

distinguished from one day or two days. It should not be so limited, however, as to eliminate the possibility of certain days off duty or even a part-time service, so long as the service is under contract and is rendered at fixed and regular periods. I think the above considerations will probably be sufficient to furnish a measure to meet such cases as may come before you since, after all, I think most cases will have to be decided upon their own peculiar facts.

INDIANA STATE TEACHERS' RETIREMENT FUND: Eligibility of Superintendent of Muscatatuck Colony to receive annuity.

Whether principal of Ft. Wayne State School is a member of the Fund.

January 22, 1943.

Mr. Robert B. Hougham,
Executive Secretary,
Indiana State Teachers' Retirement Fund Board,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of January 19, 1943, requesting an official opinion in answer to the following question:

"The superintendent of the Muscatatuck Colony has completed 35 years of service in the public schools of Indiana, prior to his appointment to the Muscatatuck post, and under the retirement fund law he is entitled to an annuity, having left the public school service. Is he eligible to receive such annuity at the same time that he is employed as superintendent of the Colony?"

The appropriate provision of the Statute bearing upon this subject is Subdivision (i), Section 28-4511, of June, 1942, Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated, 1933, which provides as follows:

"Any person coming under the provisions of this act who shall have rendered thirty-five (35) years or

more teaching service in the public schools of the state and who ceases to be in the employ of the public schools of the state, for any cause, shall be entitled to an annuity * * *."

The question, for all practical purposes, is as to whether the Superintendent of the Muscatatuck Colony, by accepting that position, has ceased to be in the employ of the public schools of the state. I think the answer to this question is very apparent. In my opinion he is not in the employ of the public schools of the state by virtue of his appointment as Superintendent of the Colony, and unless he has some other employment, which could be classified as employment by the public schools of the state, he would be entitled to the annuity.

You submit the further question which concerns the Principal of the Ft. Wayne State School. It is stated that during the current school year a new principal has been employed at the school who is not a member of the retirement fund. It is further stated that she does no teaching, but is fully occupied with supervisory duties relating to the school. The question is as follows:

"Is it necessary that she become a member of the retirement fund?"

The answer to this question is found in Subdivision (a) of Section 28-4511, *supra*, which designates the members and beneficiaries of the fund. Without reciting all of the provisions of this subdivision of the section, a reading of it reveals the fact that if such principal is a member of the fund, the authority for so holding must be found in the following language:

"* * * the legally qualified and regularly employed teachers in state benevolent, charitable, and correctional institutions whose teachers devote their entire time to teaching * * *."

According to the statement of facts given the Principal of the Ft. Wayne State School does no teaching at all. Therefore, it is not necessary for her to become a member of the retirement fund.