

1973 O. A. G.

OFFICIAL OPINION NO. 37

December 26, 1973

Mr. John W. Miller, Executive Secretary
Indiana State Teachers' Retirement Fund
506 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Miller :

This is in response to your request for my Official Opinion on the following questions :

1. Is a disability benefit received by a teacher over the age of sixty-five (65) from the Indiana State Teachers' Retirement Fund a retirement benefit as defined in IC 1971, 21-6-5.5-2, as found in Burns' (1973 Supp.) Sec. 28-4832?

2. Members of Religious Orders who had taken a vow of poverty could not be covered by Federal Social Security until the 1972 amendments. Members of these Religious Orders have served as teachers in the public school corporations and are members of the Indiana State Teachers' Retirement Fund. Currently under consideration are members with retirement dates ranging from July, 1943 to the present. Are these individuals eligible for the \$200 per month increase under IC 1971, 21-6-5.5, as found in Burns' (1973 Supp.) Sec. 28-4831 through Sec. 28-4833?

ANALYSIS

IC 1971, 21-6-5.5-2, as found in Burns' (1973 Supp.) Sec. 28-4832, provides that:

"On and after the effective date [April 24, 1973] of this chapter, every retired teacher who is now receiving an annuity or pension or other retirement benefit from the teachers' retirement fund and is sixty-five [65] years or older and is not eligible to receive an annuity or pension or other retirement benefit payable under the federal Social Security Act shall be entitled to receive, from the teachers' retirement fund, in addi-

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tion to all other amounts now being received by such retired teacher from the teachers' retirement fund the sum of two hundred dollars [\$200] per month for so long as such teacher shall be entitled to receive an annuity or pension or other retirement benefit from the teachers' retirement fund." IC 1971, 21-6-5.5-2, as added by Acts 1973, P.L. 238, § 1, p. 1241.

IC 1971, 21-6-5.5-1 (c), as found in Burns' (1973 Supp.) Sec. 28-4831 (c), states:

"(c) 'Retired teacher' shall mean every person who, while a member of the teachers' retirement fund (as 'member' is defined in the act), and prior to the effective date [April 24, 1973] of this chapter, shall have retired on an annuity or pension or other retirement benefit paid and payable from the teachers' retirement fund."

The Acts of 1973, Public Law 238 did not provide a definition of ". . . an annuity or pension or other retirement benefit from the teachers' retirement fund . . ." as set out above. However, IC 1971, 21-6-1-1, as found in Burns' (1970 Repl.) Sec. 28-4801, provides that:

"There shall be and is hereby created a fund to be known and designated as 'The Indiana State Teachers' Retirement Fund,' to be used and applied in the payment of *annuities* to persons engaged in teaching or in the supervision of teaching in the public schools of the state, after stated periods of service, *or for such other causes and under such conditions as are hereinafter set forth.*" (Emphasis added) IC 1971, 21-6-1-1, *supra*.

This section is the basic statute creating the Indiana State Teachers' Retirement Fund; the language indicates that all payments from the fund are annuities.

This conclusion is buttressed by the language of IC 1971, 21-6-1-11(k), as found in Burns' (1970 Repl.) Sec. 28-4811 (k), which provides in relevant part that:

". . . Any teacher, while actually teaching in the public schools of the state, may be temporarily or permanently *retired for disability* on a benefit in accordance with this act . . ." (Emphasis added)

Similarly, IC 1971, 21-6-1-11(o) (1), as found in Burns' (1970 Repl.) Sec. 28-4811 (o) (1) provides in relevant part that:

“ . . . Any teacher subject to the benefit provisions of this act, while actually serving as such, may be temporarily or permanently *retired for disability* on a benefit in accordance with this act . . . ” (Emphasis supplied)

It, therefore, appears that a disability benefit is “. . . an annuity or pension or other retirement benefit . . . ” as provided in IC 1971, 21-6-5.5-2, *supra*. Thus, any teacher over the age of sixty-five (65) years who is not eligible for benefits under the Federal Social Security Act and who receives payments from the Indiana State Teachers' Retirement Fund is eligible for the two hundred dollars (\$200) per month provided in IC 1971, 21-6-5.5-2, *supra*.

Turning to your second question dealing with the eligibility of certain members of religious orders for the benefits provided by IC 1971, 21-6-5.5, as found in Burns' (1973 Supp.) Sec. 28-4831 through Sec. 28-4833, the answer hinges on the individual's eligibility for Social Security. This office may not determine the eligibility of an individual for federal benefits. Such decision is a determination of a question of federal law, to be interpreted by the appropriate federal agencies.

CONCLUSION

Therefore, it is my Official Opinion that:

1. Where a teacher over the age of sixty-five (65) years receives a disability benefit from the Indiana State Teachers' Retirement Fund, and is not eligible for benefits under the Federal Social Security Act, said disability benefit is considered “an annuity or pension or other retirement benefit” as defined in IC 1971, 21-6-5.5-2, such teacher thereby qualifying for the \$200.00 benefit provided under said statute.

2. Eligibility of a member of a religious order for the increased benefits of IC 1971, 21-6-5.5 hinges on a federal determination of eligibility for benefits under the Social Security Act, which the Attorney General of Indiana has no authority to construe.