

templated privately in the transportation of the employes and officials designated, to or from their homes to their places of assigned duties, as a matter of personal advantage and convenience.

As a matter of precaution against unwarranted application and extension of the rule provided in this opinion, perhaps it should be added that in invoking the implied power of such boards, there must necessarily occur border line cases which must depend upon the facts in each case, and for which it is difficult if not impossible to make a general rule. It may be added that while much is left in such matters to the discretion of the board of education and that discretion will not be interfered with generally, yet it is also the rule that in cases of clear abuse of their discretion, or such unreasonable exercise thereof as to impute fraud or collusion, the courts will correct or prevent such abuse.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2754.

STATE TEACHERS' RETIREMENT SYSTEM—NO PROVISION FOR REINSTATEMENT AS AN ACTIVE TEACHER OF PENSIONER BY BOARD OF EDUCATION—EXCEPTION, DISABILITY BENEFICIARIES—NO PROVISION FOR REINSTATEMENT OF PENSIONER OF LOCAL DISTRICT PENSION SYSTEM WHICH HAS MERGED WITH STATE SYSTEM—WHERE LOCAL SYSTEM HAS MERGED WITH STATE SYSTEM BENEFICIARIES IN LOCAL SYSTEM SHALL BE PAID SAME AMOUNT BY STATE SYSTEM—A PENSIONER IN EITHER STATE OR LOCAL SYSTEM MAY NOT BE REINSTATED AS AN ACTIVE TEACHER BY DISCONTINUING PENSION DURING SUCH PERIOD OF ACTIVE TEACHING.

1. *There is no provision in the act providing for the creation of local district pension systems for teachers (7875 to 7896 G. C.) for the reinstatement of a beneficiary or pensioner as an active teacher in that district.*

2. *There is no provision in the state teachers' retirement system law (7896-1 to 7896-64) for the reinstatement as an active teacher of a beneficiary or pensioner by a board of education, the sole exception being in the case of disability beneficiaries who may be restored to active service, as provided in section 7896-39 G. C.*

3. *A pensioner of a local district pension system which has merged with the state teachers' retirement system, cannot be reinstated as an active teacher, either with or without the continuation of his pension payments, while in active service.*

4. *Where a local district pension system has merged with the state teachers' retirement system, the pensions paid to beneficiaries in the local district pension system shall thereafter be paid in the same amount by the state teachers' retirement system, since these pensions have been accepted by the state teachers' retirement system as a liability in an exact amount at the time of evaluation.*

5. *A pensioner of the state teachers' retirement system may not be reinstated as an active teacher by discontinuing his pension during such period of active teaching.*

COLUMBUS, OHIO, December 31, 1921.

HON. W. E. KERSHNER, *Secretary State Teachers' Retirement System, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following questions:

"(1) May a pensioner of a local city pension system which has merged with the state teachers' retirement system be reinstated as an active teacher after September 1, 1920, either with or without the continuance of his pension payments while in active service?"

"(2) If such reinstatement is legal, might a pensioner of a city pension system merged with the state retirement system be restored to active service for a time by discontinuing his pension payments and then be restored to the pension roll when he ceases active service at the same pension as he received originally, or would he then be retired under the state retirement system and his rate of pension fixed by the state retirement law?"

"(3) May a pensioner of the state teachers' retirement system be reinstated as an active teacher by discontinuing his pension during such period of active service?"

In your statement of facts bearing upon the above three questions you say:

"In Youngstown, as well as in other cities perhaps, it was the custom under the city pension system to allow a pensioner to be reinstated, drop his pension while teaching, and resume it upon again leaving service. In a few cases pensioners were reinstated as active teachers prior to September 1, 1920, and such teachers were allowed to become members of the state retirement system as active members of the city pension system instead of as pensioners. In two or three cases, however, pensioners under the city pension systems have been reinstated as active teachers since September 1, 1920. Their idea seems to be to drop the pension while again in active service and then resume it upon the completion of such service. In my opinion we should not allow pensioners of city pension systems to be reinstated after September 1, 1920, with the expectation of being pensioned under the state system upon the completion of such active service.

