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?
"3. If a retired teacher becomes re-employed under regular contract, what is the immediate status of the teacher's retirement account insofar as receiving the benefits provided under Chapter 325 of the Acts of 1959 in event of retirement after a re-employed period of one or more days?"

Your first question asks whether or not a re-employed member must make contributions during the first thirty days of his re-employment. Acts of 1955, Ch. 329, Sec. 18, as amended, as found in Burns' (1959 Supp.), Section 60-1929, reads, in part, as follows:

"Reemployment of Retired Employee.—(a) If a member who is receiving retirement income payments under this act becomes reemployed in a position covered by this act, his retirement benefit payments shall cease after thirty [30] consecutive school days or working days of such reemployment. During such period the member shall also make contributions under section 13(a) of this act." (Our emphasis)

Section 13(a), referred to above, was amended by Acts of 1959, Ch. 325, Sec. 2, and is found in Burns' (1959 Supp.), Section 60-1924. That section provides, in part, as follows:

"* * * All employees shall contribute 3% of their compensation not in excess of eighty-five hundred dollars [§8,500] per annum in addition to their contributions for social security. Such contributions shall be made in the form of a deduction from compensation and shall be made notwithstanding that the compensation paid in cash to such employee shall be reduced below the minimum prescribed by law. Every such employee shall be deemed to assent and agree to the deductions made from his compensation as provided for in this act and payment to said employee of compensation less all deductions authorized by this act shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such employee during the period covered by such payment except as to the benefits provided by this act." (Our emphasis)
In view of the language found in the sections quoted above, it is my opinion that a re-employed member must make contributions to the retirement fund of which he is a member for the entire period of his re-employment, which would necessarily include the first thirty consecutive school days or working days of such re-employment.

Your second question asks whether the first thirty days of re-employment should be recognized when counting service to determine credit.

Burns' 60-1924, supra, says of those employees over age sixty or previously employed:

"* * * employees who become covered by social security pursuant to the provisions of this act shall after the date on which they become so subject be deemed members of the retirement system covering the positions which they occupy. * * *"

Under the above provisions, all re-employed persons who were formerly covered by a retirement fund are deemed members of the retirement system covering the positions which they occupy from the date on which they become subject to social security coverage.

Social security coverage was extended, retroactive to January 1, 1955, to all services performed by individuals as employees of the State who are covered by the Teachers' Retirement Fund and the Public Employees' Retirement Fund pursuant to the provisions of Acts of 1955, Ch. 329, as found in Burns' (1959 Supp.), Section 60-1911 et seq. Under the terms of the federal-state agreement providing for such coverage, virtually all state employees are subject to OASI coverage for the period of their employment from the time they become so employed. Therefore, anyone occupying a position covered by these funds is automatically covered by social security from the date of his employment, and as an employee covered by social security, he is thereby a member of the retirement system itself from that date.

Furthermore, Acts of 1955, Ch. 329, Sec. 15, as found in Burns' (1959 Supp.), Section 60-1926, provides as follows:

"Creditable service.—Each employee shall have included in his creditable service for the purpose of
determining his eligibility for retirement benefits and the amount thereof, all service for which he was entitled to credit in the retirement system of which he was a member at the time the members of said system were included by a modification of the federal-state agreement pursuant to section 5 of this act, in addition to all service rendered after said date. * * *" (Our emphasis)

It is therefore my opinion that a re-employed member is a member of the retirement system covering the position which he occupies from the beginning date of his re-employment, and as such is entitled to have the first thirty days of such re-employment, as well as all service rendered after that time, recognized when counting his service to ascertain the credit to which he is entitled for the purpose of determining his eligibility for retirement benefits and the amount thereof.

Your final question concerns the right of a formerly retired, now re-employed member of the retirement fund to receive benefits provided by the Acts of 1959, Ch. 325, supra, in the event of retirement after a re-employed period of one or more days.

The nature of the rights of a teacher to a retirement allowance rests largely on the language of the particular statute under which the retirement system is established. Burns' 60-1929, supra, sets out the benefits to which a re-employed member is entitled upon cessation of such re-employment, including the formula for computing a supplemental pension. There is no provision in the act requiring a member to work any specific length of time after his re-employment before he is eligible for benefits under this section. Therefore, any member would be entitled to the benefits set out from the time of his re-employment. It would be a question of fact in each case, depending on the particular circumstances, whether or not the individual was a full-time, bona fide employee, under a valid employment agreement. If it is determined that the individual meets these requirements, he will be a member of the fund, covered by all the provisions of the act, and therefore, entitled to the full benefit of the provisions of the act from the time of his re-employment.

As I have pointed out in other Opinions, the purpose of the pension act is beneficial, and our Supreme Court has held that
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statutes of such character should be liberally construed in favor of those intended to be benefited.

State *ex rel.* Bolden v. Johnstone (1937), 211 Ind. 281, 6 N. E. (2d) 706;


It is therefore my opinion that a retired teacher who becomes re-employed under a valid contract is covered by the provisions of Acts of 1959, Ch. 325, *supra*, from the time he returns to covered employment. The question of re-employment would be one of fact to be determined in each case by the Board of Trustees of the Teachers’ Retirement Fund. Since the re-employed teacher again becomes a member of the fund from the beginning date of his re-employment, he is entitled to credit for all the time he serves from his beginning date, and must also make the necessary contributions to the fund for the entire period of his re-employment.

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OFFICIAL OPINION NO. 54

October 9, 1959

Mr. John Morris, Commissioner
Indiana Department of State Revenue
141 S. Meridian Street
Indianapolis 25, Indiana

Dear Mr. Morris:

This is in response to your request for my Official Opinion relative to the following subject:

“As Commissioner of the Indiana Department of State Revenue, I am requesting an opinion from you as to the subject of reciprocity with the State of Florida as related to inheritance taxes.”

The question to which you have reference arises with respect to estates of decedents who have died domiciled in the State of Florida, there owning and holding intangibles issued by Indiana corporations. In the absence of reciprocity be-