OPINION 3

OFFICIAL OPINION NO. 3

February 22, 1965

Mr. Earl M. Utterback
Executive Secretary
Indiana State Teachers’ Retirement Fund
506 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Utterback:

This is in reply to your letter requesting an Official Opinion relative to the creditability of an Indiana State Teachers’ Retirement Fund member’s teaching service with the Area Industrial Institute in Evansville, Indiana. Your question is as follows:

"Is Miss Hatlestad to be considered ‘a legally qualified and regularly employed teacher,’ and therefore eligible for membership in the Indiana State Teachers’ Retirement Fund, either as an active participating member of the Fund or as ‘other educational employment’?"

The excerpt enclosed from minutes of the Board of Trustees of the Indiana State Teachers’ Retirement Fund indicates that Miss Hatlestad was a member of the fund with ten [10] years’ creditable service before her current employment, as detailed in a letter which you received from the Superintendent of the Evansville-Vanderburgh School Corporation which reads, in part, as follows:

"Miss Hatlestad has been employed to teach basic education in the Manpower Development Training Program operated by the Evansville-Vanderburgh School Corporation in cooperation with the state and federal governments. She has been employed on an hourly basis to teach classes for as long as the program continues, which may be a matter of weeks, months, or years. She has not been given a contract, as is true of all other teachers in this program. We do not consider her as a regular member of our teaching staff since this is a special program operated out of grant funds which we receive through the state from..."
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the federal government. This grant fund has been made a part of our budget as instructed by the State Board of Accounts, but it is a fund in our budget that is an 'in-and-out' account and no appropriations are needed for payments made out of it."

The manpower development training program in which Miss Hatlestad teaches is, apparently, one authorized by the Act of Congress of March 15, 1962, Public Law 87-415, Title II, § 231, as amended, as found in 42 U. S. C. A. § 2601, which reads, in part, thus:

"The Secretary of Health, Education, and Welfare shall, pursuant to the provisions of this subchapter, enter into agreements with States under which the appropriate State vocational education agencies will undertake to provide training needed to equip persons referred to the Secretary of Health, Education, and Welfare by the Secretary of Labor pursuant to § 2582 of this title, for the occupations specified in the referrals. . . . Such State agencies shall provide for such training through public education agencies or institutions. . . . The State agency shall be paid 50 per centum of the cost to the State of carrying out the agreement, except that for the period ending June 30, 1965, the State agency shall be paid 100 per centum of the cost to the State of carrying out the agreement with respect to unemployed persons, and for the fiscal year ending June 30, 1966, the State agency shall be paid 66⅔ per centum of such cost. Such agreements shall contain such other provisions as will promote effective administration (including provision (1) for reports on the attendance and performance of trainees, (2) for immediate certification to the Secretary of Labor by the responsible training agency with respect to each person referred for training who does not have a satisfactory attendance record or is not making satisfactory progress in such training absent good cause, and (3) for continuous supervision of the training programs conducted under the agreement to insure the quality and adequacy of the training provided), protect the United States against loss, and assure that
the functions and duties to be carried out by such State agency are performed in such fashion as will carry out the purposes of this subchapter. . . .” (Our emphasis.)

42 U.S.C.A. § 2602 provides the Secretary of Health, Education, and Welfare with power to prescribe rules and regulations deemed necessary and appropriate to carry out the provisions of the above quoted Section 2601. According to 42 U. S. C. A. § 2612, the Secretary of Health, Education, and Welfare cannot approve any training program financed in whole or in part by the federal government unless satisfied no reduction in expenditure for vocational education and training in the State and locality of such federally financed program is related to it.

A federally financed manpower development training program not only is therefore distinguishable from, but is in addition to, vocational education in the State system of common schools. A local public education agency employing teachers and operating a manpower development program acts under federal authority and subject to federal supervision (whether exercised directly or by the agreed State agency) and does not otherwise so act.

The relationship of employer to employee, under common law rules recognized by the State of Indiana and by Federal Regulations, is one where the person for whom services are performed has the right to control and direct the individual who performs the services.

20 C. F. R. § 404.1004 as found in 42 U. S. C. A., Appendix;

_Prest-O-Lite Co. v. Skeel_, 182 Ind. 593, 596, 106 N.E. 365 (1914);


Although the Evansville-Vanderburgh School Corporation has apparent authority to employ teaching services in discharging duties imposed by its agency or subagency, such employment is not the same as its employment of teachers in the public schools pursuant to Indiana statutes. However, if
the right to control and direct teachers in the manpower development training program is granted to the Evansville-Vanderburgh School Corporation under an agreement between the Secretary of Health, Education, and Welfare as administered by the Indiana agency, then such teachers are, under usual common law rules, employees of the Evansville-Vanderburgh School Corporation.

The Acts of 1915, ch. 182, as amended, as found in Burns IND. STAT. ANN., § 28-4511, reads, in part, as follows:

“(a) The members and beneficiaries of this fund shall include any legally qualified and regularly employed teacher . . . in any of the public schools of this state or any persons employed by the trustee or board of trustees of a public school corporation who were qualified under this act previous to their election or appointment; . . . .”

If, as appears from information supplied with your request, Miss Hatlestad was a member of the Indiana State Teachers' Retirement Fund previous to her employment by the Evansville-Vanderburgh School Corporation to teach in the manpower development training program which such Corporation "operates" in cooperation with the federal and state governments, and if, under the usual common-law rules, her relationship with such corporation is that of its employee, then it is my opinion that Miss Hatlestad is eligible to be a member and beneficiary of the Indiana State Teachers' Retirement Fund while so employed.

In view of this Opinion, there is no need to determine creditability of this service as "other educational employment" unless it is determined that Miss Hatlestad is not, as a matter of fact, an employee of the Evansville-Vanderburgh School Corporation. If such determination is made, then please have reference to my immediately preceding Official Opinion where "other educational employment” credit in the Indiana State Teachers' Retirement Fund was under consideration.