It seems to me that since the city pension systems have merged with the state retirement system that their pensioners should not be allowed to be restored to active service, unless on condition that their pensions would cease during such time of active service and to be resumed at the old rate at the completion of such service."

In a subsequent memorandum furnished by you you further amplify as follows:

"It was a common practice in Ohio city pension systems to allow a pensioner to be reinstated as an active teacher, relinquish his pension while thus in active service, and then receive the pension again upon relinquishing his position as an active teacher. This was true when a teacher was thus reinstated in the city in which he was drawing a pension. Under a ruling of a former attorney-general pensioners in one city might teach in any other school district of the state and at the same time continue to draw the pension previously granted. At the time of the merger of the city pension systems with the state teachers' retirement system on September 1, 1920, the retirement system accepted all teachers at whatever status they were reported. Therefore if a pensioner of a local pension system should have been reinstated as an active teacher prior to September 1, 1920, and have been reported to us as an active member of the city pension system such a teacher

was so accepted by the state retirement system and later might retire under the provisions of the state retirement law.

In some cities some teachers who were pensioners of the local system were reinstated as active teachers subsequent to September 1, 1920, and in such cases in my opinion they should upon again retiring receive the pension to which they were entitled under the city system. To allow such teachers to be reinstated and then retire under the state system would simply mean that all pensioners of city systems who could be reinstated for a short time could relinquish their city pensions and retire under the state retirement system. *These pensioners were accepted from the city systems as a liability based upon the amount of their pensions.* To grant them larger pensions under the state system would therefore increase the liability considerably above that fixed by the actuary in the evaluation of the system and this would result in loss to the state system. It seems to me that if pensioners of city pension systems are to be allowed to teach again and receive a salary they should relinquish their city pensions during the time of such active service and resume those same pensions if they again retire."

Pertinent sections of the teachers' retirement act are as follows:

"Sec. 7896-1: * * * * *

'Present-teacher' shall mean any person who was a teacher, as defined by this act, before the first day of September, nineteen hundred and twenty; whose membership in the retirement system has been continuous; and,

* * * * *

(c) Who was a member of a local district pension system on said date * * * and who continued thereafter to be a member until he, with the membership of such local district pension system, became a member of the retirement system.

'New-entrant' shall mean any teacher who is a member except a present-teacher.

'Prior-service' shall mean all service as a teacher, as defined by this act, rendered before the first day of September, nineteen hundred and twenty, by a present-teacher * * *.

'Member' shall mean any person included in the membership of the retirement system as provided in this act.

'Contributor' shall mean any person who has an account in the teachers' savings fund.

'Beneficiary' shall mean any person in receipt of a retirement allowance or other benefit provided by this act. * * *

'Pension' shall mean annual payments for life derived from appropriations made by an employer and paid from the employers' accumulation fund or the annuity and pension reserve fund as provided in this act. All pensions shall be paid in twelve equal monthly installments.

'Retirement allowance' shall mean the pension plus the annuity.

* * * * *

'Local district pension system' shall mean any school teachers' pension fund created in any school district of the state of Ohio in accordance with the laws of such state prior to the first day of September, nineteen hundred and twenty."

* * * * *

"Sec. 7896-25: The membership of any person in the retirement

system shall cease * * * if he retire on a pension, as provided in this act. * * *

"Sec. 7896-32: When a present-teacher ceases to be a member his prior-service certificate shall be void and not renewable."

The state teachers' retirement act gives a definite meaning to various important terms which appear in the act, and under these circumstances this meaning is the only meaning to be given to these words as they may be used in the retirement act. Summarized, your inquiry may be said to be, (1) whether a board of education has authority to reinstate a pensioner as a teacher, and (2) the exact legal status of those persons who were pensioners under a local district pension system and which pensioners were taken into the state teachers' retirement system, at the time of merger of the local district pension system with the state retirement system.

