

1969 O. A. G.

OFFICIAL OPINION NO. 13

June 11, 1969

Mr. John A. Ruby
Executive Secretary
Judges' Retirement System
Room 501—State Office Building
Indianapolis, Indiana 46204

Dear Mr. Ruby:

This is in response to your request for an Official Opinion on certain questions submitted by you with regard to House Enrolled Act No. 1765 to be published as Acts of 1969, Ch. 208, Sec. 1, as found in Burns' (1969 Supp.), Section 4-7010.

This Act was effective upon signature of the Governor, March 13, 1969, affecting all judges who had otherwise qualified on said date, whether or not they were on the bench at that time.

The Judges' Retirement System was created by Acts of 1953, Ch. 157, as found in Burns' (1968 Repl.), Sections 4-7001 to 4-7025. Section 10 thereof was amended by Acts of 1965, Ch. 269, increasing the amount of benefits receivable and providing qualifications and entitlement of widows' annuities.

Section 10 was amended again by Acts of 1969, Ch. 208, reducing the minimum time for service in order for a participant to qualify, from twelve years to eight years, and increasing the maximum annuity from \$4,800 per year to "not to exceed ten thousand dollars" and added or changed certain other provisions. The 1969 amendment declared an emergency and was approved March 13, 1969.

At the outset, we are confronted with construction and interpretation of Section 10 as amended by Acts of 1969, Ch. 208, as to whether or not the 1969 amendment applies to all judges or only those made eligible by the amendment. The general rule is that to determine the effect of an amendment to a statute, one must consider the amendment as a part of the original act; and the entire act as amended must be given the same construction as if the amendment had been a part of the original act. *Cummins v. Pence* (1909), 174 Ind. 115,

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91 N. E. 520; Walsh, Treasurer v. State *ex rel.*, Soules (1895), 142 Ind. 357, 41 N. E. 65. See also Sutherland Statutory Construction, 3d Edition, Section 1935, and cases cited.

Concluding that the term "this act" as used in Acts of 1953, Ch. 157, Sec. 4, means the entire act, it, therefore, relates to the effective date of the Act of 1953 as amended and brought down to date by Acts of 1969, Chapter 208, when the amendment became a part of the law by the Governor's signature on March 13, 1969. See Walsh, Treasurer v. State *ex rel.*, Soules, *supra*.

Based on the foregoing reasoning, the answers to your specific questions are as follows:

"1. What is the effective date of the Act? What would be the first date a judge could begin receiving benefits under this new law?"

A. Acts of 1969, Chapter 208 became a law March 13, 1969, under an emergency clause, when the Governor signed the Act. Annuities for participants now receiving benefits should be adjusted, as provided for in the amendment, as of March 13, 1969. Annuities for participants not now receiving benefits would begin on the date the participants file written application, subject to provisions contained in A, B, C and D of the first paragraph of Section 10.

"2. Does a judge have to be on the bench on the effective date of the Act? Could Judge A who went off the bench December 31, 1968, who has 8 years of service, and qualifies for benefits in every other respect, qualify for benefits under H. B. 1765?"

A. A judge does not have to be on the bench on the effective date of the Act, but he must have otherwise qualified; and the fact that he went off the bench December 31, 1968, would not disqualify him for benefits if he had eight (8) years of service and in every other respect qualifies for benefits under the Act.

"3. Does H. B. 1765 affect the benefits of judges who are now receiving benefits under the Judges' Retirement System?"

A. Yes; a judge now receiving benefits under the Judges' Retirement System will be eligible for increased benefits provided for in Acts of 1969, Chapter 208, if he otherwise qualifies under the Judges' Retirement System.

"4. In computing a retirement benefit for a judge, should subsistence pay be considered part of his 'current annual salary?'"

A. Subsistence pay is *not* considered part of the current annual salary. See Burns' (1968 Repl.), Sections 4-7002 and 4-6913 for definition of "salary" and Section 4-6923 for definition of "subsistence."

"5. The new law states that benefits * * * shall be fifty (50) per centum of current annual salary being paid by the State of Indiana for the position which the participant occupied at the time of his retirement, not to exceed ten thousand dollars (\$10,000). Does the \$10,000 refer to the maximum benefit a judge may receive under the new law, or does the \$10,000 refer to the maximum compensation which may be used in the computation of a judge's benefits?"

A. Acts of 1969, Chapter 208, defines the limitation of the fifty per cent (50%) provided for in Acts of 1953, Chapter 157, and Acts of 1965, Chapter 269. Section 10 ties fifty per centum (50%) "to the current annual salary being paid by the State of Indiana for the position which the participant occupied at the time of his retirement" provided that said 50% shall not exceed ten thousand dollars (\$10,000) per annum, therefore limiting the maximum annual *benefit* a judge may receive to ten thousand dollars (\$10,000).

"6. In computing the benefit for a judge, the new law states '* * * current annual salary being paid by the State for the position which the participant occupied at the time of his retirement * * *' If Judge B had 10 years of creditable service with the Judges' Retirement System and left the bench 10 years ago and qualifies in every other respect for a benefit under the new law, what do we use for his current annual salary?"

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Do we use \$12,000 (the amount the judge was making 10 years ago when he left the bench) or do we use \$20,000 (the amount being paid to the judge who occupies the same position presently)?"

A. The example in your question assumes a current annual salary of twenty thousand dollars (\$20,000) paid by the State of Indiana for the position occupied by the judge at the time of his retirement; therefore, you would use the figure of \$20,000, and his annual maximum benefit could be no more than \$10,000.00.