ing any other statute on the subject matter. The Act of 1931
under which I assume that the bonds were issued, Chapter
99, Section 4, provides that the bonds shall bear interest from
the date thereof until funds are available sufficient to pay
the face value thereof, together with the accrued interest
thereon.

In answer to your second question, the judgment of the
court in question was a final adjudication between the parties,
is the law of that case and binding upon the parties in the
absence of an appeal.

As to your fourth question, it is my opinion that Section
2 of said Act of 1939 does not change the law as set forth
in the Read case, but authorizes the issuance of bonds under
Chapter 129 of the Acts of the General Assembly for the
year 1905, as amended, although no judgment has been taken,
whenever the amount of the deficiency is clearly ascertained.

Your question No. 5 involves a case of litigation and, in
effect, asks my opinion as to what judgment that court will
render. This is something that I cannot answer.

OFFICIAL OPINION NO. 101

December 20, 1946.

Hon. Ross Teckemeyer, Secretary,
Public Employes' Retirement Fund,
307 Board of Trade Bldg.,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of December 17th requesting
an official opinion as follows:

"In the administration of this Act, the question has
arisen relative to credit for military service of employees
who received a leave of absence from their employer to
serve in the Merchant Marines for the duration of the
War.

"Section 7 of Chapter 340 of the Acts of 1945 reads
as follows:
'Any person becoming a member of the Fund after the effective date, who shall enter the military, naval, marine, coast guard or other armed service of the United States during the time of war, * * *'

'* * * also any former employe having left the service of the employer prior to the effective date to enter such armed services of the United States, provided such entry into the armed services occurs subsequent to September 16, 1940, and who was not an employe on the effective date, shall receive prior service credit for both prior service and armed service if such former employe again enters the service of the employer * * *'

"In your opinion, if an employe left his employment with a state department subsequent to September 16, 1940, to serve in the Merchant Marines, and after leaving such service returned to his former position, would he be entitled to both prior service credit for his actual prior service and the service while in the Merchant Marines providing he returned to his former employment as specified in Section 7?"

Merchant seamen are employed under contract with the owners or operators of the merchant ships and are not in the armed services of the United States.

McCune v. Kilpatrick (1943), 53 Fed. Supp. 80;
In re: Berue (1944), 54 Fed. Supp. 252;
Ex parte Falls (1918), 251 Fed. 415.

Therefore, such merchant seamen do not come within the purview of these provisions which you quote in your request.

I am, therefore, of the opinion that a person who entered the Merchant Marines did not enter the armed services of the United States as that term is used in Section 7 of the Public Employes' Retirement Fund Act and that such act has no application to such person.