applying for and being issued an operator’s license under the same conditions prescribed for a beginner’s license permittee.

I am, further, of the opinion that the holder of a driver education permit is not required to convert or surrender such permit on becoming sixteen years and one month of age. He may retain the same, and use the same until such permit has been in effect for a six months’ period, and within a period of thirty days thereafter he is eligible to take an examination for a probationary operator’s license.

OFFICIAL OPINION NO. 52

September 21, 1959

Honorable William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter of August 26, 1959, has been received and reads as follows:

“May I have an Official Opinion concerning the two questions in reference to an interpretation of the provisions of the 1959 Teachers’ Sick Leave Act?

1. Is a teacher who resigns from a school corporation in Indiana and later is reemployed by the same system entitled to ten or seven days sick leave upon her reemployment? There seems to be a question about the meaning of ten days the first year and seven days in each succeeding year. Shall we interpret the provision to mean that a reemployed teacher is not entitled to ten days upon her return because she has already served her first year in the corporation?

2. Does teaching service in another school corporation in Indiana or elsewhere limit the eligibility of a teacher for ten days sick leave during the first year in our school system? Some people have advanced the idea that any teacher who has served in an Indiana
School Corporation has already qualified for her ten days of sick leave and is not entitled to the ten days if she changes to another corporation in Indiana. Such an interpretation would mean that ten days sick leave would be limited to inexperienced teachers or to those employed from outside of Indiana.

Acts of 1945, Ch. 231, Sec. 2, as last amended by Acts of 1959, Ch. 243, Sec. 1, as found in Burns’ (1959 Supp.), Section 28-4333, in part, provides as follows:

"* * * Each teacher shall be entitled to be absent from work on account of illness or quarantine for a total of ten [10] days the first year and seven [7] days in each succeeding year without loss of compensation, and for death in immediate family for a period extending not more than five [5] days beyond such death. If in any one [1] school year the teacher shall be absent for such illness or quarantine less than the prescribed number of days, the remaining days shall be cumulative to a total of ninety [90] days. Accumulative days accrued to the teacher as of the effective date of this act shall be credited to the teacher. * * *

Section 4 of the foregoing amendatory statute declared an emergency that the same be in effect on and after August 1, 1959.

The foregoing statute is an amendment to Section 2 of the 1945 statute concerning minimum salaries of teachers. Section 1 of said law was amended in 1959 by Acts of 1959, Ch. 96, Sec. 1, as found in Burns’ (1959 Supp.), Section 28-4332. The minimum salaries of teachers therein provided are not retroactive and under its provisions it is in full force and effect after January 1, 1960. By the same token it is hardly to be assumed the Legislature intended the amendment to Section 2 of the Act to have any retroactive effect except to the extent clearly stated in the law.

In 1951 O. A. G., page 38, No. 14, at page 39 of the Opinion, it is stated:

"'It is a familiar rule of statutory construction, that legislation must be given prospective application, unless a different intention is clearly expressed.'
To give a retroactive construction to the language of the provisions of the statute now being considered, that the ten days of sick leave given for the "first year" means the first year of service in a school corporation prior to the adoption of the amendment, is unwarranted. Such a construction would nullify the benefit given by the Legislature for the first year of service of a teacher in a particular school corporation after the amendment.

If the ten days provision is construed to be retroactive, on the theory the amendment was a part of the original statute since its enactment in 1945, there could be no "accumulative days accrued to the teacher," since such legislation originated with the 1945 statute. Evidently this was not the legislative intent.

The history of this legislation is pointed out in an Official Opinion of this office, being 1949 O. A. G., page 137, No. 36, where on pages 138 and 139 of the Opinion, it is, in part, said:

"The provisions regarding sick leave for teachers was originally enacted in 1945 as a part of the teachers Minimum Salary Act, Section 28-4332, Burns' 1948 Replacement, same being Section 1, Chapter 231, Acts 1945. This statute was amended by Section 1, Chapter 358, Acts 1947, and finally amended by Section 1, Chapter 224 of the Acts of 1949 * * *

"It is to be noted that under each of such successive amendments the accumulative days have been increased. The 1947 and 1949 amendments also contain the clause that accumulative days accrued to the teacher as of the effective date of this act shall be credited to the teacher.

"The 1945 law was the subject of two opinions by this office found in 1945 Indiana O. A. G., pages 217 and 526. While in each of these opinions language is used which would seem to indicate that upon a teacher leaving the employment of a particular school corporation that she would lose her accumulative days of sick leave, each of said opinions were dealing with questions as to whether or not a new or succeeding school cor-
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poration would be burdened with such accumulative days. They did not attempt to answer the question here presented.