Section 7896-25 says that the membership of any person in the retirement system shall cease if he retire on a pension, and a person who has been retired on a pension is a beneficiary and thus a person who becomes a beneficiary in the state retirement system ceases to be a member of that system, as defined by the law itself. Thus a "beneficiary" of the state retirement system is no longer a "member" of the system and a member of the system cannot be a "beneficiary." Under the terms of the law itself a person cannot be both at the same time. A "beneficiary" is any person who is in receipt of a retirement allowance and "retirement allowance" is defined as the "pension plus the annuity." The pension, which is a part of the "retirement allowance" granted to a "beneficiary" is defined as "annual payments for life," which shall be paid "in twelve equal monthly installments." It will be noted that the law itself does not say that a pension shall mean "payments," but it says "annual payments," which means the remaining years of the beneficiary's life. It does not mean intermittent payments for a portion of the life of the beneficiary, to be given up at will under certain circumstances, and then received again whenever the personal desires of the beneficiary would have it so, neither can the annual pension be paid a portion of one school year and during the other part of the school year waive the pension for the time being, because the law itself says that these annual payments *for life* shall be paid in twelve equal monthly installments.

The state teachers' retirement system is an activity which affects not only the person who has been pensioned, and those teachers who constitute its membership not yet pensioned, but every tax payer in the state, because a tax is levied by each board of education for the payment of the employer's share of the contribution necessary for the upbuilding and maintenance of the fund. Thus section 7896-55 G. C. provides:

"The employers' accumulation fund shall be the fund in which shall be accumulated the reserves for the payment of all pensions payable as provided by this act. The amounts paid by employers on account of their normal contributions and their deficiency contributions shall be credited to the employers' accumulation fund.

Until the deficiency contribution shall have been discontinued, upon the retirement of a contributor, an amount equal to his annuity reserve shall be transferred from the employers' accumulation fund to the annuity and pension reserve fund and a pension equal to his annuity shall be paid therefrom. The remainder of any pension granted to him shall be paid directly from the employers' accumulation fund until the pension reserve thereon shall have been fully accumulated and

the deficiency contribution shall have been discontinued. Thereupon, the full reserve on all pensions theretofore payable from the employers' accumulation fund shall be transferred from said fund to the annuity and pension reserve fund and said pensions shall thereafter be paid from the annuity and pension reserve fund. Upon the retirement of a contributor thereafter, the full amount of his pension reserve shall be transferred from the employers' accumulation fund to the annuity and pension reserve fund."

Each board of education in the state is now charged with its contribution to the employers' accumulation fund of a certain per cent of the earnable compensation of each teacher, which is known as the "normal contribution," and a further per centum of each teacher to be known as the "deficiency contribution."

Section 7896-44 provides that "the amount paid by an employer on account of a 'deficiency contribution' shall after the first payment be at least three per centum greater than the amount paid by him during the preceding year." These rates of per cent for contributions by boards of education are fixed on the basis of the liabilities of the retirement system and they are certified to the boards of education and other employers by the retirement board after each actuarial valuation.

One of the liabilities which must be considered in the making of the actuarial table in the certification to boards of education for future payments is the amount of money which the state teachers' retirement system must pay out annually to those pensioners taken over by the state retirement system from a local district pension system which has merged with the state retirement system. It is thus found that even this taxation rate to be levied in a local school district upon the tax payers would be affected by deviations which might be permitted if persons who were tabulated and computed as having the status of a pensioner at the time of the creation of mortality and actuarial tables would thereafter, at will, assume the status of a nonpensioner and can thereafter become a pensioner possibly during the term for which the actuarial table was created. It is apparent at once that the stability of the tables upon which the operation of the teachers' retirement fund is to be carried out would be disturbed and not strictly correct, and this is not contemplated by the law. At the present time boards of education are contributing 5.57 per cent of the members' salaries toward the upbuilding of the teachers' retirement fund, this being the sum of the 2.8 normal contribution and the 2.77 deficiency contribution. These figures shall obtain until the first certification of new figures by the retirement board to boards of education throughout the state and the certification made by the retirement board as to the amounts to be paid by boards of education comes from the actuarial valuation and the actuarial valuation is arrived at by considering all the elements which go to make up the system itself. Thus section 7896-19 provides:

"The retirement board shall * * * collect and keep in convenient form such data as shall be necessary for the preparation of the required mortality, and service tables, and for the compilation of such other information as shall be required for the actuarial valuation of the assets and liabilities of the various funds created by this act. Upon the basis of the mortality and service experience of the members and beneficiaries of the system, the retirement board from time to time shall adopt the tables to be used for valuation purposes and for

determining the amount of annuities to be allowed on the basis of the contributions of members."

