

propelling motor vehicles on the highways from that which was not so used, if such gasoline were all in one service tank. Therefore, if the gasoline used for propelling the motor vehicle on the highways came out of the same service tank as that used for other commercial purposes, no attempt at allocation was made and all was treated as taxable and none subject to refund.

I think this is emphasized by the character of the proof which the Legislature required. It will be noted that the statement which is to be filed and which forms the basis of the refund, shall be supported by the oath of the person seeking the refund and accompanied "by the original invoices showing the payment of such purchases." In other words, it was contemplated that when the purchase was made it definitely became a purchase for transportation purposes on the public highways or for some other commercial use as to which a refund could be made.

The statute forms the basis for your authority to make a refund and, I do not think you are authorized to substitute for the proof required by the statute some other evidence of an excepted use.

As to what the Legislature may say when its attention is called to the matters embraced in your letter no one, of course, can tell, but until and unless the Legislature authorizes you to accept the meter readings as proof of an excepted use, or gives you a broader discretion than the present statute gives you, I think you should adhere to the statute and make refunds only in such cases as are expressly provided for therein.

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**TEACHER'S RETIREMENT FUND: Whether teachers electing to come under the 1937 and 1939 amendments may thereafter withdraw such election.**

April 23, 1940.

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

Dear Sir:

I have before me your letter in which you state, among other things, that a number of requests have been received by

the Board for permission to withdraw applications filed with the Board under which members of the fund have elected to accept the provisions of the 1937 and 1939 amendments to the Retirement Fund Law. You request an official opinion as to whether the Board has authority to permit such withdrawals.

This question arises by reason of certain amendments to the Teachers' Retirement Fund Act enacted in 1937 and 1939. The last literary paragraph of the 1939 amendment provides as follows:

"Any teacher whose contractual rights had vested in the fund prior to July 1, 1939, may elect prior to December 31, 1942, to accept the benefits of this act as amended in 1937 and thereafter. In case any such teacher shall not elect to accept such benefits conferred by the said amendatory acts he or she shall continue in prior contractual rights in the fund."

Acts of 1939, p. 78.

The effect of the above provision as respects the class of teachers defined in the first sentence thereof, is to leave them as respects teachers' retirement fund obligations and benefits in exactly the same position as if the amendatory legislation of 1937 and 1939 had not been passed, subject only to the right of election therein set out whereby they may elect prior to December 31, 1942, to accept the benefits of the amendatory acts.

No statement is contained in the Act as to whom the election is to be communicated or as to what it is to contain, or the form in which it is to be presented but, I think, it is clear that the election would have to be communicated to the Board of Trustees of the fund since they are its administrators; and it seems to me too, that it would have to take such form as to indicate clearly that such person was rejecting the prior provisions and accepting the new provisions of the 1937 and 1939 amendments. In other words, the State, through the Board, is saying to the teachers in the above class, in effect, that there is no intention to disturb the contractual relations already existing but a new offer is made which the teacher may either accept or reject. If he does nothing prior to December 31, 1942, such inaction is tantamount to rejection of the 1937 and 1939 amendments. If, however, he desires to come under the

1937 and 1939 amendments all that he has to do is to make his election prior to December 31, 1942.

The offer by the State, when accepted by the teacher, becomes the contract and, I think, both parties are bound by it, and as to the parties so electing the provisions of the previous act no longer apply. I do not think it is contemplated that a teacher having once elected to come under the 1937 and 1939 Acts can thereafter withdraw that election. If a teacher can do so once he can do so any number of times up to December 31, 1942, thus having the fund continually in confusion.

I do not find anything in the act which authorizes the Board either to receive the election,—although as already stated I think it is evident that they may so do,—or to permit its withdrawal, but I think the legal effect of electing to come under the 1937 and 1939 Acts is to make the provisions of those Acts applicable and binding, and when they once become applicable and binding there is no authority anywhere, except by and through the consent of all parties concerned, whereby that status can be changed. In my opinion the Board has no authority to accept a withdrawal of an election under the 1939 Act or thereafter to make any change in the liabilities and benefits accruing to the teacher so electing to come under the amendatory Acts differing from the liabilities and benefits as set up when the election was made.

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**POLICE, INDIANA STATE: State Police Officer, has right to break seal of shipment on interstate operated truck to make search following lawful arrest.**

April 24, 1940.

Mr. Don F. Stiver,  
 Superintendent, Indiana State Police,  
 State House,  
 Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your inquiry of recent date as follows:

“Kindly furnish me with an official opinion as to the legal right of a State Police Officer, following a lawful arrest of an interstate operated truck to break the seal