"Since the provisions of this statute regarding sick leave are of a beneficial nature, and since the statute contains no reference to a requirement of continuous employment in a particular school corporation, I am of the opinion a teacher who serves [severs] her employment with a school corporation with which she has accumulative days of sick leave to her credit would not be barred from asserting her right to accumulative days of sick leave upon her again being employed by that particular school corporation. As the statutes do not contain a condition of continuous employment, I am of the opinion no such condition can be implied."

From the foregoing Official Opinion it is clear that the Legislature has consistently increased the number of accumulative days and finally, in 1959, increased the number of days the teacher could be absent for illness or quarantine, without loss of compensation, to a period of ten days the first year, instead of seven days as previously provided. After granting such increased number of days the provision under consideration thereafter provides that "accumulative days accrued to the teacher as of the effective date of this act shall be credited to the teacher." The effective date of said Act was August 1, 1959. This statute is of a beneficial nature and should be liberally construed, and from the foregoing language it is apparent the additional benefits as to amount of sick leave were intended to be in addition to the accumulative days the teacher had previously acquired.

A further examination of the foregoing Official Opinion shows that it has been held by Opinions in 1945 that, where a teacher leaves the service of a particular school corporation and enters employment with a new school corporation, she does not have the benefit of the accumulative days of sick leave in the prior school corporation as a charge against the school corporation of her new employment, but in the new school corporation she must start over the acquiring of accumulative days. As to the same time should she return to the original school corporation where she had accumulative days

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of sick leave to her credit, she could again claim such accumulative days on such return to employment in that school corporation.

The construction given the statutes in said Opinions is entitled to consideration for in 1952 O. A. G., page 94, No. 23, at pages 96 and 97 of the Opinion, it is said:

"When the legislature and officers of state departments have given a provision of the Constitution or a statute a uniform construction for a long series of years, such construction will have great weight with the courts when the question of construction is presented to them.

"State ex rel. Gleason v. Gerdink (1909), 173 Ind. 245, 251, 90 N. E. 70;


"It has further been held that a practical construction given to the statute by public officers of the state and acted upon by those interested, and by the people, is to be considered in cases of doubt.

"Zoercher v. Indiana Associated Telephone Corp. (1937), 211 Ind. 447, 456, 7 N. E. (2d) 282."

From the foregoing, I am of the opinion your questions should be answered as follows:

1. The ten days a teacher is entitled to be absent from work on account of illness or quarantine, during the "first year," means the first year of service in a particular school corporation after the effective date of said 1959 amendment. Therefore, a teacher who resigns from a school corporation in Indiana and later is re-employed by the same system is entitled to ten days sick leave for the first year of her re-employment, if she has not already claimed such ten days credit, and seven days of sick leave thereafter, to be added to any accumulative days of sick leave she might have previously acquired in that school corporation. However, such teacher may not claim more than one first year credit of ten days sick leave against any one school corporation.
2. Teaching service in another school corporation in Indiana or elsewhere does not limit the eligibility of a teacher for ten days sick leave during the first year in a different Indiana school system, after August 1, 1959, for the reason that such teacher has at no time in the past been given credit for ten days sick leave for any year of service against the particular school corporation in which she may have been employed prior to this time. As above pointed out, a teacher is limited to one claim for ten days of sick leave for a "first year" of service in a particular school corporation, but may on changing employment receive credit for ten days for her first year of employment in a new school corporation, providing she has not been so credited therein at some time since the enactment of the 1959 amendment to the statute.

OFFICIAL OPINION NO. 53  
October 8, 1959

Mr. Norval L. Martin  
Executive Secretary  
Indiana State Teachers' Retirement Fund  
Sixth Floor, 145 W. Washington Street  
Indianapolis, Indiana

Dear Mr. Martin:

Your letter requesting an Official Opinion has been received and reads as follows:

"In reference to Section 1, Subsection (a) of Chapter 325 of the Acts of 1959, which amends Section 18, Subsection (a) of Chapter 329 of the Acts of 1955, we would like to have your Official Opinion regarding the following questions:

"1. Should contribution be made by a re-employed member during the first 30 days of re-employment while benefits are being paid or after the first 30 day period of re-employment?

"2. Should the first 30 days of re-employment be recognized when counting service to determine credit?"