If a beneficiary, who had been rated and computed as such by the actuary, could thereafter, at various times change at will his status from a beneficiary to an active teacher, the tables would not be correct because he would be counted in a certain class in the tables and thereafter would not be in that class at all. Much more might be said as to how these actuarial tables would be disturbed by beneficiaries changing their status at will, but it is believed sufficient has been said to show that the tables would be disturbed in a degree not contemplated by the law. The stability of any organization or function of this kind rests on its hewing strictly at all times to its mortuary and actuarial tables and its safety and preservation depend upon the fact that the system should be conducted within the figures which have been created after careful examination and study by the actuary of the system's own liabilities. A careful examination of the whole of the state teachers' retirement law would indicate that the policy intended was that "once a pensioner, always a pensioner."

Having discussed the undesirability of permitting any deviation from actuarial tables established by computation and upon which the system itself is presumed to operate, attention will now be directed to the question of "reinstatement" itself. It is presumed that you have in mind reinstatement of a beneficiary as an active teacher by a board of education, since the state teachers' retirement system itself has no power of reinstatement as an active teacher, because the retirement system is not an employer of teachers and thus could give no status as an active teacher to a beneficiary. Reinstatement, if it could be made at all, must come from an employer who employs teachers, which in most instances would be a board of education. As stated heretofore, when a board of education reinstates a teacher, thus changing the status of that person from a beneficiary to an active teacher, the whole plan appearing in the teachers' retirement act is disturbed and more than likely this was in mind when the framers of this legislation drew up the act, because nowhere in the numerous sections which compose the retirement act is there any mention made or authority found for the "reinstatement" of a pensioner, the sole exception appearing in section 7896-39, which says:

"A disability beneficiary, notwithstanding the provisions of this act, shall be considered on leave of absence during his first five years on the retired list and shall retain his membership in the retirement system. * * * Should a disability beneficiary be restored to active service his retirement allowance shall cease and the annuity and pension reserves on his allowance at that time in the annuity and pension reserve fund, shall be transferred from the annuity and pension reserve fund to the teachers' savings fund and the employers' accumulation fund respectively. * * *"

Here we have mention made in the act of those beneficiaries who may be "restored to active service" and then follows very careful directions by the law itself as to just what shall be done with various amounts in the financial transactions in his case. The fact that the law so carefully mentions what shall be done in a case where a disability beneficiary is restored to active service, is indeed significant and it must be held that if other beneficiaries other than disability beneficiaries could "be restored to active service," then the framers of the law and the general assembly itself would likely have said

so and would have made specific provisions as to what should be done with the various funds when a beneficiary is reinstated, as set forth in such a specific manner for the disability beneficiary in section 7896-39.

Your attention is invited to the very latest pronouncement of the Ohio supreme court in the case of *State ex rel. Clarke vs. Cook* (No. 16539), decided on November 22, 1921, the second branch of the syllabus reading:

"Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (*State ex rel. Locher vs. Menning*, 95 O. S., 97, approved and followed.)"

As your question has arisen largely because boards of education in school districts operating local city pension systems, have reinstated their beneficiaries as active teachers, due regard must be had to the law providing for the creation, maintenance and operation of local district pension systems (7875 to 7896 G. C.). Under this local district pension law teachers might be retired in three ways: (1) retirement by the board of education "on account of physical or mental disability, where the teacher had taught for a period aggregating twenty years" (section 7880); (2) voluntary retirement by the teacher who had taught for a period aggregating thirty years (7882); and (3) those cases where "if any teacher who has taught for a period aggregating twenty years is not reemployed by the board of education, such failure to re-employment shall be deemed a retiring and such teacher shall be entitled to a pension (7891)."

