

Section 3, subsection (3), Clause (c) of Chapter 328 of the Acts of 1945 provides as follows:

“The said board shall determine the actuarial liability incurred by the years of service of the present teachers who shall elect membership in the fund as provided for in this act, or who are granted credit for prior experience as provided for by this act, and shall determine the state's share as hereinbefore declared of this liability, and shall distribute the payment of this liability over a period of years which will be equitable to the state and to the fund. The said board shall issue to each person claiming prior service, upon the presentation of that claim in the form established and approved by the board, a certificate of the amount of prior service allowed by the board.”

Under the provisions of the foregoing sections of the statute I am of the opinion that since teachers have a right to elect whether or not to become members of the Teachers' Retirement Fund under the 1945 Act, that at the time of making such election and becoming members of said Fund under the 1945 Act they may designate the number of years for which they claim credit for prior service, which need not be all the years for which such credit could be granted, and that thereupon the Board should allow credit for the years claimed by the teacher and issue a certificate therefor.

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OFFICIAL OPINION NO. 134

December 24, 1945.

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

Dear Mr. Ruston:

Your letter of November 27, 1945, received requesting an official opinion on the following questions:

"1. In the event that a teacher is absent from his work because of personal injury arising out of and in the course of his employment, is he entitled to receive compensation under the workmen's compensation act, and, at the same time, receive the benefits granted by Chapter 231, Acts of 1945?

"2. In the event that a teacher is absent from his work because of being quarantined, by order of a board of health, is he entitled to receive the benefits granted by Chapter 231, Acts of 1945?

"3. Is a teacher employed under a temporary teachers contract entitled to receive the benefits granted by Chapter 231, Acts of 1945?"

1. In answer to your first question, the Workmen's Compensation Act, Chapter 172 of the Acts of 1929, as amended, Section 40-1201, *et seq.*, Burns' 1940 Replacement, applies to injuries or death arising out of and in the course of the employment.

Under Section 29 of said Act, Section 40-1301 Burns' 1940 Replacement, certain benefits are paid for disability for work and under Section 31 of said Act, Section 40-1303, Burns' 1940 Replacement, certain benefits are paid for loss of, or the permanent impairment of the use of certain members of the body. No benefits are due during the first seven (7) days of disability. These facts show the scope of the Workmen's Compensation Act is in some respects different from the benefits granted teachers under Chapter 231 of the Acts of 1945.

Under Section 40-1218 Burns' 1943 Supplement, Section 18, Chapter 172, Acts 1929, as amended by Section 2, Chapter 136, Acts 1943, the provisions of said Workmen's Compensation Act are made applicable to the State and to all political subdivisions thereof, without any right of exemption from the compensation provisions thereof, except for some minor provisions not important in the consideration of the question here presented.

Section 1 of Chapter 231 of the Acts of 1945 in part provides:

"\* \* \* and each teacher shall be entitled to be absent from work on account of personal illness for

a total of five days in each year *without loss of compensation*. If in any one year the teacher shall be absent for such reason less than five days, the remaining days up to a maximum total of five shall be accumulative to a total not to exceed thirty days, and said teacher shall be entitled to the remainder of his salary above the expenditure for a substitute for a period of at least thirty additional days each year after his accumulative days have been used." (Our emphasis.)

Under Section 40-1202 Burns' 1943 Supplement, Section 2, Chapter 172, Acts 1929 as amended, the Workmen's Compensation Act covers "personal injury or death by accident arising out of and in the course of the employment." It is to be noted under Section 1 of Chapter 231 of the Acts of 1945, *supra*, a teacher may be absent from work without loss of compensation on account of "personal illness." Before reaching an answer to your first question it is therefore necessary to determine if a teacher receives an injury subject to the payment of compensation under the Workmen's Compensation Act, is such an injury also covered by the words "personal illness" within the meaning of Section 1, Chapter 231 of the Acts of 1945.

In the case of National Live Stock Insurance Company v. Bartlow (1915), 60 Ind. App. 233, 237, it was held the word "illness" and the word "sickness" were synonymous. Also see "Sickness," 58 Corpus Juris, page 707.

A case in point on the question here under consideration is the case of Doody v. Davie, *et al.* (1926), 246 Pac. 339, 77 Cal. App. 310, where the court was required to determine whether or not an injury to a city fireman's foot sustained when he stepped on a nail while off duty, though resulting in no infection or general bodily illness, constituted "sickness" within the meaning of the "Charter" of the city of Oakland, California, which in part provided:

"A member (of the fire department) becoming incapacitated for duty by reason of sickness shall be entitled to sixty day's sick leave without loss of pay."

In holding such an injury constituted "sickness" within the meaning of said section of the charter of said city, the court on page 340 of the Pacific citation said:

"Appellants assert that the word 'sickness' in section 100 does not include 'injury.' It certainly does in its popular significance and in the definitions found in such a standard work as Bouvier's Law Dictionary, wherein it is said:

" 'Sickness. By sickness is understood any affection of the body which deprives it temporarily of the power to fulfill its usual functions. It has been held to include insanity. L. R. S. Q. B. 295. Sickness is either such as affects body generally, or only some part of it.'

