OPINION 42

OFFICIAL OPINION NO. 42

November 21, 1968

TEACHERS—Status of one who returns to teach after being on retirement.

Opinion Requested by Hon. Harry B. Spanagel, State Representative.

You have asked for an interpretation of the following language in a subsection of the Indiana statute which created the Indiana State Teachers’ Retirement Fund and the Board which governs it:

"Provided: A teacher may return to teaching while on retirement and not lose his retirement status or benefits unless he earns more than fifteen hundred dollars ($1500) in any one school year unless said teacher shall in writing notify the secretary of the Indiana State Teachers’ Retirement Fund that said teacher is leaving such retirement status in which event due to the giving of such notice said teacher may return the amount drawn in annuity and receive credit for the amount so withdrawn and repaid as herein provided." Acts 1915, ch. 182, § 9, as last amended by Acts 1965, ch. 410, § 1(f), Burns IND. STAT. ANN. § 28-4506(f).

The proviso above quoted was added by the 1965 amendment. Your questions are as follows:

"a. Does the reference to ‘annuity’ mean that the portion of the retirement benefit deriving from the teacher’s contribution is to be returned or does it refer to the total retirement benefit received including the teacher’s annuity and the state pension?"
“b. How is the money to be received and credited by the retirement fund?

“1. Split between the teacher’s account and the state’s account?

“2. Received entirely by the teacher’s account?

“c. When said teacher returns to ‘retirement status’ after ‘leaving such retirement status’ is the new retirement benefit computed without reference to the previous retirement?

“d. Does the term ‘receive credit for the amount so withdrawn and repaid’ mean that all of the amount repaid shall be used in computing the annuity upon the subsequent retirement?”

You have informed me that your questions concern a formerly retired teacher re-employed on contract for a full school year at a salary of more than fifteen hundred dollars ($1,500.00) per school year.

The first (and not quoted) portion of subsection (f) above, as amended in 1965, applies to a teacher who leaves teaching in the public schools prior to retirement. It was interpreted in 1965 O.A.G. p. 181. As is stated in that opinion, teachers who participate in the Indiana State Teachers’ Retirement Fund on and after January 1, 1955 are subject to the provisions of the Indiana Public Employees Social Security and Supplemental Retirement Benefits Act (hereinafter referred to as the “Supplemental Benefits Act”), Acts 1955, ch. 329, as amended, Burns §§ 60-1911 to 60-1940, except to the extent that they are given other privileges by their original contracts of employment, or by other statutes, including the separate statute creating the State Teachers’ Retirement Fund, 1965 O.A.G. at 182.

Section 18 of the said Supplemental Benefits Act, as last amended by Acts 1965, ch. 416, § 1, Burns § 60-1929, provides the general rules for the re-employment of a retired employee. That section provides that retirement benefits cease after thirty consecutive school or working days of the re-employ-
ment; that contributions shall be made to the retirement fund by the employee beginning with the first day of his re-employment, and that upon subsequent retirement, he shall receive the retirement benefit which was in effect on the day of his re-employment plus an additional retirement benefit on account of the period of re-employment. The employee is not required or authorized to pay back into the fund the amount which he has been paid in benefits. The 1965 amendment to the section related only to computation of benefits upon retirement and the effect upon benefits of re-employment for less than sixty days. It did not change the relevant provisions of the section. Therefore, the relevant provisions speak as of April 1, 1959, the effective date of Acts 1959, ch. 325, § 1, which added the provisions to the section. See 1965 O.A.G. pp. 72, 76.

The State Teachers' Retirement Act amendment enacted by the 1965 General Assembly did, for the first time, authorize (although it does not require) a retired teacher, after informing the secretary of the fund in writing, to return the amount drawn in "annuity and receive credit for the amount so withdrawn and repaid as herein provided." Therefore, as I stated in my 1965 O.A.G. p. 60, the later enacted provisions of the State Teachers' Retirement Act govern, to the extent to which there is a conflict, and a retired teacher, when re-employed, may pay back the "annuity" paid to him, and receive credit therefor.

Your first question concerning the meaning of the word "annuity" in the State Teachers' Retirement Act presents some difficulty in interpretation. Does it mean that portion of the sum paid to the teacher as retirement benefits which derived from the teacher's contributions, or does it include as well the retirement benefit received from the State of Indiana's contributions?

Section 17(a) of the Supplemental Benefits Act, as last amended by Acts 1959, ch. 325, § 5, Burns § 60-1928(a), entitles retired employees to receive as benefits

"(1) a pension provided by the contributions of the employer, and (2) an annuity provided by the employee's contributions." (Emphasis added.)
The Teachers' Retirement Act, in contrast, uses the word "annuity" to include the benefits paid both from the teacher's and the State's contributions, e.g., Burns § 28-4506 and Acts 1915, ch. 182, § 14 (h), as last amended by Acts 1965, ch. 410, § 4, Burns § 28-4511 (h). In addition, Burns § 28-4506 (e) and (f) distinguish between the amount of the teacher's "regular contributions" and the "annuity." Since the section we are interpreting is an amendment to the State Teachers' Retirement Act, it is my opinion that the word "annuity" means the total retirement benefits paid, rather than only that portion of the amount of benefits received which were derived from the teacher's contributions.

The purpose of the proviso is apparently to permit the teacher to retire for the second time as though he had not retired previously. Under those circumstances, the General Assembly could not have intended to permit the teacher to pay into his own contributions account all of the benefits supplied from both that account and the account contributed by the State. At his second retirement, the employee would have a grossly inflated personal contributions account, based in part upon the State of Indiana's payments of retirement benefits to him from state-contributed funds, while the State would lose the benefit of all the money it had paid him. This General Assembly could not have intended, in my opinion. The money paid into the Teachers' Retirement Fund must be deposited in the two accounts in the proportions in which it was paid out from each account, and the teacher shall be given credit for the amounts deposited in each account. Thereby, the just interests of both the teacher and Indiana taxpayers are preserved.

When the teacher retires again, his retirement benefit should, in my opinion, be computed as though he were going on retirement for the first time. He will in effect, by repaying all of the retirement benefits he had previously received, have placed both himself and the State of Indiana in the position they would have been had he not retired the first time.