Section 7883 G. C., a part of the local district teachers' pension law, is pertinent and says:

"Each teacher so retired or retiring shall be entitled *during the remainder of his or her natural life* to receive as pension, annually, twelve dollars and fifty cents for each year of service as teacher, except that in no event shall the pension paid to a teacher exceed four hundred and fifty dollars in any one year. *Such pensions shall be paid monthly during the school year.*"

It will be noted that the law says that the teacher retired shall be entitled "during the remainder of his or her natural life;" this can have but one meaning, which is, what is left of one's life from the time of pensioning until death; not a portion of the remainder of one's life, that is, part time on as a pensioner and part time of the remaining period as an active teacher, but a pensioner during the remaining period of actual life. It is significant, too, that the word "annually" is inserted between two commas following the word "pension," which means that *the pension shall be paid each year during the remainder of life and not during certain years when it was to be paid and certain years when it was not to be paid*. Specific mention is also made that the pension "shall be paid monthly during the school year," thus indicating that from the period of September 1st to August 31st there should be a pension paid in each and every month of the period and not during a certain number of months of the school year. The local district teachers' pension law sets forth three ways in which a teacher can retire or may be retired, but a careful examination of the whole of that law (7875 to 7896 G. C.) does not show any provision whatever or any grant of authority to the board of education in the local district to reinstate a teacher who has become a pensioner in that school district under the local district teachers' pension law. It would appear that if the

general assembly or the framers of this legislation had in mind that teachers could be reinstated under the local district pension law, then the act itself would likely have said so and made the proper provision therefor. This is wholly lacking and no where in the act is there authority found for a board of education, operating a local district pension system in its district, to reinstate as an active teacher one who has been retired and given the status of a pensioner in that system. This was what was in mind in 1914 when the opinion of the then Attorney-General, to which you refer, was issued. These two questions were submitted to the Attorney-General, to wit:

"If a teacher is forced to retire by either section 7880 or 7882 (local district teachers' pension act), *may she teach in the public schools, or in the public institutions, and draw her pension?*

"If a teacher requests to be retired by section 7880 or 7882, *may she teach in public schools, or in public institutions, and draw her pension?*"

In passing upon these two questions, the then Attorney-General held as follows:

"If a teacher is forced to retire by virtue of the provisions contained in section 7880, General Code, and comes within the provision of said section as to the length of time such teacher has taught, then such teacher can teach in other public schools of the state than the one from which such teacher has retired or in the public institutions of the state, and continue to draw the pension. The same rule applies when a teacher voluntarily retires."

It will be noted that the question submitted was whether the teacher could teach "in the public schools," that is, anywhere, and the answer was that the teacher could teach "in other public schools of the state than the one from which such teacher was retired," thus giving a very clear inference and almost a direct answer that the teacher who was retired and pensioned could not teach again in the schools of the district which operated a pension system. It is conclusive, therefore, that if teachers were reinstated in the districts in which they were beneficiaries, as pensioners under the local district teachers' pension law, such reinstatements by boards of education were made without authority of law.

However, you indicate in your memorandum that "at the time of the merger of the city pension systems with the state teachers' retirement system * * * the retirement system accepts all teachers at whatever status they were reported;" that is to say if a pensioner of a local pension system should have been reinstated as an active teacher prior to September 1, 1920, and has been reported to the state teachers' retirement system as an active member of the local teachers' pension system, such a teacher was so accepted by the state retirement system as a present teacher and one who might retire later under the provisions of the retirement law. The provision for the method of starting a merger of a local district pension system with the state retirement system appears in section 7896-23 G. C., and among other things this section says that "all the teachers included in the membership of such local district pension system, *shall become members* of the retirement system created by this act." When a local district pension system decided to merge with the retirement system, then the provisions appearing in section 7896-59 G. C. shall apply, such section reading as follows:

