tractors notice that this procedure may be followed at the option of the owner or awarding agency. By providing clear and adequate notice of this, the bidder submits his bid knowing that such assignment may come to pass and has indicated his acceptance of this procedure by submitting his bid.

Question No. 5 reads as follows:

> "Does the owner, such as a School Board, have the authority to insist upon certain materials or equipment for service standardization throughout their buildings?"

Such an "owner" would have the right to insist upon such standardization, but whether his justification for such insistence upon the use of a particular article of manufacture or brand name is valid or amounts to a plan to stifle free competition is a fact question which could not be answered herein.

OFFICIAL OPINION NO. 32

July 19, 1961

Mr. Earl M. Utterback
Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis 4, Indiana

Dear Mr. Utterback:

Your letter of June 9, 1961, has been received and reads as follows:

> "We request an official opinion on problems that have arisen in application of Senate Enrolled Act No. 86 passed by the General Assembly of 1961.
>
> "This act provides 'Every person who shall be receiving or eligible to receive a retirement benefit from the Indiana State Teachers' Retirement Fund shall be eligible to receive and shall receive from such fund an additional retirement benefit of an amount sufficient when added to his present pension benefit derived from

state sources and *his social security benefit earned as a teacher* to equal one hundred seven dollars and fifty cents ($107.50) per month from said sources for a person with thirty years of creditable service and a greater or less amount per month for more or fewer years of service, adjusted on an actuarial basis by the actuary of the Fund.'

"Our question is, shall the social security benefit considered, be the one that was available at time of retirement or the benefit that is now available?

"We may illustrate with the following actual case:

"The teacher retired June 1, 1960 with 22½ years of creditable service and had 12 quarters of teaching service. On June 1, 1960 he needed 17 quarters to qualify. On October 1, 1960, the Social Security law was amended and he was required to have only 10 quarters. There was therefore available to this member on October 1, 1960 a social security benefit based on his teaching service of $33.75 per month. Disregarding social security benefit, this member would receive an increase under the 1961 Act of $56.10 per month because his original retirement was based on a low salary and the increase granted in 1961 contained no reference to salary.

"Must the Fund pay this member an increase of $56.10 per month beginning July 1, 1961 under the theory that there was no social security available when he retired or must it deduct the $33.75 social security now available from his teaching service and pay him an increase of $22.35 per month?

"We have other cases slightly different but involving the same question. A member retired with insufficient quarters credit from teaching to receive social security benefits then or at any future date. Following retirement, the social security law was changed. The member is presently receiving *no* social security benefits but has fully insured status under social security and will when he reaches the age of eligibility receive a benefit based on his service as a teacher.

> "When this member reaches the age of eligibility, must the Retirement Fund recompute or remove the benefit granted under the 1961 law because of the social security benefit from teaching then available?"

Senate Enrolled Act No. 86, referred to in your letter, is Acts 1961, Ch. 281, Sec. 1, as found in Burns' (1961 Supp.), Section 28-4511c, which reads as follows:

> "SECTION 1. Acts of 1957, c. 219, s. 1, as last amended by Acts of 1959, c. 244, s. 1, is further amended to read as follows: Section 1. Every person who shall be receiving or eligible to receive a retirement benefit from the Indiana State Teachers' Retirement Fund shall be eligible to receive and shall receive from such fund an additional retirement benefit of an amount sufficient when added to his present pension benefit derived from state sources and his social security benefit earned as a teacher to equal one hundred seven dollars and fifty cents ($107.50) per month from said sources for a person with thirty (30) years of creditable service, and a greater or less amount per month for more or fewer years of service, adjusted on an actuarial basis by the actuary of the Fund. Said benefit shall be payable beginning July 1, 1961, and shall be paid from an appropriation from the General Fund of the State of Indiana from moneys not otherwise appropriated; and there is hereby appropriated for the Indiana State Teachers' Retirement Fund from moneys not otherwise appropriated in the General Fund an amount sufficient to satisfy the requirements of this act."

This act contains an emergency clause to be in force and effect on July 1, 1961. Prior to its amendment in 1961 said statute was Burns' (1959 Supp.), Section 28-4511c.

The statute in question should be construed in the way which is most beneficial to the recipients of the benefit. It has been said that such statutes must be construed in the most beneficial way the language will permit to prevent absurdity, hardship, or injustice; to favor public convenience and to oppose all prejudice to public interests.

