OFFICIAL OPINION NO. 50

May 18, 1946.

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

Dear Sir:

Your letter of April 26, 1946, has been received requesting an official opinion on the following questions:

"1. Shall we grant persons who have entered military service of the United States the privilege of paying assessments while in service and prior to the time when they shall have returned to teaching service?

"2. When does Leave of Absence service credit end for the teacher who has entered military or naval service of the United States and has received a discharge therefrom?

"3. May a teacher be granted service credit for military or naval service and retire on an annuity from the State Teachers' Retirement Fund on the basis of total years of teaching service credit plus military service credit, said person not having returned to teaching service following discharge from the armed services?"

Section 28-4327 Burns' 1945 Supplement, same being Section 6, Chapter 97, Acts 1941, provides 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."
Section 28-4326, Burns’ 1945 Supplement, same being Section 5, Chapter 97, Acts 1941, reads 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 28-4328, Burns’ 1945 Supplement, same being Section 7, Chapter 97, Acts 1941, also provides:

“Such defense service and leave of absence shall be deemed to terminate when such teacher has been reinstated, or upon written resignation submitted to the school corporation. 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.”

Section 28-4511 (m) Burns’ 1945 Supplement, same being Section 3, Chapter 328, Acts 1945, in part provides as follows:

“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. * * *” (Our emphasis.)

Statutes for the benefit of veterans are to be liberally con-
strued.

State v. Dudley (1910), 173 Ind. 633, 635;
1946 Ind. O.A.G., p. 56, No. 17.

1. In answer to your first question it is to be noted Section
28-4327 Burns' 1945 Supplement, supra, provides "Contribu-
tions 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." . This has a direct reference to Sec-
tion 28-4511(m) Burns' 1945 Supplement, supra, applying
to teachers who are on leave of absence and that their mem-
bership should continue in said fund "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.” (Our emphasis.)

The last quoted part of the section of said statute is clear,
unambiguous, and needs no construction to determine its
meaning. It gives the teacher on a leave of absence the
option to pay during such leave of absence or on his return.

In answer to your first question I am therefore of the opin-
ion you should grant persons who have entered military service
of the United States the privilege of paying assessments while
in service or after their return from service.

2. In answer to your second question it is pointed out the
above statutes do not make the teacher's right to claim credit
in the retirement fund for that period spent in the United
States service dependent upon their re-entering their employ-
ment as a teacher on return from such service. Under Sec-
tion 28-2326 Burns' 1945 Supplement, supra, they are given
sixty days after honorable discharge or release, including
medical, from active participation in such service to present
themselves for reinstatement. Said section provides when
that is done they shall thereupon be reinstated by the school
corporation and have the same status as a teacher as of the
time of entering defense service, with certain other benefits
granted them. This means their right to insist upon a renewal
of their contract and a reinstatement of their status under
the teaching contract they must present themselves within
such sixty days.

Under Section 28-2328 Burns' 1945 Supplement, *supra*, it is
provided such defense service or leave of absence shall be
deemed terminated when such teacher has been reinstated or
submitted his written resignation. When this section is con-
strued with Section 28-2326 Burns' 1945 Supplement, *supra*,
I am of the opinion such teacher who fails to present himself
within sixty days has lost his right to insist upon restoration
to his original status as a teacher when going into service,
and that such failure to so apply for reinstatement within the
required period of time would be equivalent to a resignation.

In answer to your second question I am therefore of the
opinion that since the teacher is entitled to credit in the retire-
ment fund for that period of time he is in service and is
permitted sixty days thereafter to apply for reinstatement,
and since such credits in such retirement fund are not con-
tingent upon such teacher returning to teaching under his
original contract, that such leave of absence service credits
would end sixty days after termination of such military serv-
vice of such teacher.

3. Your third question has been answered by the answer
to your question number two, *supra*. Since the Act does not
make the teacher's right to service credit in the retirement
fund dependent upon his renewal of his teaching contract
after sixty days from the termination of such military service,
such teacher would be entitled to such service credit in such
retirement fund to the time such leave of absence ended,
regardless of such teacher returning to teaching service fol-
lowing his service in the military forces. The number of
years of teaching service to the credit of the teacher would
control his right to retirement.