"If a local district pension system votes to merge with the retirement system as provided in this act, the retirement board created by this act shall employ an actuary to value the assets and liabilities which will be taken over by the retirement system hereby created in the event of such merger. * * * The actuary shall compute the present value of the liabilities on account of teachers in service in the local district pension system and on account of pensioners on the rolls of such local district pension system. He shall also compute the present value of the prospective amount to be received by reason of the payment of the normal contributions by the employer on behalf of the active teachers of such local system in the event of the contemplated merger. From the present value of the total liability for pensions on account of teachers in service in the local district pension system as previously determined, the actuary shall deduct the present value of the normal contributions. The amount remaining, together with the excess, if any, of the present value of all payments, necessary to continue the pensions of the pensioners of the local district pension system, over and above the amount of the moneys and securities of such system, shall be known as the 'accrued liability.'

Provided that no teacher, a member of a local district pension system at the time of the passage of this act, shall receive a lesser total retirement allowance upon retirement after merger of the local system with the state system than said teacher would have received upon retirement under the provisions of the local system."

Sections 7896-60 and 7896-61 (too long to quote here in full) also set forth the many details that must be worked out by the actuary in the merger of the local district pension system with the state teachers' retirement system. Among other things it is provided that:

"In the event of merger, the moneys and securities to the credit of the local district pension system * * * shall be transferred to the employers' accumulation fund (of the state retirement system) and the pensions then payable by the local district pension system shall thereafter be paid from the employers' accumulation fund (state retirement system) until the reserves on these pensions with the other pensions payable from the employers' accumulation fund shall have been accumulated and shall be transferred to the annuity and pension reserve fund, from which fund they shall thereafter be payable. The pensions of the active members of the local district pension system and of the new-entrants shall thereafter be payable as are the pensions of other members of the retirement system hereby created. * * *

After the moneys and securities of any local district pension system shall have been transferred to the employers' accumulation fund or to the teachers' savings fund as hereinbefore provided, such local district pension system shall cease to exist." (7896-61.)

It is presumed that under these provisions of the state teachers' retirement law, when any local district teachers' pension system was merged with the state teachers' retirement system, the actuarial evaluation was made up in strict accordance with the things set out in the law as being necessary and that in such actuarial evaluation would be carried the exact status of all persons connected with the local district pension system, including beneficiaries

or pensioners and active teachers who were members of the local system. You indicate that the status which was reported upon each one of these teachers, whether a pensioner or active teacher in the local district, was accepted by the state teachers' retirement system and that thereafter the pensions which had been paid by the local district system to their beneficiaries were now being paid by the state retirement system which had taken them over. These pensioners from the local district pension system were accepted as liabilities by the state teachers' retirement system, with possibly an exact figured status applying to each one of the individual cases. To permit them to have any other status than that at which they were accepted by the state teachers' retirement system would, as indicated earlier in this opinion, disturb the actuarial tables, affect the rest of the membership of the state teachers' retirement system in one form or another, and in fact those contributions of employers contributed to the state retirement system, which contributions are raised by taxation by boards of education, levied upon the tax payers in all the districts of the state.

Considering the exact legal status of a pensioner of a local district pension system, which has merged with the state system, it would appear that this would be settled at least as to the amount of pension payable by the state retirement system thereafter to these pensioners taken over from local district systems, by the following significant language occurring in section 7896-61 G. C.:

"In the event of merger, the moneys and securities to the credit of the local district system * * * shall be transferred to the employers' accumulation fund (of the state retirement system) and *the pensions then payable by the local district pension system shall thereafter be paid from the employers' accumulation fund.* (State retirement system.)"

Here is direct authority as to what pension shall be paid in these cases by the state retirement system to those beneficiaries of local pension systems who have been taken over by the state retirement system where a merger has taken place. This same section speaks of the "pensions" of two different classes: first, the pensioners of the local district system who have been taken over, and second, "the pensions of the active members" of the local district pension system. The section having made the direct statement that the pensions then payable by the local district pension system shall thereafter be paid by the state retirement system, provision is made that the pension of the active members of the local district pension system, and of the new-entrants not yet pensioned, shall thereafter be payable, "as are the pensions of other members of the retirement system hereby created." When the state retirement system takes over a local district pension system, it inherits "the pensions then payable by the local district pension system" and this means the amount of pension allowed to each beneficiary in the local district pension system taken over. It does not mean a deviation of these figures, as the expression of the law is "the pensions then payable."

