

geographies until the next meeting of the Commission on or before December 15 of the following year. In the interim the school trustees in such case would be required to purchase or use in their schools the best books on such subject they may find available. In this connection it is pointed out that in Official Opinion of this office to you under date of November 13, 1945, same being 1945 Indiana O. A. G. number 115, it is stated the first meeting of the Commission under Chapter 243 of the Acts of 1945, for the adoption of textbooks may be held later than December 15, 1945, due to the fact the Acts will not be promulgated in time to give the legal notice required by said statute.

I am further of the opinion the Commission is not authorized by the above statute to substitute revisions of books for those once adopted during the term of the five-year textbook contracts. This would be inconsistent with the provisions of Section 7 of said statute, *supra*, requiring the Commission to pass upon the books adopted and at that time taking into consideration "the size and quality as to material, subject matter, style of binding, mechanical execution of such books, and the price thereof."

OFFICIAL OPINION NO. 119

November 20, 1945.

Hon. Forrest V. Carmichael, Executive Secretary,
Indiana State Teachers' Retirement Fund Board,
Room 334, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of October 9, 1945, has been received in which you request an official opinion on the following question:

"Was it the intention of the General Assembly, that teachers who started teaching prior to July 1, 1921, who enter the 1945 Indiana State Teachers' Retirement Fund Act, who had entered into a contractual relationship under the 1939 Teachers' Retirement Fund Acts, be permitted to be granted an annuity without the payment of arrearages under the prior Act?"

Your reference in your question to teachers "who had entered into a contractual relationship under the 1939 Teachers' Retirement Fund Acts," is assumed to refer to those teachers who before December 31, 1942, signified an election for membership in said Fund pursuant to Paragraph (3) of subdivision (a) of Section 1, Chapter 28, Acts 1939, Paragraph 3, Section 3 of Chapter 189 of the Acts of 1935, or Paragraph 2 of Section 8 of Chapter 256 of the Acts of 1921. Said paragraph from the 1913 Act, same being Section 28-4511 Burns' 1943 Supplement, reads 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, 1936, may elect to receive membership in such fund at any time before December 31, 1942, 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."

It is therefore necessary to consider the following sections of the 1945 Teachers' Retirement Act to determine the status of such teachers referred to in your question, applying for membership in such Fund under the 1945 Act.

Section 3 of Chapter 328 of the Acts of 1945 provides in part as follows:

"(a) * * * The members of the fund shall be as follows.

"(1) All teachers as herein defined, who are employed to teach in the public schools of the state and whose services in such schools began after June 30, 1921, or whose services shall begin hereafter.

"(2) Those teachers who entered service in such schools of the state prior to July 1, 1921, and who,

before December 31, 1942, were members of the fund under the provisions of Chapter 182 of the Acts of 1915 or acts amendatory of said chapter.

“(3) 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. * * *

“(h) Teachers coming under the provisions of this act except those teachers provided for in paragraph (3) of subdivision (a) of this section shall be required to pay as arrearages an amount equal to the amount which would have accumulated from their contributions with four per cent (4%) compound interest had they been members under this act for the number of years which they claim for prior service, provided that a teacher may waive his right to former service and pay only current rates from the time when the membership begins and receive no credit for prior service. These arrearages may be paid in cash the first year or in a series of installments according to the rules and regulations of the board of trustees of the Indiana state teachers’ retirement fund or may be left as a lien against the annuity: *Provided, however,* That deferred payment or adjusted accounts must bear interest at four per cent (4%) per annum which shall be compounded if not paid. No interest shall be charged for time not credited to the teacher. *In case of retirement before all arrearages are paid, the annuity otherwise available will be reduced in the proportion which the amount unpaid bears to the then present value of such annuity.*” (Emphasis ours.)

It is clear that such a teacher is not a member of the Fund under Paragraph (1) of subdivision (a) of Section 3 of the 1945 Acts as their “services in such schools began after June 30, 1921.” It is also clear that they are not members under Paragraph (3) of said section of the 1945 Act as they had elected to receive membership prior to December 31, 1942.

Therefore they must be found to come within the provisions of said Paragraph (2) above quoted or they are not members of the Fund under the 1945 Act. If they are included under said Paragraph (2) then they must pay arrearages under the provisions of Paragraph (h) of the 1945 Act.

