General in his opinion of November 16, 1942, as to why an attendance officer is still performing services of the school and has not ceased to be in the employment of the public schools of the state for any cause, as required by Section 28-4511, supra, which is a prerequisite to be entitled to receive annuity benefits under the teachers' retirement fund act.

In conclusion, I reaffirm the previous opinion, written by the Attorney General, to your question, and in my opinion your question must be answered in the affirmative for the reason that under the present statutes such teacher is still an employee of the public school system of Indiana, under the classification of a teacher.

DEPARTMENT INSPECTION AND SUPERVISION OF PUBLIC OFFICES: Interpretation of Chapter 55 of the Acts of 1943 with reference to the benefits of burial allowance for members of the armed force of World War II. Effect of medical discharge.

December 27, 1943.

Hon. Otto K. Jensen,
State Examiner,
Department of Inspection and Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of December 11, 1943, received as follows:

"This department has received many inquiries regarding Chapter 55, Page 138, Acts 1943, the same being Sec. 59-1009, Burns' Ind. Statutes Replacement 1943, and we are desirous of receiving an official opinion on the following:

"1. Are the members of the armed forces, now engaged in World War II, resident of any county in the State of Indiana, who die or have died while in such service, entitled to receive the benefits of the burial allowance of not to exceed $75.00 and, if neces-
sity requires it, not to exceed $25.00 for the purchase of a burial place?

"2. (a) Are those who have been members of the armed forces of World War II who have received a 'medical discharge' in the event of death after receiving the discharge, entitled to the benefits of the allowances above mentioned?

"(b) Would their wives or widows be entitled to the same?

"3. (a) Are the women who serve in the Nursing Corps, the Wacs, Waves and Spars entitled to the same benefits in the event of their death?

"(b) In the event of the death of a husband of any of the above, would he be entitled to the benefits?

"4. Is the Act retroactive so that it would apply to those of World War II who died (a) before the passage of the Act and (b) before the effective date of the Act?

"5. Does the Act entitle a city, which for many years has had set aside a plot for the graves of soldiers where other facilities were not available, the right to file a claim for the burial lot?"

Section 59-1009, Burns' 1943 Supplement, being Sec. 1, Ch. 55 of the Acts of 1943, is as follows:

"Whenever any honorably discharged soldier, sailor or marine, who may have at any time served as a regular or volunteer soldier, sailor or marine, in the army or navy of the United States, or the wife, or widow of any such soldier, sailor or marine, resident of any county of this state, other than the inmates of the Indiana State Soldiers' Home or the National Military Home in Grant County, or whenever any member of the armed forces engaged in World War II, resident of any county of this state, has died or shall die hereafter, upon claim filed by any interested person with the board of commissioners of the county, stating the fact of such service, death and discharge, and that the body has been buried in a decent and respectable manner in a cemetery or burial ground, such board of commissioners shall investigate, hear and determine
such claim. Like other claims, filed for allowance by
them, and if, the facts averred are found to be true,
such board shall consider, also, the tribute of respect
due to such soldier, sailor or marine and make allow-
ance of such claim in a sum not exceeding seventy-five
dollars ($75.00) for service rendered and material
furnished in care of such body and such burial: And
be it further Provided, That in case of such death and
burial, it is averred in such claim and proven that
from actual necessity a burial place not to exceed the
sum of twenty-five dollars ($25.00) for the body of
such soldier, sailor or marine, or the body of the wife,
or widow of such soldier, sailor or marine, or for the
body of any such member of the armed forces who was
engaged in World War II, was purchased in any ceme-
tery, such board shall make further reasonable allow-
ances in payment for such burial place, and such allow-
ance in either or both cases shall be paid from the
funds of such county, as now provided by law.”

Attention is called to the fact that the beneficial provisions
of said Act extends to “any member of the armed forces en-
gaged in World War II,” and as to a burial place provides
for “a burial place * * * of any such member of the armed
forces who was engaged in World War II.” It is, therefore,
my opinion that your first question should be answered in the
affirmative.

In answer to your second question, number 2(a), I wish
to advise the beneficial provisions of said statute would extend
to a member of the armed forces of World War II who has
received a “medical discharge” providing such medical dis-
ccharge was an honorable discharge from such service.

In answer to your question, number 2(b), it is my opinion
the wives or widows of such person would be entitled to the
benefits of the Act providing such medical discharge was in
fact an honorable discharge.

Question number 3(a) is answered in the affirmative, due
to the provision in said Act that the benefits extend to “any
member of the armed forces engaged in World War II.” In
my opinion members of the Nursing Corps, Wacs, Waves and
Spars would be in that classification. As to members of the
Nursing Corps, attention is further called to the following statutes:

Section 59-1007a, Burns' 1943 Supplement, being Sec. 1, Ch. 254, Acts of 1943, provides as follows:

"All persons who have served, or who are now serving, or who may hereafter serve as a part of the armed forces of the United States in the present war with Germany, Italy or Japan, or any of their allies, and the wives, widows, and children of such persons, who are residents of the state of Indiana, shall have and are hereby given all of the rights and privileges now held and enjoyed by soldiers, sailors, nurses and/or other veterans, their wives, widows and children, of the first world war, under existing statutes or under any statute which may hereafter be enacted."

Section 59-1008, Burns' 1933, being Sec. 1, Ch. 180, Acts of 1933, provides as follows:

"Every nurse who served as such during the World War with any of the armed forces of the United States and who was honorably discharged from service, and who is a resident of the state of Indiana, shall have and is hereby given all of the benefits, rights, privileges and immunities which are conferred by the law of the state of Indiana, upon and which are held and enjoyed by honorably discharged soldiers, sailors and marines who served in the World War, and such benefits, rights, privileges and immunities as are now by the law of the state of Indiana conferred upon any representative, heir or relative of any honorably discharged deceased soldier, sailor or marine who served in the armed forces of the United States during the World War are hereby conferred upon the like representative, heir or relative of any such deceased nurse."

Each of the above statutes should be considered in pari materia and a reading of the three sections of the statute clearly indicates an intention to include members of the Nursing Corps.

Your question, number 3(b), in my opinion should be answered in the negative. Neither of the foregoing statutes
makes such provision for the husbands of any such member of the armed forces, and only makes provision for the wife or widow of such member of such armed forces.

In answer to your fourth question, I wish to advise that in my opinion it should be answered in the affirmative as to both clause (a) and (b). Section 59-1009, Burns' 1943 Supp., supra; extends such benefits to "* * * any member of the armed forces engaged in World War II, * * * (who) has died or shall die hereafter, * * *." The legislature has therefore clearly expressed its intention to include those who died prior to the passage of the Act and those who die after the passage of the Act, and in my opinion, this provision is legal.

Your fifth question does not contain sufficient facts to give a definite opinion thereto. Attention is directed to that part of Section 59-1009, Burns' 1943 Supp., supra, which makes provision for the payment of a claim for such a grave if it "was purchased in any cemetery, * * *." The plan under which such cemetery was established may control. If there had already been a dedication of such cemetery for such purpose under a trust agreement, or by action of the city council, the benefits of the Act may not extend to such city for a grave furnished in such cemetery.

BUREAU OF MINES AND MINING: Duties of Superintendent, or Coal Mine Manager, in connection with shot firers.

December 27, 1943.

Mr. Henry S. Wallace, Director,
Bureau of Mines & Mining,
Division of Labor,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in response to your request of December 16th, 1943, for a construction of the following statute which prescribes the duties of the Superintendent, or Coal Mine Manager, in connection with shot firers: