

are to be calculated, is the amount of the actual payment by the teacher, even though included therein is an item of interest. It is true that the fund does not get the benefit of the interest item included in the payment as it does where the payments have been made in the regular way beginning with the time when the teacher actually began teaching. Neither does the fund incur the liability unless membership in the fund is elected and the amount of the arrearages for prior service claimed have been ascertained. Of course, this total contribution cannot be withdrawn with interest accruing added, but the interest which enters into the process of determining the amount of arrearage in the first place, it seems to me, is a part of the contribution and should form the basis for the application of the percentage of withdrawals, as above authorized. It is my opinion, therefore, that in the case assumed in your last question the withdrawal rights should be based on the actual contribution.

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**MILITIA: Defense force to replace National Guard. Power of Governor to organize.**

November 13, 1940.

Hon. M. Clifford Townsend,  
Governor, State of Indiana,  
State House,  
Indianapolis, Indiana.

Dear Governor:

This will acknowledge receipt of your letter of recent date in which you request an official opinion on the following question:

“May the Governor legally create a defense force for the State of Indiana to replace the National Guard when it is called into federal service? May the Governor take such action by executive order?”

I direct your attention to Sections 1 and 5 of Article 12 of the Constitution of Indiana which sections recite as follows:

“Section 1. Organization. The militia shall consist of all able-bodied male persons, between the ages of eighteen and forty-five years, except such as may be

exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped, and trained, in such manner as may be provided by law."

"Section 5. Sedentary and active. The militia may be divided into classes of sedentary and active militia, in such manner as shall be prescribed by law."

Sedentary militia is defined by the statute as follows:

"The sedentary militia shall consist of all male persons subject to bear arms under the Constitution of the State of Indiana, who do not belong to the active militia. (Acts of 1895, Chap. 53, Sec. 2, p. 102.)"

Section 45-102 Burns' Indiana Statutes Annotated, 1933.

Consequently, since all able-bodied male persons between the ages of eighteen and forty-five years (with certain exceptions) are already members of the militia, it is suggested that the information you desire is the organization and service of the sedentary militia.

Section 45-105, Burns' Indiana Statutes Annotated, 1933, recites in part as follows:

"\* \* \* *The governor shall have power to alter, divide, annex, consolidate, disband or reorganize any organizations, department or corps and create new organizations, departments or corps when required or whenever in his judgment the efficiency of the state forces will be thereby increased, and he shall have power to change the organization of any organization, department or corps so as to conform to any organization, system of drill or instructions now or hereafter prescribed by the laws of the United States for the organization of the national guard and for that purpose the number of the officers and noncommissioned officers of any grade in any organization, department or corps may be increased or diminished and the grades of such officers and noncommissioned officers may be altered to the extent necessary to secure such conformity. The governor shall have power to fix and*

*from time to time to alter the maximum and minimum number of enlisted men which shall form part of any organization, department or corps. The aggregate forces of the national guard in time of peace, fully armed, uniformed and equipped, shall be not more than are authorized by the Militia Laws of the United States.*

*"The governor shall have power to order officers, enlisted men and members of said militia for the performance of duty \* \* \*."*

It, therefore, seems unnecessary for me to decide whether or not you may legally create a defense force for the State of Indiana, inasmuch as such a force is already in existence. That you may convoke and organize the sedentary militia seems beyond question.

Since this authority is specifically granted to you by statute, it is my opinion that such action may be taken by Executive Order.

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**TREASURER: ALSO UNEMPLOYMENT COMPENSATION DIVISION: Whether employees of Indiana Unemployment Compensation Division are protected by the Indiana Workmen's Compensation Act. Whether Workmen's Compensation payments are Administration expense.**

November 18, 1940.

Hon. Joseph M. Robertson,  
Treasurer of State, and Chief Administrative Officer,  
Department of Treasury,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of November 14, 1940, requesting an official opinion as to the liability of the Indiana Unemployment Compensation Division under the Workmen's Compensation Act of Indiana. The questions concerning which you desire the official opinion of this Department may be summarized as follows:

"(1) Are the employees of the Indiana Unemployment Compensation Division protected by the Indiana