"Appellants admit that if as a result of his injury the petitioner had developed a fever or nausea he would have been entitled to sick leave. The differentiation between such a case and the instant one is a very fine one, and one which seems to us incapable of practical application. If a fireman broke his leg or his wrist while off duty, the continuance of his salary would depend upon whether or not his constitution was strong enough to stand the shock and pain without some bodily reactions, such as fever, nausea, nervousness, etc. The inquiry into this question of fact would certainly be most unsatisfactory; its determination could not depend upon the degree of temperature developed, or the amount of nausea, faintness, dizziness or nervousness which would result. It is almost impossible to conceive of any injury severe enough to incapacitate a man which would not cause some general variation from normal in the functions of the body."

In the case of *Murray Hospital v. Angrove* (1932), — Mont. —, 10 Pac. (2d), 577, 582, the court citing and approving the case of *Doody v. Davie*, *supra*, held that an injury to an employee's knee sustained when struck by an automobile while proceeding from home to place of employment constituted "sickness" within the meaning of a settlement contract entered into by the employer and employee with a hospital,

which contract was entered into pursuant to the provisions of the Montana statutes. The court in that case, on page 582 of the Pacific citation, said:

“We conclude that the Legislature used the term ‘sickness’ in its ‘popular significance,’ and intended that each employee specified should receive hospitalization for ‘any affection of the body which deprives it temporarily of its power to fulfill its usual functions,’ save and except those which develop because of his own vice.”

I am therefore of the opinion the words “personal illness” as used in Section 1, Chapter 231 of the Acts of 1945 are synonymous with “sickness” and that the Legislature in using the words “personal illness” intended to include any affection of the body which deprives it temporarily of its power to fulfill its usual functions and thereby incapacitate any such teacher from conducting his classes in the public schools. This would also include incapacity of such teacher resulting from an accidental injury sustained by such teacher.

In the case of *Artificial Ice and Cold Storage Company v. Waltz* (1927), 86 Ind. App. 534, 540, 541, it is held the payment of compensation under the Workmen’s Compensation Act is primarily the liability of the employer and that said Act does not contemplate double payment for the same accident.

Since the Workmen’s Compensation Act does not contemplate double payment of compensation for the same injury and since the provision of Section 1 of Chapter 231, Acts of 1945, *supra*, only provides that such teacher may be absent from work on account of personal illness *without loss of compensation*, I am of the opinion each of said statutes may be construed in *pari materia* with each other and when so construed do not authorize double payment for the same injury or illness.

I am therefore of the opinion a teacher who receives benefits under the Compensation Act while absent from her employment would only be entitled to receive under Chapter 231 of the Acts of 1945 the difference between the amount received under the Workmen’s Compensation Act and the full benefits provided by said Chapter 231 of the Acts of 1945.

2. In answer to your second question it is submitted the above quoted section of Chapter 231 of the Acts of 1945 makes such sick leave benefits available to such teacher only when he is "absent from work on account of *personal illness*." It is a well recognized rule of statutory construction that words in a statute must be construed in their plain, ordinary and usual meaning unless a contrary purpose clearly appears.

Section 1-201, Burns' 1933.

Garvin v. Chadwick Realty Corp. (1937), 212 Ind. 499, 506.

Since submitting your question you have advised me this question is limited to the quarantining of a teacher in his residence rather than the closing of a school under a general quarantine.

In answer to your second question I am therefore of the opinion the words "personal illness" as used in said statute clearly refer to the illness of the teacher and said Act would not apply to a teacher who was quarantined in his own residence due to the illness of some other member of the family.

3. In answer to your third question I wish to advise temporary teachers' contracts are controlled by the provisions of Section 28-4330 Burns' 1943 Supplement, same being Section 1, Chapter 202, Acts 1943, which in part provides "The temporary teacher's contract shall contain all the provisions of the regular teacher's contract except those providing for continued tenure of position."

Said section of the statute further in substance provides that the temporary teacher's contract shall be used only in cases where a teacher is employed to serve because of absence of a regular teacher who shall have been granted a leave of absence by the school corporation for engaging in military service or in services directly auxiliary thereto, for professional study or advancement, for exchange teaching or for extended disability that shall be attested to by a licensed physician. It further provides that if such temporary teacher's employment continues for a period of six (6) months or more in any one (1) school year such teacher, at his request, shall be entitled to the credit that would otherwise be enjoyed by such teacher with reference to the State Teachers'

Retirement Fund. He is also entitled to the benefit of the minimum salary law.

Since the Legislature has provided that such temporary teachers' contracts shall contain all the provisions of the regular teachers' contracts except those providing for continued tenure of position, and since the statutes of this State regarding the employment of teachers and their salaries, are read into and become a part of any such teacher's contract, the beneficial provisions of Chapter 231 of the Acts of 1945 regarding sick leave for teachers are available to teachers employed under a temporary contract.