It is therefore necessary to consider whether they are entitled to an annuity under the provisions of the 1945 Act as coming within Paragraph (2) of Section 8 of said Act. In determining this question we should consider the general scope and purpose of the Act 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.

We should also consider other Acts in *pari materia* and the legislative history of the Act.

Sherfey v. City of Brazil (1938), 213 Ind. 493, 497, 498;

City of Evansville, *et al.* v. Summers (1886), 108 Ind. 189, 193;

Connecticut Mutual Life Ins. Co. v. Talbot, *et al.* (1887), 113 Ind. 373, 379.

Such a consideration shows that it was plainly the intention under the amendments of 1921, 1937, and 1939 above referred to that those teachers who had elected under the original Act or amendments thereto were to be members of the Fund therein provided and were to receive the benefits of that amendment on the payment of arrearages under the conditions of that Act.

See Paragraph (2) of subdivision (a) of the 1939 amendment which reads as follows:

“(2) Those teachers who entered service in such schools of the state prior to July 1, 1921, but who were not members of the state pension system, and who, before December 31, 1936, elected to receive membership in this system by the payment of arrearages under the conditions set forth by this act.”

This is the same as the language used in the 1937 amendment and except for the date is the same as the language used in Paragraph (2) of Section 8 of the 1921 amendment.

It is hard to conceive that the Legislature intended that those teachers who had not elected to receive membership under the prior Acts or amendments thereto would be given the benefits of the 1945 Act but that those teachers who had elected to receive such membership under such Act or its amendments should be discriminated against by not permitting them to receive the benefits of the 1945 Act.

In 50 American Jurisprudence, paragraph 372, under Statutes, it is said:

“An intent to discriminate unjustly between different cases of the same kind is not to be ascribed to the legislature. * * *”

I am therefore of the opinion that when Paragraph (2) of subdivision (a) of Section 3 of the 1945 Act is construed in the light of the purpose sought to be accomplished as shown by the Act and its legislative history, that the Legislature intended that those teachers who had elected to receive membership in the Fund under the original Act or amendments thereto in 1921, 1937, and 1939 were to receive the benefits of the 1945 Act under Paragraph (2) of subdivision (a) of Section 3 of the 1945 Act. Such teachers would have to pay arrearages under the provisions of subdivision (h) of said section of said Act.

Subdivision (h) of said statute in part reads as follows:

“* * * *In case of retirement before all arrearages are paid, the annuity otherwise available will be reduced in the proportion which the amount unpaid bears to the then present value of such annuity.*”
(Emphasis ours.)

It is to be noted that subdivision (h) of the 1945 statute in so far as the same is applicable to the question presented, is identical with the terms of subdivision (h) of the 1939 Teachers' Retirement Act and a like result in harmony with this opinion was reached from a construction of said 1939 statute as found in 1940 Indiana O. A. G., page 231 at 235

and 236 and in 1933 Indiana O. A. G., page 306 at 307. However, the fact that there are unpaid arrearages in such case at the time of the retirement of said teacher would not bar her right to an annuity but in such case the annuity otherwise available would be reduced in the proportion which the amount of the unpaid arrearages bears to the then present value of such annuity.

OFFICIAL OPINION NO. 120

November 23, 1945.

Hon. Clarence E. Ruston, State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of November 9, 1945, has been received in which you request an official opinion construing Chapter 231 of the Acts of 1945, your specific questions being as follows:

"1. Does the word year as used in Section 1 of Chapter 231, Acts of 1945, refer to the school year?

"2. What part of the five-day period of absence allowed, is allowable for the current year after March 7, 1945, the effective date of Chapter 231, Acts of 1945?

"3. In the event that a teacher is employed part time by two or more school corporations, is each employing corporation chargeable only for the proportionate part of the five-day period of absence allowed?

"4. In the event that a teacher employed part time by two or more school corporations, and is re-employed by only a part of the former employing corporations, how should any unused portion of the five-day period of absence allowed be allocated for the purpose of accumulation?

"5. In the event that a teacher is absent from work on account of personal illness for a period in excess of five days and no substitute teacher is employed, is