

it the receiving of any of the above? It seems to me that it requires an unreasonably wide stretch of the imagination to so conclude. The board member receives nothing directly *on the contract or for the letting of it*. His only possible receipt is through the route of a dividend on his ten dollar holding, which the association may pay in part out of the profits derived from this contract if a profit is realized; and the amount of this dividend is limited by law so that it is problematical whether any part of the profit, if any, on this contract would ever be returned to stockholders in the form of dividends. It may possibly be returned to patrons in the form of savings. The receipt is so problematical, so uncertain and so small that, in my opinion, it can not be considered as a receipt at all *within* the meaning of the above statutes. Stock ownership in the contracting corporation by a member of the board may be such as to invalidate the contract upon grounds of public policy or may present a case of such interest as to result in a violation of the above statute, but under the facts of the case as stated herein I am of the opinion that the letting of the contract to the low bidder would not, on account of the very small stock ownership of two members of the board, be a violation of said statute.

Burns Indiana Statutes Annotated, 1933, Section 15-1613.

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**ACCOUNTS, STATE BOARD OF: Teachers' Retirement Fund  
Act of 1937, effect of same as to teachers who were mem-  
bers of the fund prior to the 1937 amendment.**

October 26, 1937.

Hon. William P. Cosgrove,  
State Examiner,  
State Board of Accounts,  
Indianapolis, Indiana.

Dear Mr. Cosgrove:

I have before me your letter referring to the 1937 amendments to the State Teachers' Retirement Fund Act and submitting the following questions:

"(1) Will it be possible for a teacher who is paying the assessment as set out in section 9 of the Teach-

ers' Retirement Fund Act as amended by chapter 189, Acts 1937, to continue to pay the same amount and retire on an annuity of \$700.00?

"(2) If there is no change made in the assessment rate as set out in section 9, effective July 1, 1939, can a teacher who has paid the annual assessment for thirty-five years retire and receive \$960.00?

"(3) Can a teacher who has paid for 20 years under the Act in effect now receive an annuity based on the provisions of the Act which goes into effect July 1, 1939, without teaching during the school years 1937-38 or 1938-39, provided withdrawal is not made before July 1, 1939?

"(4) Can a teacher who has withdrawn from the fund after 22 years of service obtain a school after July 1, 1939, repay the withdrawal and retire under the provisions of the new Act effective July 1, 1939?"

Three rules of statutory construction as applied to amendments to statutes suggest themselves as having a bearing upon the correct answer to the questions submitted.

First, the rule is well settled that "the amendment of a statute by a subsequent act operates from that time precisely as if the subject-matter of the amendment had been incorporated in the prior Act at the time of its adoption; for the amendment becomes a part of the original Act, from the date such amendment is in force, whether it be the change of a word, figure, line or entire section, or a recasting of the whole language."

The above language is quoted from the case of *Stiers v. Mundy*, 174 Ind. 651 at page 655. See also, to the same effect, the following cases:

*State, ex rel., v. Adams Express Co.*, 171 Ind. 138 at p. 141;

*Concrete Steel Co. v. Metropolitan, etc., Co.*, 95 Ind. App. 649 at p. 657;

*Atz v. City of Indianapolis*, 87 Ind. App. 580 at p. 585.

The second rule which I think has a bearing in this matter is the rule that an amendment of a section of a law "to read

as follows" operates to repeal all of the section amended not embraced in the amended section of the law.

Smith v. State, 194 Ind. 686 at p. 688;

State, ex rel., Nicely v. Wildey, et al., 209 Ind. 1 at p. 5;

Feibleman v. State, ex rel., 98 Ind. 516 at p. 518.

In the last case above cited the court said on page 518:

"It is well settled by the decisions of this court that where a section of a statute is amended, it ceases to exist, and is superseded by the section as amended."

In the case of Smith v. State, *supra*, at p. 688 the court said:

"The amendments are accomplished in both instances by amending the sections of the acts to be amended, 'to read as follows.' An amendment of a section of a law 'to read as follows' operates to repeal all of the section amended not embraced in the amended section of the law. Lewis' Sutherland, Statutory Construction (2d ed.) Sec. 337. All of Sec. 1, Acts 1921, p. 736, which is not embraced in the section as amended (Acts 1923, p. 70) is repealed."

The 1937 amendments of the State Teachers' Retirement Fund Act are accomplished by amending specifically numbered sections of the former Act "to read as follows," so that this rule clearly applies.

Acts of 1937, page 906 et. seq.

The third rule which I think has a bearing is the statutory rule which reads as follows:

"\* \* \* And the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute, unless the repealing Act shall so expressly provide; and such statute shall be treated as still remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability."

Burns Indiana Statutes Annotated (1933), Sec. 1-307.

Applying the second and third rules above referred to, I think the first question should be answered in the affirmative. The annuity as provided in the 1937 Act is \$700.00. However, as a practical matter, I do not see how this question or the answer thereto can be of any particular consequence after January 1, 1939, when the amended Act becomes effective, since by its terms the annuity is \$960.00, the statutory payments by teachers and the authority to change them being the same in both acts. That is, it is hardly conceivable that a teacher who could claim \$960.00, would insist upon the payment of the lesser amount.

The answer to the second question is in the affirmative. While amendments are ordinarily given a prospective construction, unless otherwise indicated, the language of amended section 14 sufficiently shows that the additional benefits provided in amended section 9 are to accrue to all persons who are members of the fund when the amendment becomes effective on July 1, 1939.

Acts of 1937, pp. 911 and 912; see also subsection (d) of amended Section 9, Acts of 1937, p. 909.

In answering your third question, I think all liabilities accruing prior to July 1, 1939, when settled, must be settled upon the basis of the Act prior to the 1937 amendment which required not less than 25 years of service to entitle any teacher to claim a proportionate annuity. If such teacher ceased teaching in 1936 after only 20 years of service, the liability of the fund became fixed and I do not think that waiting until July 1, 1939, when the amendment became effective, would affect that liability. The answer to your third question is in the negative.

The answer to your fourth question is in the affirmative. Both the Act amended and the amended Act authorize the repayment of a withdrawal upon beginning again to teach upon substantially the same terms as to reinstatement as a member of the fund. When thus reinstated, the member is entitled to the benefits of the Act in force at the time the benefits accrue.