Town of Brownsburg v. Trucksess *et al.* (1934), 98 Ind. App. 322, 329, 185 N. E. (2d) 315;

1954 O. A. G., page 43, No. 14.

Courts will look to the general purpose and scope of a statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567, 24 N. E. (2d) 776;

State *ex rel.* Bailey v. Webb (1939), 215 Ind. 609, 612, 21 N. E. (2d) 421.

The Legislature is presumed to be acquainted with existing law and in legislation on any subject to have in view its provisions together with the construction placed thereon by the courts.

Stith Petroleum Co. v. Department of Audit and Control (1936), 211 Ind. 400, 405, 5 N. E. (2d) 517.

The interpretation of legislation by administrative officers, while not controlling, is persuasive and entitled to consideration.

State *ex rel.* Middleton v. Scott Circuit Court of Scott County (1938), 214 Ind. 643, 649, 17 N. E. (2d) 464;

Department of Insurance, etc. v. Merchants Fire Insurance Co. (1944), 222 Ind. 611, 615, 57 N. E. (2d) 62.

In an Official Opinion of this office found in 1957 O. A. G., page 252, No. 52, the question was presented for determination as to whether or not a member of the Indiana State Teachers' Retirement Fund accepting an early retirement from services covered by the applicable retirement statutes, who at time of retirement did not have enough social security coverage to be eligible to draw such benefit, would have her account reviewed on reaching the age at which social security coverage might become available to such person. It was pointed out that the statute seems to contemplate the social

security status as of the time of retirement. It is there shown by quotations that provision is made so that if a person is entitled to social security coverage at time of retirement, and this fact lessens the amount of retirement benefits, there can be no later adjustment of such account even though the teacher would subsequently enter employment covered by social security and thereby lose her then present right to further social security payments. On pp. 254 and 255 of the Opinion it is stated:

> "The Teachers' Retirement Fund Board is a statutory board, and its power and authority is conferred and limited by the statute. Like all administrative boards of the state, this board has only such powers as are specifically delegated to it by law, and such other powers as may be necessarily incident to powers expressly granted. Unless a grant of power and authority can be found in the statute, it must be concluded that there is none.
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> 1953 O. A. G., page 478, No. 103;
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> 1953 O. A. G., page 470, No. 101;
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> Chicago & C. E. I. Ry. Co. v. Public Service Comm. *et al.* (1943), 221 Ind. 592, 49 N. E. (2d) 341;
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> 1944 O. A. G., page 65.
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> "There is no statutory provision providing for review for such purpose of a teacher's retirement account when the member reaches the age of eligibility for receiving social security benefits. Therefore, it is my opinion that the Indiana State Teachers' Retirement Fund does not have authority later to review, for such purpose, the account of a teacher who effected an early retirement from service and who did not have sufficient social security coverage at the time of retirement to be eligible for social security benefits when reaching the age of eligibility to draw such benefits. The benefits to which a teacher is entitled from the Teachers' Retirement Fund should be determined as of the date of his retirement from active service, and your question is accordingly answered in the negative."

A similar result was reached in construing this statute in 1957 O. A. G., page 90, No. 22.

The act in question is giving additional benefit to one already retired, and the act applies as of the time it becomes effective, but any increase or decrease in social security benefits effective after that time would have no effect.

Applying the foregoing to your illustrated cases, I am of the opinion that the teacher who retired June 1, 1960 without social security benefits, who in October 1960 acquired social security benefits based on teaching service, would have his case considered on the basis of the social security benefits being received at the time the Act becomes operative, July 1, 1961, for the purpose of computing the increased benefits given by the statute in question. Those teachers already retired, or to be hereafter retired, whose social security benefits are deferred for any reason after the time of computation of benefits for payment to them, made under the provisions of the statute in question, would not have any deductions made as to any such social security benefits so deferred.

OFFICIAL OPINION NO. 33

July 21, 1961

Honorable A. Morris Hall
State Senator
716-717 Marion National Bank Bldg.
Marion, Indiana

Dear Senator Hall:

This is in reply to your recent letter requesting an Official Opinion on the following subject:

> "Section 9-1036 of Burns and following sections provide for the apprehension of a principal by his surety. The annotated cases under these sections are clear that such surrender may be made, and the surety discharged, prior to judgment against such surety. Nowhere can we find any decisions, and we believe there are none, deciding the question of whether the power to apprehend and surrender the principal continues after