

time of imposition of a new sentence under Burns' 9-2211, *supra*, which sentence may be imposed as part of the revocation order or subsequent thereto. If no new sentence is imposed, revocation has no bearing upon the computation since the term of imprisonment is computed from the date of the original sentence.

OFFICIAL OPINION NO. 49

September 28, 1961

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

Dear Mr. Utterback:

This is in reply to your request for an Official Opinion on the following question:

"Should the Teachers Retirement Fund assume the retirement reserve for years of service credited to the teacher for which no contributions were ever made if this teacher is retiring from a Municipal Unit, covered under Public Employes' Retirement Fund (where she has been employed for the past two years) rather than from a State Unit of Government?"

Your letter of request states that an application for retirement is currently on file for the employee in question in the office of the Public Employes' Retirement Fund. The employee has asked that her teacher's service be used in computing her retirement.

Additional information supplied me shows that the employee in question has been a member of the Public Employes' Retirement Fund continuously since January, 1948, as an employee of a county department of public welfare.

The right of any public employee to a pension or retirement benefit depends entirely upon the terms of the statute under which he claims such benefit. The right in this instance is

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therefore determinable from the terms of the Public Employees' Retirement Act as such act has been amended, added to and supplemented. The Public Employees' Retirement Fund was created by the Acts of 1945, Ch. 340. The Indiana Public Employees Social Security Integration and Supplemental Retirement Benefits Act was enacted as the Acts of 1955, Ch. 329, and provided for a supplemental system of retirement benefits for employees of the state and political subdivisions thereof who were members of certain existing retirement systems, including the Public Employees' Retirement Fund. In answering any question involving the fund, both acts, as amended, must be construed together to arrive at a conclusion.

Specific provision is made in Acts of 1955, Ch. 329, Sec. 21, as amended and found in Burns' (1959 Supp.), Section 60-1932, regarding the accumulation of service credits in more than one retirement system. The first paragraph of that section reads as follows:

“An employee with creditable service in any retirement system which becomes subject to this act, at the time he becomes a member of any other retirement system so subject shall be entitled to retain such service credit and the automatic suspension provision of section 20(a) of this act shall apply only if the combined creditable service of said employee in said retirement systems is less than seven [7] years at the expiration of a continuous period of five [5] years during which he performs no service. With respect to any such employee the last retirement system in which he renders service shall be responsible for payment of the benefits provided by section 17 of this act, based on his total creditable service and the amount of his prior contributions and interest credits thereon in the possession of any other retirement system subject to this act, together with its proportionate actuarial cost of his retirement benefits shall be paid by such system to the system hereby made responsible for the payment of such benefits.”

The second and third paragraphs of Burns' 60-1932, *supra*, are not set out or considered in this discussion inasmuch as they provide the conditions under which a state employee who

is a member of a state retirement fund can claim past service as a state employee which he has been unable to claim otherwise. Such provisions are inapplicable to your fact situation.

Your letter refers to "service credited to the teacher" by the Teachers' Retirement Fund, which grant of nine years' prior service credit is evidenced by a copy of a letter from the Executive Secretary of the Teachers' Retirement Fund directed to such former teacher. If the grant of such prior service credit was proper and legal, the former teacher would now be within the terms of Burns' 60-1932, *supra*, as "an employee with creditable service in any retirement system" subject to the Acts of 1955, Ch. 329, which individual later became a member of another retirement system also subject to the Acts of 1955, Ch. 329. The employee in question had creditable service in the Teachers' Retirement Fund, which fund is now subject to the Acts of 1955, Ch. 329, and the employee later became a member of the Public Employees' Retirement Fund, which is also a retirement system subject to the Acts of 1955, Ch. 329. The employee has thus fulfilled the requirements of Burns' 60-1932, *supra*, and is therefore entitled to retain such service credit in the Teachers' Retirement Fund and is further entitled to any benefits thereby afforded.

Burns' 60-1932, *supra*, provides that the last retirement system in which the individual renders service shall be responsible for the payment of the benefits afforded under the act, based on the total creditable service. The amount of prior contributions of a member and interest credits thereon in the possession of any other retirement system subject to the act, together with its proportionate actuarial cost of his retirement benefits, is to be paid by such system to the system made responsible for the payment of such benefits. Therefore, the Public Employees' Retirement Fund is responsible for the payment of the benefit based on the total creditable service and the Teachers' Retirement Fund is required to pay to the Public Employees' Retirement Fund any contributions and interest of the employee which it holds, *plus* the proportionate actuarial cost of the retirement benefit attributable to the Teachers' Retirement Fund by reason of his creditable service as a teacher.

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The Acts of 1955, Ch. 329, Sec. 12, as amended, as found in Burns' (1959 Supp.), Section 60-1923, specifically provides that:

“* * * No employee shall be required to pay any contributions for service prior to the time he is covered by this act as a condition precedent to receipt of the supplemental benefits provided by the employer under this act. * * *”

On this authority, it appears that the fact that the Teachers' Retirement Fund does not now hold any contributions paid to it by the teacher would not relieve it of the liability for paying its proportionate actuarial cost of the retirement benefit, nor would the presence or absence of such contributions affect the amount such fund is liable to pay.

It is therefore my opinion that under the terms of Burns' 60-1932, *supra*, the Teachers' Retirement Fund is required to assume the retirement reserve for years of service properly credited to a teacher although no contributions were ever made and although the former teacher is retiring from a municipal unit covered by the Public Employees' Retirement Fund, rather than from a state unit of government.

OFFICIAL OPINION NO. 50

September 28, 1961

Mr. Joe McCord, Director
Department of Financial Institutions
1024 State Office Building
Indianapolis, Indiana

Dear Mr. McCord:

This is in response to your request for an Official Opinion concerning the question of whether the Chesterton State Bank of Chesterton, Indiana may open a branch bank in the town of Portage pursuant to authority granted by the Department of Financial Institutions on October 28, 1959. Because the facts giving rise to this problem are somewhat unusual, a resumé of the factual situation is important.