by said teacher or said teacher's estate because of the disability payments paid during the time of such disability; * * *”

For the purpose of the question presented regarding a teacher who entered the Fund under the 1939 law it is submitted Clause (k) of Section 1, Chapter 28 of the Acts of 1939 is practically identical in respect to payment of disability benefits.

Subsection (3), Clause (a) of Section 48-4511 Burns' 1945 Supplement, Section 3, Chapter 328, Acts of 1945 provides in part as follows:

“Teachers who entered service in the schools of the state prior to July 1, 1921, and who failed to elect membership in the state teachers' retirement fund prior to December 31, 1942, may elect to receive membership in such fund at any time before December 31, 1946, by the payment of all arrearages for prior service claimed. These arrearages may be paid in cash the first year or in a series of instalments according to the rules and regulations of the board of trustees of the Indiana state teachers' retirement fund, which shall not be more burdensome than the equal distribution of the instalments over the term of years between the time of election to come into the fund and the year in which the teacher may retire on the full annuity: * * *”

Subsection (3), Clause (a), Section 3, Chapter 28, Acts 1939, being the provisions under which the teachers in 1939 entered the Teachers' Retireremnt Fund, is for the purpose of the questions presented identical in its provisions with the last quoted section of the 1945 Teachers' Retirement Act.

Therefore, identical answers can be given to each of your questions presented.

It is to be noted Subsection (3), Clause (a) of Section 28-4511 Burns' 1945 Supplement, supra, only makes the payment
of all arrearages a necessary condition precedent to the retirement of a teacher on full annuity. The 1939 law being identical in this respect either of said Acts could not be construed to require the payment of full arrearages prior to retirement on disability, but only prior to retirement on full annuity.

Under Clause (k) of Section 28-4511 Burns' 1945 Supplement, supra, the conditions under which such disability benefits are payable does not include the full payment of all arrearages. It is further noted said clause of the statute provides no further penalty, deduction or payment shall be suffered by said teacher or said teacher's estate because of the disability payments made during the time of such disability except that in the event of the death of the teacher while drawing disability then the total of such disability payments shall be deducted from any funds which otherwise would be payable to the estate or the designated beneficiary of such deceased teacher.

Courts have no authority to read anything into a statute which is plain and unambiguous, but must give full effect thereto.


It is also well recognized that when a statute is free from any ambiguity, there is no room for judicial construction by court.

State v. Squibb (1908), 170 Ind. 488;
Kunkalman v. Gibson (1908), 171 Ind. 503;
Williams v. Michigan City (1934), 100 Ind. App. 136.

I am therefore of the opinion that each of the foregoing quoted parts of the 1945 Teachers' Retirement Act, as well as the corresponding referred to sections of the 1939 Teachers' Retirement Act, are clear and unambiguous and not subject to construction. That there being no requirement for payment of full arrearages prior to retirement on disability, no such provision can be read into the statute. That since the statute provides no further penalties shall be exacted on retirement on disability, other than a charge against the
amount payable from the Fund in case of the death of a teacher while drawing disability benefits, no further penalty could be exacted.

In answer to each of your questions I am therefore of the opinion a teacher who becomes a member of the Retirement Fund under the 1939 Act and does not elect to become a member of the Fund under the 1945 Act, as well as a teacher who originally becomes a member of the Fund under the 1945 Act, is not required to pay full arrearages prior to retirement on disability.

OFFICIAL OPINION NO. 48

May 17, 1946.

Hon. A. V. Burch,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. Burch:

I have your letter of May 3, 1946 in which you request an official opinion upon the following question:

"The State Fair Board has filed in our office for payment a voucher in the amount of $246,851.19. This amount represents the balance in an account titled ‘Indiana State Board of Agriculture’, less $7,000.00 which was held in this fund to pay interest due July 15, 1946. This fund was created by a tax levy of 3½ mills on each $100 of taxable property beginning with the year 1923 payable 1924 and extending annually thereafter. (See Sec. 15-213).

"* * *

"The portions of this law (Sec. 15-213) setting out that the Fair Board shall at the time of making its annual report to be filed with the Auditor of State, state the amount on hand, which will not be used, and this amount shall thereupon be paid into the State General Fund, has not been complied with. There have been no reports filed in our office up to the time of the