OFFICIAL OPINION NO. 12

June 10, 1969

Mr. John A. Ruby
Executive Secretary
Public Employees' Retirement Fund
Room 501—State Office Building
Indianapolis, Indiana 46204

Dear Mr. Ruby:

This is in response to your letter in which you stated the following:

> "* * * the Board of Trustees of the Public Employees' Retirement Fund of Indiana requests a clarification of the provisions of the Acts of 1969, Chapter 412, in regard to the eligibility of deputy prosecuting attorneys to be included under the provisions of the Public Employees' Retirement Fund of Indiana for services prior to the effective date of said act and subsequent to January 1, 1946."

You also stated in your letter that the following request had been received by you in this connection:

> "Pursuant to Acts of 1969, Ch. 412, request is hereby made for creditable service for retirement purposes under the Public Employees' Retirement Fund for the period from May 1, 1961, to December 31, 1962, during which time I was employed as a Deputy Prosecuting Attorney for the 19th Judicial Circuit of the State of Indiana (Marion County)."

Accordingly, this opinion considers your complete inquiry. Acts of 1969, Ch. 412, containing an emergency clause and becoming effective upon passage, amended the definition section of the Public Employees' Retirement Act, and established the classes of persons who may become members of the Public Employees' Retirement Fund.

It is my opinion that the 1969 amendment made all deputy prosecuting attorneys members of the Public Employees' Retirement Fund, giving them credit for prior service as such officers. Prior to the 1969 amendment, the Act had been ad-

ministratively interpreted to exclude from membership deputy prosecuting attorneys whose salaries were paid by counties and not by the State of Indiana.

The 1969 Act changed the definition of "employee" now to include "prosecuting attorneys and all deputy prosecuting attorneys of the various judicial circuits, whether their compensation is paid by the state or a county * * *"

Further, the Act now provides that:

> "* * * the state shall be considered the employer of all prosecuting attorneys and deputy prosecuting attorneys for the purposes of this act and Provided further, That any prosecuting attorney, or deputy prosecuting attorney who has before the date of this amendatory act and while serving as such officer made contributions and has had contributions made for him under this act by a county, a judicial circuit or the state as his employer, shall receive credit for such service under this act."

The fact that this definition specifically provides for prior service credit for all prosecuting attorneys and deputy prosecuting attorneys who have previously made contributions, and for whom contributions have been made, raises the question of whether prior service credit may be given for such service for which no contributions have been made.

In construing an act, the prime object to be considered is the intent of the Legislature. This intent is to be determined by looking at the Act as a whole.

In Stout v. Board of Commissioners of Grant County (1886), 107 Ind. 343, 8 N. E. 222, the Supreme Court stated:

> "* * * But the legislative intention, as collected from an examination of the whole, as well as the separate parts, of a statute, will prevail over the literal import of particular terms, and will control the strict letter of the statute, where an adherence to such strict letter would lead to an injustice, to absurdity, or to contradictory provisions. *Mayor, etc.* v. *Weems,* 5 Ind.

> 547, *Middleton* v. *Greeson,* 106 Ind. 18, and *Miller* v. *State ex rel.,* 106 Ind. 415."

See also: Gilson v. The Board of County Commissioners of Rush County (1891), 128 Ind. 65, 27 N. E. 235.

Section 6a of the Public Employees' Retirement Act, as amended by Acts of 1957, Ch. 232, Sec. 3, amended by Acts of 1959, Ch. 376, Sec. 2, and as found in Burns' (1961 Repl.), Section 60-1606(a), reads, in part, as follows:

> "Each employee of the State of Indiana * * * in active service on the effective date or date of eligibility whichever is later, as provided in section 5 * * * who shall have become a member of the fund, shall receive credit for all service rendered his immediate employer prior to such date in any position and in any department in the service of such immediate employer for which the employee shall have received compensation."

"Compensation" is defined by the 1969 amendatory Act to include salary payments from county funds to Public Employees' Retirement Fund members considered employees of the state for the purposes of the Act. The words "immediate employer" (the definition of which was not changed in the 1969 Act) is defined as the employer receiving the services of the employee at the time he became a member of the Fund.

In the case of deputy prosecuting attorneys paid entirely from county funds, the State is now the "immediate employer" of such officers for the purposes of the Public Employees' Retirement Fund Act.

It is clear that under the 1969 amendatory Act, any incumbent deputy prosecuting attorney who now becomes a member of the Fund for the first time will receive prior service credit for his prior services as such deputy prosecuting attorney.

The Legislature intended to give such service credit to incumbent deputy prosecuting attorneys, so it would not consistently deny credit for prior service as a deputy prosecuting attorney to present state employees, who are already members of the Fund, or former deputy prosecuting attorneys who

later become members of such Fund, but who have not received credit for such service.

It is my opinion, therefore, that the Legislature did intend that present state employees who are members of the Fund and/or former deputy prosecuting attorneys who later become state employees and members of the Fund, shall receive prior service credit for prior service as deputy prosecuting attorneys.