Section 7896-32 says that:

"When a present-teacher ceases to be a member his prior-service certificate shall be void and not renewable."

This language, in conjunction with section 7896-25 G. C., practically says:

When a present teacher is retired on a pension, his prior service certificate shall be void and not renewable.

Thus if one who had the status of a present teacher later became a beneficiary, that is, a person receiving a pension, and then was reinstated as an active teacher by some board of education, his prior service certificate would be void and not renewable and thus he would receive no credit in the pension computations for that service as a teacher which was rendered before the first day of September, 1920, and would really have the status of a "new-entrant" in the state teachers' retirement system with all his prior rights of accumulated service lost to him under the direct language of the law itself. Thus a teacher, instead of improving his condition on the basis that the state teachers' retirement system possibly might pay larger pensions than a local district pension system, might possibly be losing certain rights which had accrued to him in the matter of prior service.

If there be those persons in the state who are drawing a pension from a local district pension system and who are at the present time engaged in active teaching through reinstatement in some district of the state, in order to increase their ultimate pension under the state retirement system, and a presumed hardship would be worked upon these particular individuals, that is a matter for the general assembly to remedy if it so desires, it being the function of this department to construe the state teachers' retirement law and the local district pension system act as they are written. As indicated heretofore in Opinion 869, issued by the Attorney-General on April 24th, 1914, and appearing at page 496, Vol. I, Annual Report of the Attorney-General for that year, a teacher could not be a beneficiary, that is, a pensioner, in a local district pension system, and at the same time be an active teacher in the district operating the local district pension system. This means that a person could not be an active teacher and a pensioner at the same time, and the same would be true under the state teachers' retirement act that one should not draw a pension from the state teachers' retirement system as a pensioner or beneficiary and at the same time be an active teacher in any of the districts which contribute toward the maintenance and operation of the state retirement system.

In reply to your inquiry you are therefore advised that it is the opinion of this department that

1. There is no provision in the act providing for the creation of local district pension systems for teachers (7875 to 7896 G. C.), for the reinstatement of a beneficiary or pensioner as an active teacher in that district.

2. There is no provision in the state teachers' retirement system law (7896-1 to 7896-64) for the reinstatement as an active teacher of a beneficiary or pensioner by a board of education, the sole exception being in the case of disability beneficiaries who may be restored to active service, as provided in section 7896-39 G. C.

3. A pensioner of a local district pension system which has merged with the state teachers' retirement system, cannot be reinstated as an active teacher, either with or without the continuation of his pension payments, while in active service.

4. Where a local district pension system has merged with the state teachers' retirement system, the pensions paid to beneficiaries in the local district pension system shall thereafter be paid in the same amount by the state teachers' retirement system, since these pensions have been accepted by the state teachers' retirement system as a liability in an exact amount at the time of evaluation.

5. A pensioner of the state teachers' retirement system may not be rein-

stated as an active teacher by discontinuing his pension during such period of active teaching.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2755.

APPROVAL, BONDS OF PAINESVILLE CITY SCHOOL DISTRICT IN AMOUNT OF \$20,000 FOR IMPROVING SCHOOL PROPERTY.

COLUMBUS, OHIO, December 31, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2756.

APPROVAL, BONDS OF HURON COUNTY, OHIO, IN AMOUNT OF \$10,320 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, December 31, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2757.

APPROVAL, BONDS OF BEDFORD VILLAGE SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO, IN AMOUNT OF \$25,000.

COLUMBUS, OHIO, December 31, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2758.

APPROVAL, BONDS OF VILLAGE OF EAST YOUNGSTOWN, OHIO, IN AMOUNT OF \$5,900 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, December 31, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

Re: Bonds of the Village of East Youngstown in the amount of \$5,900 to secure funds to pay the village portion of improving certain streets, 1 bond payable in 5 installments of \$1,000 each and 1 installment of \$900—6 per cent.