the law, to undertake the instruction of these children. There is no privity of contract between the school corporation and the tubercular institution in these cases. The liability is that of the school corporation and a tubercular institution accordingly would have no claim. The claim would be in favor of the teacher or instructor hired by the school corporation to render these instructions.

**QUESTION 3.**

"Are they entitled to make such a claim for the period beginning March 4th?"

My answer to this question must also be in the negative. As they (the tubercular institutions) are not entitled to make any claims for such services, it is immaterial when, if ever, such a claim should be presented.

---

**STATE BOARD OF ACCOUNTS: STATE EXAMINER:** Contributions applicable under Teachers' Retirement Fund Act where service not continuous.

**TEACHERS' RETIREMENT FUND:** Contributions applicable under this Act where service not continuous.

August 11, 1941.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion with respect to certain questions arising under the Teachers' Retirement Fund Act respecting certain actuarial aspects of the law in cases in which the teaching service is not continuous from the date when service begins. This question applies not only in cases of intermittent service after the Act became effective and after the teacher became a member of the Fund, but applies also in cases where prior service is allowed under the express terms of the Act.

Section 28-4506 of Burns' Indiana Statutes Annotated 1933, June, 1941, Cumulative Pocket Supplement contains a table
providing the annual contributions to be made by teachers, based on the age at beginning service and taking into consideration withdrawals and death benefits prior to the maturity of the annuity as fixed by the Act. As indicated, this table sets out the rate of annual contributions of the teacher based upon an age at beginning service ranging from 18 years to 40 years. The figures thus set out in the statute constitute the rates as modified by adjustments made as the result of an actuarial investigation during the year 1937 and every four years thereafter.

Section 28-4506, Burns' Indiana Statutes Annotated, 1933, June, 1941 Cumulative Pocket Supplement, Sub-divisions (b) and (c).

There is nothing in the above subdivisions of Section 28-4506, supra, which states that the rates therein set out are based upon a continuous service from the time of beginning, but such is obviously the case, since it would be impossible to fix a rate at any given age of beginning of service which would fit continuous service as well as service with breaks ranging from one to ten or fifteen years, as the case might be; and it is hardly conceivable that the Legislature would have enacted a law which otherwise interpreted than as I have suggested, would give rise to so many and varying discriminations. As I understand it, you are in agreement with this interpretation so far as it goes, but are uncertain as to what becomes of the numerous cases where continuous service does not exist but where the service is broken up by numerous and varying periods during which the teacher is not in the service of the public schools. This doubt arises primarily in view of the language set out in Section 28-4511 of the Teachers' Retirement Fund Act, which reads as follows:

"In computing years of service, as provided in this act, the board of trustees may include service as a public school teacher rendered outside of the state not however in excess of ten (10) years for such outside service nor for more than one-fourth (1/4) of the years of service claimed for retirement as a portion of the service necessary before any teacher shall be entitled to be paid any benefits under this act. The age which the teacher had attained at the time of beginning service in the earliest year for which credit is granted shall be taken as the
age of beginning service as provided by this act and arrearages based on that age of beginning shall be paid for the years of service for which credit is granted; Provided, That nothing in this section shall affect the amount or amounts to be paid into such retirement fund by teachers before being entitled to an annuity. * * *"

In my opinion, however, the above provision deals primarily with the arrearages to be paid in case of claims for prior service rather than the rate to be paid where there has been a lapse of time between prior service and the beginning time of the later service. The statute in express terms states that

"The age which the teacher had attained at the time of beginning service in the earliest year for which credit is granted shall be taken as the age of beginning service as provided by this act. * * *"

But that is only part of the statement. This statement is only true as the basis for the determination of arrearages to be paid and, in my opinion, does not profess to fix the age of beginning service for the determination of future assessments in the case of a lapse of time between the prior service claimed and a later service being performed.

The same thing is noticeably true from a consideration of sub-divisions (e) and (f) of Section 28-4506, supra, which provides for the withdrawal by teachers leaving the service of the public schools—the withdrawal of part of the contributions already made, and later provides that upon a return to the teaching employment that these withdrawals shall be repaid and the teacher "shall thereupon have credit for all the service comprehended in the amount so withdrawn and repaid."

Here is a case giving recognition to the right of a teacher to cease teaching and, after the lapse of a number of years, to begin teaching again and by repaying his withdrawals obtain credit for the prior service; but it does not profess to state what the rate will be for the remainder of the service.

From a consideration of the entire Act it seems to me that the rates as specifically set up apply in terms only to a case of continuous service, and where prior service is claimed and granted to a service immediately following that granted and continuously thereafter, leaving the rates as applicable to all other cases to be fixed in harmony with the table set up in the
Act so as to produce the teacher's share of the annuity provided without favor and without distinction. The problem thus presented is not a legal problem but an actuarial problem to be worked out in a manner consistent with the table of rates as fixed in or according to the rate laid down in the statute.

____________________________________

AUDITOR OF STATE: Sale of island in Wabash River at Lafayette—procedure for making conveyance.

August 13, 1941.

Hon. Richard T. James,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. James:

I have before me your letter requesting an official opinion as to what statute, if any, governs the sale or giving of title by the Auditor of State to an island formed in the Wabash River at LaFayette, Indiana, since 1913. You state that Mr. Frank McCoy of LaFayette has lived on the island since May, 1940; that the island began to form shortly after the 1913 flood and has continued to increase in size until, at the present time, it contains five acres. The island is located just south of the railroad bridge which crosses from LaFayette, Indiana, to West LaFayette.

Assuming that the Wabash River at the point indicated, is navigable, the island thus formed belongs to the State of Indiana. I quote from Thompson on Real Property, Vol. 5, page 302, as follows:

"Islands formed in navigable rivers and lakes do not belong to the shore owners, but to the owner of the bed of the river or lake, ordinarily the state."

Also from Vol. 1, page 125, of Thompson on Real Property, note the following language:

"Generally, in this country, the ownership of lands covered by navigable streams is regarded as resting in the state."